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DECISION

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

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FILE: B-194075 DATE: April 16, 1979

MATTER OF: Rubbermaid Applied Products, Inc.

DIGEST:

Request for reformation of contract terms based upon mistake alleged after award is denied since contracting officer is not charged with constructive notice of possible error merely because contractor's offered delivery terms differed from those offered under prior contracts, nor is contracting officer obligated to search agency files to compare prior contract terms to verify accuracy of current bid.

Rubbermaid Applied Products, Inc. (Rubbermaid) requests reformation of its Federal Supply Schedule requirements type contract No. GS-04S-22724 awarded by the General Services Administration (GSA) due to a mistake in bid alleged after award. The contract prices in question were based on discounts bid from suppliers' catalogue or market prices as well as the delivery terms offered by the bidder.

Rubbermaid's bid offered delivery terms F.O.B. destination, but now seeks to have its contract reformed to reflect delivery terms of F.O.B. destination within 250 miles of Statesville, North Carolina and F.O.B. origin beyond that distance. The effect of the requested correction would be to shift to the Government all of the transportation costs beyond a 250 mile radius of Statesville.

Rubbermaid states that, when it submitted its offer, it inadvertently neglected to specify the intended terms because it confused the terms of this solicitation with other contracts held by another division of the firm.

Rubbermaid charges the contracting officer with constructive notice of the error (there is no claim of mutual mistake or actual knowledge of the error) because the intended terms were included in three previous NIS (New Item Inventory Schedule) contracts which were allegedly in the contracting officer's files at the time bids were received.

We have consistently held that the responsibility for preparing a bid rests with the bidder. The general rule applicable to a mistake in bid alleged after award is that the bidder must bear the consequences unless the mistake was mutual or the contracting officer had either actual or constructive notice of the mistake prior to award. See Wolverine Diesel Power Company, 57 Comp. Gen. 468 (1978), 78-1 CPD 375. Constructive notice is said to exist when the contracting officer, considering all the facts and circumstances, should have known of the possibility of an error in the bid. Wolverine Diesel Power Company, supra.

In this respect, GSA disclaims any actual or constructive knowledge of the alleged error. The agency points out that the NIS is a marketing technique used by GSA to determine whether the Government has a need for the products. GSA notes that items on such a schedule do not compete with other similar items on the NIS schedule for award. However, in 1978 the product was shifted to a competitive multiple award schedule. Accordingly, contracting personnel believe they should not be charged with constructive knowledge of a possible error in bid merely because the delivery terms bid differed from those under the prior contracts because in a competitive environment it was plausible that Rubbermaid changed its delivery terms to make its product more competitive against other items on the schedule.

Under similar circumstances, we have held that it was not unreasonable for a contracting officer to conclude that a bidder would change F.O.B. origin delivery terms offered in prior sole source contracts to F.O.B. destination when faced with a competitive situation, even though that change amounted to a price reduction of about 20 percent. We also noted that the contracting

officer was not under any obligation to search agency files to compare previous contract terms to verify the accuracy of current bids. E. I. DuPont DeNemours and Company, Inc., B-188620, June 3, 1977, 77-1 CPD 388.

Thus, since there is neither an allegation of mutual mistake nor a claim that the contracting officer had actual knowledge of the alleged error, and because in our view the contracting officer cannot be charged with constructive knowledge of the possibility of the asserted error, the mistake must be considered to be Rubbermaid's unilateral error. Under this circumstance, the contract may not be reformed.

Deputy Comptroller General
of the United States