

DECISION



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

10,005

FILE: B-193911

DATE: May 2, 1979

MATTER OF: Paul Holm Company, Inc. DLG 01471
[Alleged Mistake in Bid After AWARD]
DIGEST:

Contractor who alleged mistake in bid after award may not have contract reformed where mistake was unilateral, there was no actual notice, and awardee's lump-sum bid was less than 20 percent lower than next low bid, which by itself is insufficient to warrant placing contracting officer on notice of possibility of error.

This decision concerns a mistake in bid by Paul Holm Company, Inc. (Holm) alleged after award by the Science and Education Administration, United States Department of Agriculture (USDA) of contract No. 50-9AHZ-8-1404 for the construction of shower facilities. DLG 00209

In response to invitation for bids (IFB) No. 114-W-ARS-78, issued by USDA, three bids were received. These bids, each consisting of a single price for the installation, included Holm's bid of \$26,867, Grashius Builders' bid of \$33,367, and Griffith Construction Co., Inc.'s bid of \$33,707. The Government estimate for the work was \$27,032. Bid-opening took place September 8, 1978, and award was made to Holm on September 11, 1978. On September 22, Holm advised the contracting officer by telephone that its bid had failed to take into account a subcontractor's plumbing costs of \$6,115. Holm requested reformation of its contract to include this amount.

The contracting officer recommended increasing the contract price \$6,115 for a total of \$32,982. The contracting officer believed that the Government cost estimate contained calculation errors and should have been \$31,422. She indicated further that, based on worksheets submitted by Holm, a bona fide mistake had been made, and she felt that she should have been on constructive notice of a possible mistake because of the 20 percent differential between Holm's bid and those of the other bidders.

The contracting officer's recommendation was sent to USDA's Office of the General Counsel for a determination, as provided in the procedures outlined in the Federal Procurement Regulations (FPR) § 1-2.406-4(a) (1978), and in the Department of Agriculture Procurement Regulations at 41 C.F.R. § 4-2.406-1(b) (1978). USDA's Office of the General Counsel determined, pursuant to its authority under 7 C.F.R. § 2.31(e), that there were insufficient grounds to charge

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the contracting officer with constructive notice of the mistake, and that it was not possible to ascertain from Holm's worksheets what the actual cost was for the omitted plumbing work, or what the correct figure would have been for Holm's intended bid. For these reasons, USDA denied the requested contract reformation; Holm has protested this determination.

Under the general "mistake in bid" provisions of FPR § 1-2.406 (1978) an agency head, or a central agency authority with an appropriate delegation, has the capacity to reform a contract after award where the resulting price increase would be under \$10,000, and the corrected contract price would remain lower than the next low responsive bid. The requested modification of \$6,115 in this case would not raise the contract price above that of the next low bidder.


Although the contracting officer indicated that she felt she should have been on constructive notice of the possibility of mistake, the determination of whether correction is appropriate is reserved for USDA's Office of the General Counsel under 41 C.F.R. § 4-2.406-1(b) (1978). USDA's Office of the General Counsel found that since the bid was a single total price without breakdown, no specific mistake was apparent or capable of being discovered. Therefore, unless the contracting officer was on constructive notice of the possibility of error prior to award--giving rise to a duty to request bid verification--there is no basis for contract reformation. The Office of the General Counsel determined that the Government estimate was not a sufficient basis to call attention to possible error, and that the 20 percent disparity between the bids was also insufficient to charge the contracting officer with notice of possible mistake. This determination is correct.

Our Office consistently has held that the responsibility for bid preparation rests with the bidder. Therefore, a bidder who makes a mistake in bid which has been accepted in good faith by the Government must bear the consequences of its mistake unless the mistake was mutual or the contracting officer had either actual or constructive notice prior to award. 48 Comp. Gen. 672 (1969); Penn Electric Motor Company, Inc., B-185703, July 9, 1976, 76-2 CPD 25.

The test for constructive notice is one of reasonableness; whether under the facts and circumstances of the particular case there are factors which should have raised the presumption of error in the mind of the contracting officer. 53 Comp. Gen. 30 (1973). United Sound, Inc., B-187273, January 19, 1978, 78-1 CPD 50. Generally, a contracting officer has no reason to suspect error where a low bid is in line with other bids received and with the Government estimate. B-179725, October 30, 1973; American Railroad Industries, Inc., B-187488, October 22, 1976, 76-2 CPD 361.

Bid disparities ranging from 5 to 38 percent have been held by our Office to be insufficient, standing by themselves, to charge a contracting officer with constructive notice of a mistake in bid. Veterans Administration Request for Decision Concerning a Mistake in Bid Alleged by L. E. B., Inc., B-186797, July 23, 1976, 76-2 CPD 77. The disparity of less than 20 percent between Holm's bid and the next two bids (or between Holm's bid and the upwardly revised Government estimate) was not sufficient to place the contracting officer on constructive notice of mistake.

The acceptance by USDA of Holm's bid constituted a valid and binding contract and there is no legal basis for granting the relief requested.


Deputy Comptroller General
of the United States