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Joseph Notopoulos

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DECISION

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

FILE: B-190177

DATE: October 12, 1977

MATTER OF: Morris Herring Construction Company, Inc.

DIGEST:

Where bid substantially lower than Government estimate and other bids is verified and bidder offers plausible explanation for low bid, acceptance of bid results in binding contract notwithstanding contractor's subsequent allegation of mistake. Moreover, there is no basis for providing rescission of contract since under circumstances contract is not unconscionable.

The Department of Agriculture, Forest Service, has requested our decision as to the propriety of the proposed rescission of a contract with the Morris Herring Construction Company, Inc. (Herring), on the basis of a mistake in bid alleged after award. Forest Service advises that the evidence presented by the contractor is not clear and convincing as to either the mistake or the intended bid, but suggests that due to the great price disparity between the alleged erroneous bid, the Government's estimate and other bids which are respectively 20, 65, 70 and 170 percent above the low bid, a contract at the bid price "might be unconscionable."

The record shows that bids for the construction of McMurtery Hollow Road #6035, Ouachita National Forest, were opened June 17, 1977. Herring submitted the low bid of \$127,729.47. The Forest Service estimate for the project was \$154,432.00 and the other bids were \$210,920.85, \$216,236.23, and \$354,110.54.

Because of the disparity between Herring's bid and the Forest Service estimate and the other bids received, the contracting officer called to Herring's attention at the bid opening the possibility of an error in its bid. Herring advised that its first estimate was \$147,000 (approximately \$7,000 below

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the Forest Service estimate), but because it wanted and needed this work, it could reduce its clearing and grubbing and excavation costs through the use of larger, more efficient equipment. Herring also advised that the initial estimate was further revised to its actual bid price because the clearing and grubbing should have been estimated as light, instead of medium, since the sawtimber was cut off in 1968.

By letter of June 17, 1977, to the contracting officer, Herring provided written verification of its bid:

"This is to verify my bid of \$127,729.47 for complete construction of McMurtery Hollow Road #3035. I certify that it is correct to the best of my ability. We have our own equipment for clearing and grubbing and we figured that we can do pay items 201(01) [clearing and grubbing] and 203(01) [unclassified excavation] as bid."

By letter of June 29, 1977, the contracting officer notified Herring of the acceptance of its bid. By letter dated July 1, 1977, which was received by the Forest Service on July 5, 1977, Herring stated that "since the date of the letting, I have found an error in my bid and would like to be relieved of my bid." By letter of July 16, 1977, Herring explained to the contracting officer that an error had been committed in Herring's unit price for unclassified excavation, item 203(01), in that the \$.72 quoted should have been \$1.72, resulting in an error of \$51,783 for that item. Herring stated that the error was attributable to its computing the bid in a small plane under hazardous flying conditions en route to the bid opening, and to its inability to double check its computations because of the pressures of time. Herring stated that it was "happy" with its bid at the time it verified its price, and that the error was discovered only subsequent thereto.

The general rule with regard to mistakes alleged after the award of a contract is that the contractor

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must bear the consequence of its unilateral mistake unless the contracting officer knew or should have known of the mistake at the time the bid was accepted. See J.J. Englert Company, Inc., B-187237, September 23, 1976, 76-2 CPD 277; Park Services, Inc., B-183599, May 8, 1975, 75-1 CPD 287, and citations therein.

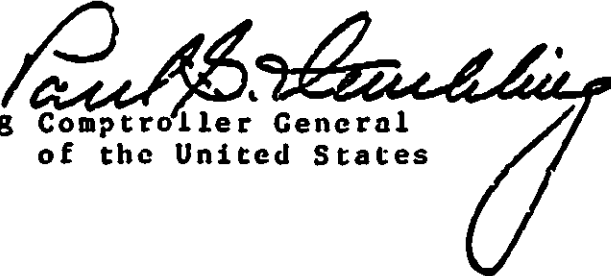
When the contracting officer has reason to suspect error, as in this case, he is required to call the bidder's attention to a suspected mistake and request verification of the bid. Federal Procurement Regulations (FPR) 1-2.406-1. In this case, it is not disputed that Herring was requested to and furnished a bid verification. Most significantly, that verification specifically confirmed item 203(01), unclassified excavation, under which Herring subsequently alleged a mistake after award. When a bidder is asked to and does verify its bid, generally the subsequent acceptance of the bid creates a binding contract. Park Services, Inc., supra.

However, under certain circumstances, where it can be said that the Government is "obviously getting something for nothing" (see Kemp v. United States, 38 F. Supp. 568 (D. Md. 1941) and Yankee Engineering Company, Inc., B-180573, June 19, 1974, 74-1 CPD 333) or where the acceptance of the bid otherwise results in an unconscionable contract (see Park Services, Inc., supra, and citations therein), this Office has granted relief notwithstanding verification by the bidder prior to award.

Here the contract price is \$127,729.47 compared with a Government estimate of \$154,432.00, and the alleged error is \$51,783.00. The contracting officer had a reasonable basis for concluding after verification that the bid was correct since Herring advised that its initial estimate was close to the Government estimate and Herring explained the various reasons why it felt it was able to lower its actual bid price from that estimate. Therefore we do not believe that there exist circumstances so extreme as to amount to an unconscionably priced contract or to the Government's "obviously getting something for nothing." Park Services, Inc., supra; Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545, 552 (1974), 74-2 CPD 393.

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Accordingly, there is no basis for either rescission or reformation of Herring's contract.


Acting Comptroller General
of the United States