

Transp.

DECISION



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

10,508

FILE: B-193335

DATE: June 19, 1979

MATTER OF: Galion Manufacturing Division,
Dresser Industries, Inc.

~~CONFIDENTIAL~~
C N 006666

DIGEST:

1. *Skipped the* Where contracting officer notified low bidder of ~~basis for~~ suspicion of error in bid and requested verification, *the* acceptance of verified bid resulted in valid and binding contract. Therefore, no legal basis exists for reformation of contract based on subsequent claim by contractor of unilateral mistake in bid.
2. Time limitations of GAO Bid Protest Procedures are not applicable to allegations of mistake in bid after award. *protest procedures did not apply*
3. *however the* ~~Protest against~~ alleged solicitation defects, which were apparent prior to bid opening ~~was~~ untimely and will not be considered on merits, since it was not filed before that time. *was*

a company
Galion Manufacturing Division, Dresser Industries, Inc. (Galion), requests reformation of contract N00104-78-C-B011 awarded by the Navy Ships Parts Control Center for eight truck cranes, because of an alleged mistake in its bid discovered after award. *D 601773* For the reasons set forth below, we find that the Navy's acceptance of Galion's bid resulted in a binding contract at the bid price, and the contract therefore may not be reformed.

Invitation for bids (IFB) No. N00104-78-B-0210 for the cranes was issued on January 19, 1978. In addition to the cranes being procured, the IFB required five data items to be furnished to the Government, the cost of which was to be included in the unit price for the cranes. Section D-6 of the solicitation advised bidders as follows:

[REQUEST for REFORMATION of Contract]
005624

"The Government may waive requirements for the submission of data items listed below for offerors who have previously furnished such data. Offerors who have previously supplied such data * * * are to indicate below the amount that may be deducted from the unit price if the requirement for that item of data is waived."

Bids were opened on February 28, 1978. Galion's bid of \$44,096 per crane (\$352,768 total) was the lowest of the five received. The other bids ranged from \$52,315 (\$418,520 total) to \$62,040 (\$496,320 total). Because of the difference between Galion's bid and the others, the contracting officer requested verification of the bid by letter dated March 17, 1978. The letter set forth the unit and total prices of the other four bids. In response, Galion verified its bid, and a contract was awarded to the firm on April 21.

Subsequent to award, Galion requested correction from the Navy, alleging that it made several mathematical errors in computing both the cost of the data items to be included in the unit price for the cranes, and the amounts listed by Galion in section D-6 that were to be deducted from the unit price in the event any data requirement was waived. Galion submitted substantial documentation to show how the errors were made and that the intended bid price was \$49,985 per crane (\$399,880 total). The Navy denied the request.

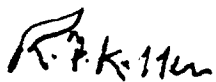
We note at the outset that the Navy contends that the present request for reformation was untimely raised under section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1978), since it was not filed in our Office within 10 working days after the Navy's denial of the request by the contractor. However, our procedures are not applicable to a request for equitable relief by way of contract reformation on the basis of mistake, Guy F. Atkinson, Co., The Arundel Corporation, Gordon H. Ball, Inc. and H. D. Zachry Company (A Joint Venture), 55 Comp. Gen. 546, 554 (1975), 75-2 CPD 378, and thus we need not consider the timeliness question further in connection with the request for reformation.

The sole responsibility for the preparation of a bid rests with the bidder. See John P. Ingram, Jr., B-191867, November 8, 1978, 78-2 CPD 332. Therefore, where a contracting officer suspects a unilateral mistake by the bidder in the bid, and his request for verification is adequate, acceptance of the verified bid results in a valid and binding contract. See Los Angeles Chemical Company, B-193741, February 15, 1979, 79-1 CPD 114.

Concerning the adequacy of the contracting officer's request in the present case, we have held that where the only basis for suspecting a mistake is the discrepancy between the low bid and other bids received, the request for verification is sufficient if this discrepancy is brought to the attention of the bidder. Atlas Builders, Inc., B-186959, August 30, 1976, 76-2 CPD 204; General Time Corporation, B-180613, July 5, 1974, 74-2 CPD 9. Here, none of the other bidders made entries in IFB section D-6 with which the contracting officer could compare Galion's figures, and the contracting officer had no other basis to suspect the specific errors as alleged.

Thus, since the acceptance of Galion's bid after verification consummated a valid and binding contract fixing the rights and liabilities of the parties, there is no legal basis for reformation. In view thereof, it is not necessary to consider evidence presented to show the nature of the mistake or the intended bid.

Galion also suggests that several provisions of the solicitation were unduly complex and ambiguous. However, since those alleged defects were apparent prior to bid opening but were not raised before that time, they are untimely under our Procedures and will not be considered on the merits. 4 C.F.R. § 20.2(b)(1).


Deputy Comptroller General
of the United States