

DOCUMENT RESUME

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[Contractor's Pricing Error in Bid Does Not Invalidate Contract]. B-188392. April 19, 1977. 3 pp.

Decision re: Morton Salt Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services; Reasonableness of Prices Under Negotiated Contracts and Subcontracts (1904).

Contact: Office of the General Counsel: Procurement Law II. Budget Function: General Government: Other General Government (006).

Organization Concerned: General Services Administration.

Authority: 48 Comp. Gen. 672. 39 Comp. Gen. 36. B-185703 (1976). B-187488 (1976). B-176772 (1973). B-179725 (1973). B-182084 (1974). B-185400 (1976). B-182085 (1975). E-185201 (1976). Wender Presses, Inc. v. United States, 170 Ct. Cl. 483, 486 (1965).

Company claimed a mistake in its bid on successful contract to supply salt. On two items, the bid was 15% less than the only other bid and an average 16% less than previous similar award. The contract was valid and binding, and may not be rescinded because alleged mistake was not so apparent as to charge contracting officer with constructive notice of possible mistake. (DJM)

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K. Baker
Proc II

DECISION



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

FILE: B-188397

DATE: April 19, 1977

MATTER OF: Morton Salt Company--Error in Bid

DIGEST:

Contractor whose bid for two items of an IFB to supply sodium chloride was 15 percent less than the only other bid on each item and was 14 and 18 percent less than the previous award on the two items may not have contract rescinded because alleged mistake of contractor was not so apparent as to charge contracting officer with constructive notice of possible mistake.

This decision involves a mistake in bid by Morton Salt Company (Morton), alleged after award by the General Services Administration (GSA) of a contract for the supply of salt.

Solicitation 7PR-W-51489/2M/7FI, issued by GSA on July 23, 1976, requested bids for 118 items, consisting of various sizes, grades and estimated quantities of sodium chloride (salt), to be delivered to various locations within the United States. Morton's bid for 100 of the items was opened on August 24, 1976, and award was made to Morton on fourteen of these items on September 17, 1976. Morton, by letter to GSA dated October 1, 1976, claimed a mistake in bid on Items 69 and 70, which had been awarded to Morton. GSA has requested our Office to decide whether Morton's contract for these two items may be rescinded.

This Office has consistently held that the responsibility for the preparation of a bid rests with the bidder. Therefore, a bidder who makes a mistake in bid which has been accepted in good faith by the Government must bear the consequences of it unless the mistake was mutual or the contracting officer had either actual or constructive notice of the mistake prior to the award. 48 Comp. Gen. 672 (1969); Penn Electric Motor Company, Inc., B-185703,

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July 9, 1976, 76-2 CPD 25. The contracting officer will be charged with constructive knowledge of such error only where the bid price deviates significantly from the other bids received or from the Government's estimate. American Railroad Industries, Inc., B-187488, October 22, 1976, 76-2 CPD 361. The test is one of reasonableness; whether under the facts and circumstances of the particular case, there are factors which could have raised the presumption of error in the mind of the contracting officer. Wender Presses, Inc. v. United States, 170 Ct. Cl. 483, 486 (1965); B-176772, May 23, 1973. Generally, a contracting officer has no reason to suspect error where a low bid is in line with other bids received and with the Government estimate. B-179725, October 30, 1973.

This Office formerly took the position that where only two bids were received, a substantial difference between them would not suggest probability of error in the low bid because the error, if there was one, could just as easily be in the high bid. 20 Comp. Gen. 28 (1940). However, this Office has more recently held that a substantial difference between two bids charges the contracting officer with notice of a probable error in one of the two bids and he cannot assume that the error is not in the low bid. 53 Comp. Gen. 30 (1973). In the cited case, a 70 percent difference was found sufficient, standing alone, to charge the contracting officer with constructive notice of a mistake in the low bid. Subsequent cases charged constructive notice to contracting officers where the difference between the only two bids were respectively 50 percent and 240 percent. Ralph David, Inc., B-182084, December 4, 1974, 74-2 CPD 308; Westinghouse Electric Co., B-185400, March 2, 1976, 76-1 CPD 151. However, this Office has concluded in cases where the variance was between 18 and 55 percent that constructive notice did not exist, based upon the particular facts in those cases. Sundance Construction, Inc., B-182485, February 28, 1975, 75-1 CPD 123; Penn Electric Motor Company, Inc., supra. In Sundance Construction, Inc., supra, this Office, considered the question of whether an allegedly mistaken bid, which was 18 percent lower than the only other bid, was "considerably lower" than the other bid, so as to place the contracting officer on notice of a possible mistake. This Office stated that, "We do not agree with the contention that an 18 percent difference is 'considerably lower'."

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In the present case, the 15 percent difference between Morton's bid on Items 69 and 70 and the only other bid on each item was not sufficient to place the contracting officer on constructive notice of a mistake. This is particularly apparent when the difference between the two bids on the subject items is compared to the difference in bids on other items requesting the same material, salt. Out of the 42 other items of salt for which only two bids were received, the difference was between 10 and 14 percent in 8 of them and the difference was 15 percent or greater in 10 of them. Consequently, the 15 percent difference in the subject items was not unusual in the context of the bids received on other similar items.

The contracting officer may have been on notice of the fact that Morton's bid on Items 69 and 70 of the present contract were 14 and 18 percent lower than the previous award for the two items. Cf. Charles and Son Window Cleaning Co., E-185201, January 2, 1976, 76-1 CPD 9. Compare 39 Comp. Gen. 36 (1959). However, the size of the difference between Morton's bid and previous awards for the two items was not substantial enough to place the contracting officer on constructive notice of a mistake in Morton's bid.

We conclude that the contracting officer was not on constructive notice of a mistake in Morton's bid on Items 69 and 70 of the subject invitation for bids. Accordingly, the acceptance by GSA of Morton's low bid consummated a valid and binding contract fixing the rights and liabilities of the parties from which our Office may not grant relief.

R. F. Ketta
Deputy Comptroller General
of the United States