

Transp.

DECISION



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

10,439

FILE: B-194712

DATE: June 13, 1979

MATTER OF: Colonial Aluminum Sales, Inc.

[Claim of Mistake in Bid]

DLGO 1784

DIGEST:

Contract may not be rescinded on basis of unconscionability, since circumstances do not establish that Government is "obviously getting something for nothing."

The Department of Transportation (DOT) has forwarded for our consideration a claim of mistake in bid submitted by Colonial Aluminum Sales, Inc. (Colonial), after the award to the firm of a \$10,500 contract to furnish and install vinyl siding at two airports in New York.

Colonial submitted the only bid under the solicitation for the services. Since the Government estimate was \$15,000, the contracting officer advised Colonial that its bid was 30 percent below the Government estimate and requested that Colonial verify its bid, which the firm did on September 27, 1978. Contract No. DOT-FA78EA-9368 was awarded to Colonial on that same date. In view of the nature of the request for verification and the response, we believe the mistake was unilateral, not mutual, and thus a valid and binding contract resulted from the award. Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393.

Shortly after award, Colonial alleged that it had misread as \$300,000 the solicitation's requirement that the contractor procure bodily injury and property damage liability insurance in the amount of \$3,000,000. Colonial stated that the cost of the additional coverage would be \$6,700. In support of the claim of mistake, Colonial submitted a letter from its insurance company advising the firm of the cost of the necessary coverage. The firm's worksheets appear to indicate that in preparing the bid Colonial allocated less than \$1,000 for insurance.

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DOT suggests that although the mistake was unilateral on Colonial's part and the firm verified the bid, enforcement of the contract at the price of \$10,500 would be unconscionable, and the contract should be rescinded. We disagree.

Where the question of unconscionability is concerned, the test applied by our Office is whether the contract price is so low that the Government is "obviously getting something for nothing." Yankee Engineering Company, Inc., B-180573, June 19, 1974, 74-1 CPD 333; 53 Comp. Gen. 187 (1973). Thus, we have found contracts to be unconscionable when the disparity between the awardee's bid and the second low bid has been 280 and 300 percent. On the other hand, differences of 53 and 58 percent have been determined insufficient to demonstrate unconscionability. See Walter Motor Truck Company, B-185385, April 22, 1976, 76-1 CPD 272. In considering this issue, we have reviewed factors such as the quantum of error, the method of verification, or the suspicion of a specific mistake in addition to price differential. See Peterman, Windham & Vaughn, Inc., 56 Comp. Gen. 239 (1977), 77-1 CPD 20; Bureau of Reclamation, Department of the Interior, B-187718, December 15, 1976, 76-2 CPD 499; B-170691, January 28, 1971.

Here, while Colonial's bid was 30 percent lower than the Government estimate, we have recognized the inexact nature of Government estimates. See Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220. In this respect, DOT's solicitation for the services established an "estimated price range" of \$10,000 to \$20,000, which would encompass the actual contract price. In addition, although the alleged \$6,700 error is 64 percent of the contract price, a breakdown provided by DOT of the Government estimate shows that the estimate for insurance was only \$3,000. Finally, we note that Colonial has offered to perform the contract for \$14,000, an increase of \$3,500 in the contract price, but \$3,200 less than the amount of the alleged error.

Under the circumstances, we do not believe that the Government is "obviously getting something for nothing," and enforcement of the contract at the awarded price therefore would not be unconscionable. Accordingly, we find no basis for revision of this contract.


Deputy Comptroller General
of the United States