

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186267

DATE: May 12, 1976

MATTER OF: Charles E. Weber & Associates

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DIGEST:

Contractor's request for an increase in contract price on grounds that its bid price did not include labor costs of subcontractor may be granted since contracting officer should have been on constructive notice of possible error in bid before award, where low bid was 23 percent below Government estimate and 48 percent below next low responsive bid, and there is no doubt as to intended bid. Consequently, contract may be reformed as administratively recommended to reflect intended bid.

This decision is in response to a request from the Director, Supply Service, Department of Medicine and Surgery, Veterans Administration (VA) for a determination concerning the propriety of permitting correction after award of a mistake claimed by Charles E. Weber & Associates (Weber) in its bid for contract V542C-166, issued by the VA. The contract requires Weber, as successful low bidder on invitation for bids (IFB) 542-38-76, to furnish and install metal and glass partitions in building No. 1 at the VA Hospital in Coatesville, Pennsylvania.

Bids were opened on February 17, 1976. Three bids were submitted in response to the IFB: Weber's bid was \$7,399; a second bid, which was rejected as nonresponsive for failure to provide a bid bond, was \$9,984; and the third bid, the only other responsive bid, was \$14,067. The estimate on the contract provided by the facility engineering service was \$9,500. On February 24, 1976, Weber, as low bidder, was awarded the contract.

By an undated letter accompanied by several worksheets notarized on March 23, 1976, Weber notified the contracting officer that the cost of labor, which totalled \$1,182, had inadvertently been left out of its bid, and asked that the contract be reformed to include these labor costs, for a total price of \$8,581. The contracting officer states his belief that Weber did fail to include labor costs in its original bid, and the contracting officer and the VA both recommend that favorable consideration be given to the request for a price increase.

To support its contention that it inadvertently omitted labor costs from its original bid, Weber submitted to the contracting officer a worksheet which indicates that the cost to Weber of the partitions it would supply would be \$5,998, its cost for the glass it would supply would be \$491.40, its markup would be \$749, and interest would be \$160.60. Added together, these figures total \$7,399, which is the figure quoted in Weber's original bid. The figures for the partitions and glass are further supported by letters from Weber's suppliers dated February 12, 1976, and March 8, 1976, respectively, indicating that they would supply the required partitions and glass for the amounts indicated by Weber on its worksheet.

To substantiate its omitted labor costs, Weber has also submitted a price list and an undated worksheet from the General Services Co. of Brookhaven, Pennsylvania, which indicate that Weber's labor costs would total \$1,182.10. As noted above, Weber seeks an increase in the same amount, rounded to the nearest dollar, to cover its labor costs. All the worksheets and letters submitted by Weber were notarized on March 23, 1976, and bear a certification of the same date, signed by Weber's owner, that they are true and accurate.

When a mistake is alleged after award of a contract, our Office will grant relief only if the mistake was mutual or the contracting officer was on actual or constructive notice of a unilateral error prior to award. No valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but failed to take proper steps to verify the bid. In determining whether a contracting officer has a duty to verify bid prices, we have stated that the test is whether under the facts and circumstances of the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer, without making it necessary for the contracting officer to assume the burden of examining every bid for possible error. R. E. Lee Electric Co., Inc., B-184249, November 14, 1975, 75-2 CPD 305, and cases cited therein. In these circumstances, the price is ordinarily corrected upon presentation of evidence establishing error and the intended price. Noah Lewis, B-182660, January 16, 1975, 75-1 CPD 29, citing 37 Comp. Gen. 706, 707 (1958).

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We agree that, in the circumstances present here, the contracting officer should have requested verification of the bid. Weber's original bid was about 23 percent less than the Government estimate, and about 48 percent less than the other responsive bid. These figures, we think, should reasonably have called to the attention of the contracting officer the possibility of Weber's error. See Handling Equipment Sales Company, Inc., B-182467, December 16, 1974, 74-2 CPD 349; National China & Equipment Corporation, B-180386, February 4, 1974, 74-1 CPD 52; compare Fritz A. Nachant, Inc., B-181028, July 11, 1974, 74-2 CPD 24, affirmed October 21, 1974, 74-2 CPD 216.

In previous cases we have allowed correction of a bid so as to include a previously calculated item which the bidder intended to include in its bid, but inadvertently omitted, while we have not allowed correction of bids to cover costs which the bidder did not originally intend to include in its bid, and only later realized were necessary to fulfill its contractual obligations. See, e.g., 37 Comp. Gen. 706, 707 (1958), supra; 17 Comp. Gen. 575, 577 (1938); National China & Equipment Corporation, supra; B-177330, January 2, 1973. From an inspection of Weber's worksheet, it is clear that it did not include labor costs of any sort in its original bid price. Because labor expenses form an obvious component of the cost of supplying and installing the partitions involved here, it seems probable that General Services furnished its labor quotation to Weber before bid submission, and that Weber intended to include labor costs but inadvertently omitted General Services' quotation in the preparation of its bid.

We think the evidence submitted by Weber establishes its error--i.e., the omission of labor costs--and the intended price, which was the bid price as originally submitted, plus its labor costs. We are in agreement with the administrative recommendation that the contract be reformed to allow Weber's claimed labor costs of \$1,182, for a total contract price of \$8,581.

Pat Kitten
Deputy Comptroller General
of the United States