

DECISION



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

FILE: B-186665

DATE: July 22, 1976

MATTER OF: Wallace Business Forms, Inc.

DIGEST:

Bidder's request for contract modification to remedy alleged mistake in bid due to misunderstanding by bidder of labeling requirement cannot be granted since contracting officer was not on actual notice or on constructive notice of the possibility of an error prior to award since bid price was only 7 percent lower than second low bid and was higher than the price of the previous printing.

This decision involves a mistake in bid by Wallace Business Forms, Inc. (Wallace), alleged after award by the Government Printing Office (GPO) of a contract for the production of 250,000 compliance inspection report forms.

GPO solicited bids for the contract from 20 firms and received 12 bids, the lowest five of which were as follows:

	<u>Bid</u>	<u>Price per thousand</u>
Wallace Business Forms, Inc.	\$8,515.00	\$34.06
Datafold Forms, Inc.	\$9,165.00	\$36.66
Associated Printers	\$9,455.00	\$37.82
Lewis Business Forms	\$9,625.00	\$38.50
Ribner Business Forms	\$9,730.50	\$38.92

The remaining seven bids ranged from \$10,167.00 to \$16,192.50. The cost of the previous printing (11 months prior) was \$33.49 per thousand.

Wallace alleges that it erred in the preparation of its bid by failing to include the price of affixing a label required by the solicitation. It alleges that its correct price per thousand should have been \$38.46, for a total price of \$9,615.00.

The error made by Wallace with respect to the labeling requirement was a unilateral mistake on its part since the solicitation clearly required the packages of forms to be labeled. The general rule regarding allowance of an upward price adjustment arising from a unilateral mistake in bid alleged after award is that acceptance of the bid results in a valid and binding contract unless the contracting officer had either actual or constructive notice of the probability of error prior to the time of award. Wender Presses, Inc. v. United States, 343 F.2d 961 (Ct. Cl. 1965); 49 Comp. Gen. 199, 201 (1969); 45 id. 700 (1966). There is no evidence in the present record to indicate that the contracting officer accepted Wallace's bid with actual knowledge of error. Consequently, Wallace can only receive relief from the contract as executed if the record shows that the contracting officer had constructive notice of an error in bid.

A contracting officer will be charged with constructive notice of error only when factors existed at the time of award which should have raised the possibility of error in the mind of the contracting officer. See Acme Refining-Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113. In the present case, Wallace's low bid of \$8,515.00 was only 7 percent lower than the next high bid of \$9,165.00. This difference was not so great as to provide the contracting officer with constructive notice of the possibility of a mistake in bid. See Engle Acoustics & Tile, Inc., B-182295, March 4, 1975, 75-1 CPD 127. Furthermore, the cost of the previous printing, \$33.49 per thousand, only 11 months prior, was lower than Wallace's bid price of \$34.06 per thousand. See Paramount Press, Inc., B-182750, March 27, 1975, 75-1 CPD 185. Consequently, we cannot conclude that the contracting officer was on constructive notice of the likelihood of error, which would have required verification of Wallace's bid. The acceptance of the bid, therefore, consummated a valid contract which fixed the rights and liabilities of the parties. See Edwin Dougherty and M.H. Ogden v. United States; 102 Ct. Cl. 249, 259 (1944); 47 Comp. Gen. 365, 368 (1968).

Accordingly, Wallace's claim for relief is denied.

Deputy


Comptroller General
of the United States