

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-185959

DATE: April 16, 1976

MATTER OF: John F. McGreevey & Company, Inc.

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DIGEST:

Contractor whose bid was 50 percent below next low bid and 45 percent below Government estimate may have contract rescinded since no valid and binding contract is consummated where contracting officer knew or should have known of error and neglected to verify bid in accordance with ASPR § 2-406.1.

By letter dated February 19, 1976, the Acting Chief Counsel, Office of the Chief of Engineers, Department of the Army, recommended that contract No. DACW61-76-B-0032, awarded by the Philadelphia District Corps of Engineers (Corps), be rescinded.

On December 11, 1975, bids were opened for ditch construction and work on wet and soft terrain at Penns Neck Disposal Area, New Jersey. The Government estimate was \$15,000, and the two bids received were \$8,250 and \$16,500. Although the low bid was 50 percent less than the next low bid, and 45 percent under the Government estimate, the contracting officer made award to John F. McGreevey & Company, Inc. (McGreevey), on December 15, 1975, without requesting that the bidder verify its low bid.

By letters dated December 31, 1975, January 5, 1976, and January 21, 1976, McGreevey alleged a mistake in bid and requested that the contract be rescinded. McGreevey maintained that the mistake occurred because it interpreted the procurement to allow the use of a crane with dragline bucket capable of operating on either pontoons or mats. In this regard, McGreevey alleges that " * * Terminology in the trade often classifies pontoons and mats as synonymous because they are often used in the water or on the bottom of streams as well as on land." However, the solicitation required the use of a crane which operated only on pontoons and, therefore, McGreevey was advised that its equipment was unacceptable since it operated only on mats.

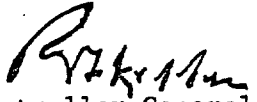
The contracting officer acknowledges that he failed to comply with the provisions of Armed Services Procurement Regulation § 2-406.1 (1975 ed.) regarding verification of low bids. In addition,

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the contracting officer acknowledges that the disparity between the Government estimate, the low bid, and the other bid received placed him on constructive notice of a possible mistake in bid.

Our Office has held that no valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but neglected to take the proper steps to verify the bid. See Sunset Construction Company, B-185140, March 2, 1976.

Accordingly, we agree with the administrative recommendation that the contract with McGreevey be rescinded.


Deputy Comptroller General
of the United States