

DOCUMENT RESUME

02393 - [A1572565]

[Request for Amendment to Contract to Correct Pricing Error].
B-188937. May 31, 1977. 3 pp.

Decision re: Eaton Labs., Inc.; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government
(805).

Organization Concerned: Veterans Administration: Dept. of
Medicine and Surgery.

Authority: 41 U.S.C. 252(c)(10). 48 Comp. Gen. 672. 53 Comp.
Gen. 30, 31. B-180329 (1974). Wender Presses, Inc. v. United
States, 170 Ct. Cl. 483 (1965).

A decision was requested concerning the propriety of
amending a contract to adjust an error in price for a drug item
quoted in bid. Since data available to the contracting officer
indicated the possibility of error, adjustment of the contract
was allowed. (HTW)

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DECISION



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

FILE: B-188937

DATE: May 31, 1977

MATTER OF: Eaton Laboratories, Inc.

DIGEST:

Sole-source contractor is entitled to adjustment in contract price for error in price on drug item resulting from quoting price on less expensive form of item than that solicited since contracting officer was on constructive notice of possibility of error where verified price of substantially same drug showed 20-percent increase from previous contract price compared to 20-percent decrease in price of item erroneously quoted and prices of other drugs solicited also showed increases from previous contract prices.

The Director, Supply Service, Department of Medicine and Surgery, Veterans Administration (VA), requests our decision as to the propriety of amending VA contract No. V797P-569.d with Eaton Laboratories, Inc. (Eaton), in connection with an error alleged to have been made in Eaton's bid.

On November 12, 1976, request for proposals No. M5-Q35-77 was issued to Eaton pursuant to 41 U.S.C. § 252(c)(10) (1970) for five drug items to be procured at fixed unit prices by VA during the period February 1, 1977, through January 31, 1978. Eaton submitted the following response to the solicitation:

<u>Item No.</u>	<u>Supplies/Services</u>	<u>Quantity (estimated)</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
1	6505-01-029-7899A - DANTROLENE SODIUM CAPSULES. 25 mg. 100s. (Dantrium).	3,168	BT	\$ 7.52	\$ 23,823.36
2	6505-00-13324JA - DANTROLENE SODIUM CAPSULES. 100 mg. 100s. (Dantrium).	2,148	BT	13.09	28,117.32

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<u>Item No.</u>	<u>Supplies/Services</u>	<u>Quantity (estimated)</u>	<u>Unit</u>	<u>Price</u>	<u>Amount</u>
3	6505-00-410-7715A - NITROFURANTOIN MACRO- CRYSTALS, CAPSULES. 100 mg. 1000s. (Macrochantin).	2,352	BT	\$ 89.06	\$209,469.12
4	6505-00-420-7716A - NITROFURANTOIN MACROCRYSTALS, CAPSULES. 50 mg. 1000s. (Macrochantin).	4,188	BT	30.35	127,105.80
5	6505-00-604-1717A - DANTRO'ENE SODIUM CAPSULES. 25 mg. 500s. (Dantrium).	3,960		34.00	134,640.00

By letter dated January 25, 1977, to the contracting officer, Eaton requested that the prices it had proposed for items 1 and 5 in response to the solicitation be decreased to \$6.55/BT and \$29.75/BT, respectively. The letter further stated that:

"All other terms, conditions and representations for the above referenced solicitation [No. MS-Q35-77] remain the same."

Award was made to Eaton at the proposed prices, as amended, on January 31, 1977. In a telephone communication with the contracting officer on February 3, 1977, and in a letter dated February 8, 1977, to the Chief, Marketing Division, Drugs and Chemicals of VA, Eaton asked that an amendment be issued to change the unit price of item 4 from \$30.35 to \$44.53. Eaton stated that the price inadvertently quoted for item 4 was the price established for nitrofurantoin tablets 50 mg. 1000, a less expensive form of nitrofurantoin than the capsules solicited in item 4. In support of the allegation, Eaton stated that the \$44.53 unit price is 55 percent less than the price offered on the current Federal Supply Schedule (\$98.95) and, as such, is the lowest price offered to any account through depot purchase to include the Defense Personnel Support Center. In support of its position Eaton submitted copies of its hospital price list, authorized Government price list, internal Government bid prices with certification of its use in the preparation of this contract and workup copy of the contract.

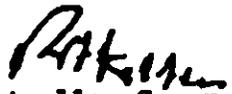
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Where, as in the instant case, a mistake in bid is not discovered until after award, the general rule is that the bidder must bear the consequences of its mistakes unless the contracting officer knew or should have known of the mistake thus necessitating verification before the acceptance of the bid. Wender Presses, Inc. v. United States, 170 Ct. Cl. 483 (1965); 48 Comp. Gen. 672 (1969); Titan Environmental Construction Systems, Inc., B-180329, October 1, 1974, 74-2 CPD 187. Constructive notice is said to exist when the contracting officer, considering all the facts and circumstances of a case, should have known of the possibility of an error. 53 Comp. Gen. 30, 31 (1973).

It is VA's position that the procurement data available to the contracting officer between December 12, 1968, through October 27, 1976, and the authorized Government price list for the period January 1, 1977, through December 31, 1977, administered by the VA Marketing Division for Drugs and Chemicals, established that the unit price of \$30.35 for Macroductin 50 mg. in bottles of 1,000 was obviously incorrect and that the contracting officer should have questioned Eaton's unit price bid of \$30.35 on item 4, especially since Eaton is the only supplier of this item. VA also states that the contracting officer was on constructive notice of the mistake because it would be most unusual for an offeror who is the only supplier of a particular product to offer to sell that product in an inflationary economy at a lower price than it had ever offered in the past. VA recommends that item 4 on the contract be amended so that Eaton be paid on the basis of a \$44.53 unit price.

A review of the procurement data available to the contracting officer at the time Eaton's bid was submitted indicates that the bid prices for the items other than item 4 were higher than the previous contract prices for these items. Moreover, the bid price for item 3, substantially the same drug as item 4 but of twice the strength, increased by approximately 19.4 percent. Since the price for item 3 had been verified by Eaton in a letter dated December 20, 1976, the contracting officer should have been aware of the possibility that a mistake had been made in the bid price for item 4 which showed a decrease of almost 20 percent and should have sought verification.

Accordingly, we have no objection to amending the contract to correct the price of item 4, Macroductin 50 mg., 1000's, from \$30.35 to \$44.53.


Deputy Comptroller General
of the United States