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**DECISION**

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

FILE: B-195080

DATE: August 1, 1979

MATTER OF: Maximum Precision Metal Products, Inc.

**DIGEST:**

1. Where spread among bid prices received was uniform, difference between low and second low bid prices was mere 16.5 percent, and contracting officer believed low bidder was already in production of the item--with its attendant economies--constructive notice of possible mistake in bid did not exist.
2. GAO has no jurisdiction to review denial of claim by Government agency under Public Law 85-804.

Six bidders responded to invitation for bids No. DAAE07-77-B-0077 issued by the United States Army Tank-Automotive Materiel Readiness Command (TARCOM) on December 20, 1976, for 107 Idler Wheel Arms, NSN 2530-00-722-3637, by submitting the following bids:

<u>Offeror</u>	<u>Unit Price</u>	<u>Total Price</u>
Maximum Precision Metal Products, Inc. (Maximum)	\$482	\$51,574
Offeror B	582	62,274
Offeror C	840	89,880
Offeror D	850	90,950
Offeror E	928	99,296
Offeror F	1,205	128,935

Maximum received the award, contract No. DAAE07-77-C-0186, on February 16, 1977. Delivery was scheduled for August 5, 1978.

[REQUEST. for Contract  
RELief]

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On October 4, 1977, over 7 months after the contract had been awarded, Maximum notified the contracting activity that it had made a mistake in computing its unit price of \$482. It advised that a unit price of \$614 should have been bid and that a unit price of \$893 was the best price the contracting activity could expect to find anywhere at that time. Maximum suggested, therefore, that the award price to it be increased or, in the alternate, that the contract be terminated on a "no cost" basis. Maximum submitted its pricing sheet for the procurement, the original worksheets used in computing a prior successful bid which had resulted in its receiving the award of contract No. DAAE07-76-C-3498 (these worksheets were used as the basis for computing its bid for the procurement presently in question), the statement of an employee regarding the mistake, and an analysis of why a correction of the mistake should be allowed. In essence, it is the position of Maximum that the contracting officer, in view of all the circumstances surrounding this procurement and the procurement history of the item, should have been on constructive notice of a possible mistake in bid and, therefore, should have requested Maximum to verify its bid price. Because verification was not requested, Maximum believes it should be granted relief. It is noted by a Maximum notation that the second low bid on this procurement was submitted by a delinquent contractor, a fact that, we presume, is intended to cast doubt on the validity of that bid price.

Initially, the Maximum request for relief was considered by Headquarters, TARCOM. Relief was denied. Our Office received the request for relief through Department of Defense and congressional channels, and we were asked for our opinion on the matter. The issues before us are whether the contracting officer was on constructive notice of a possible mistake in bid, a fact which would have required a proper request for bid verification, and, if not, whether relief may be granted under Public Law 85-804 (codified at 50 U.S.C. § 1431 (1976) (and implemented by paragraph 17-204.3 of the Defense Acquisition Regulation (1976 ed.)).

We note that the procurement history for this item shows a May 1976 purchase of 239 items at a unit price of \$595, a December 1975 purchase of 148 items at \$693 each, and an April 1975 purchase of 434 items at a unit price of \$640. The May 1976 purchase was made from Maximum (contract No. DAAE07-76-C-3498), and pursuant to the Option for Increased Quantities clause in the contract the amount of the purchase was increased during 1976 by an additional 196 items.

It is the position of the contracting officer that no constructive notice existed as to a possible mistake in Maximum's bid in view of the mere 16.5-percent difference between the low and second low bids. Further, it is stated that the contracting officer knew that Maximum had received contract No. DAAE07-76-C-3498 for the same item and he thus believed that any Maximum price for the item would be lower than it might be otherwise since Maximum already would be in production of the arms. The contracting officer, it appears, had no knowledge that Maximum was not actually in production at the time of the instant award. Maximum defaulted on contract No. -3498 in 1977.

The general rule as to a mistake in bid alleged after award is that the bidder must bear the consequences of a mistake unless the mistake is mutual or the contracting officer had actual or constructive notice of the error prior to award. Reaction Instruments, Inc., B-189168, November 30, 1977, 77-2 CPD 424; Boise Cascade Envelope Division, B-185340, February 10, 1976, 76-1 CPD 86; Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393. No valid or binding contract is consummated where the contracting officer knew or should have known of the probability of error, but failed to take proper steps to verify the bid price. In the instant case the question is simply whether or not constructive notice existed since actual notice did not exist. The test for constructive notice is reasonableness--whether under the facts and circumstances of the particular case there are factors which could have raised the presumption of error in the mind of the contracting officer. Morton Salt Company--Error in Bid, B-188392, April 19, 1977, 77-1 CPD 273.

We believe that the decision to make award to Maximum without requesting verification of the bid price was reasonable under the circumstances. The range of bid prices with which the contracting officer was faced after bid opening was exceedingly uniform in its spread even though the difference between the high and low bids was great. Thus the spread of prices did not operate to cause the Maximum price to stand apart from the others and thus to appear on its face to be in error. Second, the difference between the Maximum bid price and that of the next low bidder was only 16.5 percent, a difference which by itself is not sufficient to indicate an error in bid. See J.B.L. Construction Co., Inc., B-191011, April 18, 1978, 78-1 CPD 301, and July 19, 1978, 78-2 CPD 49. Finally, the contracting officer believed that Maximum was already in production on its contract No. -3498 and apparently (which we find reasonable) that due to ensuing economies decided to reduce its prior price of \$595 to \$482.

As regards relief under Public Law 85-804, we have no jurisdiction to review the denial (as was done here) of claims by Government agencies under this statute. See Edfield Research, Inc., B-185709, June 28, 1976, 76-1 CPD 413.

Accordingly, we believe that contract No. DAAEO7-77-C-0186 is valid and binding on all the parties thereto, and the relief requested by Maximum may not be granted.

  
Deputy Comptroller General  
of the United States