

DOCUMENT RESUME

02671 - [A1732746]

[Request for Modification of Contract Price after Award].
B-189060. June 9, 1977. 3 pp.

Decision re: Arizona Rain Sprinkling Co.; by Robert F. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Department of the Interior: Office of
Administrative and Management Policy; Bureau of Indian
Affairs.

Authority: B-185340 (1976). B-182895 (1975). B-187441 (1976).
F.P.R. 1-2.406.1.

The Director, Office of Administrative and Management Policy, Department of the Interior, requested a determination concerning the propriety of modifying a contract price to correct an alleged error in the bid resulting from a dimensional distortion in a drawing in the invitation for bids. Since reduction in size of drawing was not unusual, and the contracting officer properly obtained bid verification, the request for modification was denied. (HTW)

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DECISION

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

FILE: B-189060

DATE: June 9, 1977

MATTER OF: Arizona Rain Sprinkling Company

DIGEST:

Request after award for modification of contract price due to alleged error in bid because of distortion in dimensional scale of drawing incorporated in IFB is denied where contracting officer properly obtained bid verification.

This decision is in response to a request from the Director, Office of Administrative and Management Policy, United States Department of the Interior for a determination concerning the propriety of permitting correction after award of a mistake claimed by the Arizona Rain Sprinkling Company (ARSC) in its bid for contract H50C14-09953, issued by the Bureau of Indian Affairs (BIA). The contract requires ARSC, as successful low bidder on invitation for bids (IFB) H54-132-X-100-655, to furnish the labor, material and equipment to level approximately 480 acres involving the movement of about 402,000 cubic yards of earth and to construct flood control structures and roads for a canal. The work statement provides that if a deficiency or surplus of earthen materials should occur in one field, the contractor will be required to obtain from an adjacent field or move to an adjacent field such material as is deficient or surplus, respectively, with the hauling distance to or from the adjacent unit not to exceed 660 feet.

The IFB states that bidders are expected to visit the site and that failure to do so will not relieve the contractor from completing the contract "in strict accordance with the true intent and meaning of the drawings * * *." It further states that the information shown on the drawings is believed to be reliable but such information is furnished for convenience of the bidders and no guarantee of the accuracy of the information is made or implied.

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On the bid opening date, September 8, 1976, seven bids were received ranging from ARSC's low bid of \$161,170.00 to a high of \$373,270.00. Although the next lowest bid was only \$5,770 higher, ARSC was requested to verify and confirm its bid due to its disparity with the \$303,000.00 estimate of the BIA. After ARSC confirmed its price, the BIA revised its estimate to \$204,120.00. The contract was awarded to ARSC on September 29, 1976. Notice to proceed was issued on November 8, 1976. Approximately 55 percent of the work had been completed and ARSC had been paid \$80,162.05 as of February 22, 1977.

ARSC claims it first became aware of the mistake on November 13, 1976 when irrigation pipe was delivered and found to be one half of the amount needed to water the site. At this time, it was discovered that the scale of one of the drawings furnished with the IFB and upon which ARSC had based its pricing calculation, was incorrect. ARSC contends that the average haul distance was 550 feet rather than the 250 feet shown on the drawings. ARSC claims that this caused it to underestimate the required performance and doubled its costs due to increased time, labor, fuel and irrigation pipe. ARSC asked for an increase of 25 cents in its price per cubic yard. This would increase its total price by approximately \$100,500.00 bringing it above the bids of the next three lowest bidders (\$166,940.00, \$212,550.00 and \$236,420.00 respectively). The BIA states that ARSC has not submitted convincing evidence that an error was made, how it occurred or its intended price and recommends that the claim be denied.

The drawing in question, entitled "Field Elevations" was the second of ten to be included in the IFB and was intended to show the approximate finish elevation requirements for the leveled land. This drawing and the top drawing entitled "Boundary Survey" each had a scale of one inch to 500 feet. The other 8 drawings indicated a scale of one inch to 100 feet. All drawings had been considerably reduced to an identical size for incorporation into the specifications. This resulted in a distortion of the scales so that one inch on a drawing no longer indicated the distance in feet. The drawings contained no statement that the drawings had been reduced in size or that the scales were no longer accurate. The BIA contends, however, that such reduction is not unusual in the construction trades and especially for such work as is involved here. In addition, it points out that the IFB requested all bidders to visit the project site.

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This case has been presented here as one involving an alleged mistake in bid and we therefore have considered whether the contracting officer was or should have been on notice of mistake prior to award and whether the contracting officer's duty to seek verification was properly exercised. However, inasmuch as ARSC does not claim that its bid price is erroneous when computed on the basis of its interpretation of the specification, this matter also may be viewed as a request for equitable adjustment due to inadequate or ambiguous specifications. We, of course, will not decide ARSC's potential dispute under the contract.

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. Boise Cascade Envelope Division, B-185340, February 10, 1976, 76-1 CPD 86; Autoclave Engineers, Inc., P-182895, May 29, 1975, 75-1 CPD 325. In cases where the contracting officer has reason to believe that a mistake may have been made, he must request from the bidder a verification of the bid, calling attention to the suspected mistake. Federal Procurement Regulations (FPR) § 1-2.406.1. Here, BIA does not consider the reduction in the size of the drawing as an unusual trade practice. If, as here, the contracting officer's only cause for suspecting error is the disparity between bids, his verification duty is discharged if the bidder knows the basis for the request for verification. Creative Printing, Inc., B-187441, November 12, 1976, 76-2 CPD 405. In the instant case, the next lowest bid was only \$5,770 higher than that of ARSC and it was specifically informed that there was a disparity between its bid and the estimate of the BIA. Therefore, we believe that the contracting officer adequately discharged his verification duty.

By separate letter of today we are suggesting to the agency that in future similar situations, notation be placed on reduced drawings to specifically indicate that the dimensional scales thereon are distorted.

Accordingly, ARSC's request that its contract be modified to correct a mistake is denied.


Deputy Comptroller General
of the United States