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Michael Herkell
R. J. #1

DECISION



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

FILE: B-190893

DATE: May 12, 1976

MATTER OF: Utility Petroleum and Refining, Inc.

DIGEST:

Where contracting officer stated that there was notice of probability of mistake in bid because price for number 5 fuel oil item was "out of line compared to other bids and available information," item may be rescinded since no valid and binding contract is consummated where contracting officer knew or should have known of error and neglected to verify bid.

On the basis of a mistake in bid alleged after award, Utility Petroleum and Refining, Inc. (Utility), requests modification of the contract awarded under invitation for bids (IFB) No. DSA600-76-B-1014, issued on August 12, 1976, by Defense Fuel Supply Center, Defense Logistics Agency (DLA). More specifically, Utility requests rescission of item No 295-53, which required approximately 109,000 barrels of number 5 (light) fuel oil, in contract No. DSA600-77-D-0032.

The invitation solicited bids for the supplying of various distillate and residual bunker fuels, pursuant to the East/West Coast Marine Bunker Program, for the period of January 1, 1977, through December 31, 1977. Utility bid on 45 of the items in the IFB and its bid discloses that for each of the items it listed either a number 2 or a number 6 fuel oil and priced accordingly, even though item 295-53 called for a number 5 fuel oil.

Utility contends that while determining which items in section "E," the list of the distillate and residual bunker fuels, to bid on, it read item 295-53, a number 5 (light) fuel, as a number 6 fuel and bid the same price (\$9.90 per barrel) as it did on item 240-55, a number 6 fuel, listed on the preceding page.

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It is Utility's position that such misreading should have been and, in fact, was apparent to DLA, but there was no request for bid verification as required by the Armed Services Procurement Regulation § 2-406 (1976 ed.). Utility, in support of its position, states that once it became aware of the mistake, which was after receiving its first order, it contacted the designated agent of the contracting officer and was told that DLA " * * * realize[d] that the number 5 (light) price was a hell of a deal, a very, very low price." Then, Utility points out that the contract administrator admitted that " * * * it's obvious that number 5 fuel costs considerably more than number 6." Moreover, Utility advises that it has "never * * * purchased or sold number 5 (light) fuel oil because that grade of fuel oil must be especially ordered and blended by refineries, and refineries usually will not sell it to retailers."

With respect to number 5 (light) fuel oil there were two bids received: Utility's bid for item No. 295-53 priced at \$9.90 per barrel and another firm's bid for item No. 853-53 priced at \$12.06 per barrel. Number 5 (light) fuel is a blend of number 6 and number 2 fuel oils. We note that number 2 fuel oil is considerably more expensive than number 6 fuel oil. DLA advises that a recent market study revealed that the price differential, in September 1976, between number 5 (light) and number 6 ranged from \$1 to \$1.46 per barrel. Also, we note that during a random review of the Journal of Commerce which regularly publishes quotations for numbers 5 (light) and 6 fuel oils, the contracting officer discovered that number 5 (light) was consistently quoted at a higher price. Consequently, as to item No. 295-53, the contracting officer has concluded:

" * * * I am of the opinion that the bid of \$9.90 for No. 5 oil should have been questioned prior to award. The price for this product was out of line, compared to other bids and compared with available information. There were good reasons to believe that a mistake might have been made by the bidder. Accordingly, the bidder should have been requested to verify

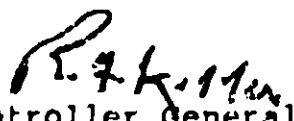
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the price in accordance with ASPR 2-406.1. This was not done and the mistake was not discovered until after award."

As a result, DLA has stated that it would have no objection to Item No. 295-53 being rescinded.

The general rule applicable to a mistake in bid alleged after award is that the sole responsibility for preparation of a bid rests with the bidder, and when a bidder makes a mistake in bid it must bear the consequences of its mistake unless the mistake is mutual or the contracting officer was on actual or constructive notice of error prior to award. See Tri-State Maintenance, Inc., B-189605, November 15, 1977, 77-2 CPD 369. If a contracting officer suspects a mistake, ASPR § 2-406 (1976 ed.) requires that a request for bid verification be made and that the bidder be informed why this request is being made. In those cases where the contracting officer knew or should have known of the probability of error, but neglected to take the proper steps to verify the bid, as here, our Office has held that no valid and binding contract has been consummated. Carcill, Inc., B-190924, January 17, 1978, 78-1 CPD 43; Hearin Forest Industries, B-182297, July 19, 1977, 77-2 CPD 36.

Based on the foregoing, Item No. 295-53 in the contract with Utility may be rescinded.


Acting Comptroller General
of the United States