



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

092189

B-177531

May 18, 1973

30904

B. C. Rogers & Sons, Inc.
P. O. Box 398
Morton, Mississippi 39117

Attention: Mr. B. T. Armstrong
Manager

Gentlemen:

This is in reply to your letter of December 18, 1972, and prior correspondence, requesting relief from an error alleged to have been made in your firm's offer in response to invitation to offer No. 16 issued by the Poultry Division Agricultural Marketing Service (AMS), Department of Agriculture.

The invitation covered the purchase of fresh frozen cut-up chickens for use in the National School Lunch Program. Offers were received from 17 firms on a delivered basis to 56 destinations. Awards were made to 11 firms. The delivered prices submitted by all offerors ranged from \$0.3118 to \$0.3388 per pound depending on the geographic locations of particular destinations. Due to the number of offerors and destinations, and in accordance with the standard procedure employed by AMS to evaluate offers received in this type of procurement, all offers were fed into a computer which printed out the lowest offeror for each destination for purposes of award.

Your firm submitted a timely wire offer on the bid opening date, November 17, 1972, covering 50 destinations with prices ranging from \$0.3176 to \$0.3385 per pound, and confirmed those prices by letter of that same date to AMS. Award was made to you on November 21, 1972, for three destinations at the following prices per pound:

Corsicana and Amarillo, Texas	\$0.3305
Birmingham, Alabama	0.3223
Rama, North Carolina	0.3176

You allege that an error was made in your bid for the Rama, North Carolina (Rama), destination in that the freight charges of

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\$1.03 per hundredweight were omitted from your offer. Notice of the mistake was given to the contracting officer by telephone on November 22, 1972, the day after award. Since the contract has been performed, your request for relief entails an upward adjustment in the contract price for the freight charges. AMS recommends against granting relief since the error was not an obvious mistake that the contracting officer should have detected.

The record shows that three offers were received for delivering chickens at Rama as follows:

Southeastern	\$0.3305
Rogers	0.3176
Green Acre Farms	0.3321

However, this comparative information of prices offered at Rama or any other destination was not available to the contracting officer prior to the award of the contract to your firm since the computer utilized for evaluating offers is not programmed to disclose such information.

The record also reveals that Rogers is located in Morton, Mississippi, within close proximity to Southeastern, 11 miles away, and Green Acre Farms, 21 miles away. We note that the above-quoted offers of Green Acre Farms and Southeastern were \$0.16 per hundredweight apart while Rogers' offer was \$1.45 and \$1.29 less than the other offerers' prices, respectively. With respect to these two firms, you refer to the fact that they received awards for destinations near Rama at prices well in excess of your offer price for Rama. Due to the proximity of all three firms, you intimate that this should have placed the contracting officer on notice of possibility of error. Furthermore, you point out that your other two awards were for higher prices than the award for Rama, but that the freight charges are significantly less than the freight charges to Rama. Similarly, you refer to higher prices bid for destinations not awarded to your firm in close proximity to Rama. Also, you contend that an analysis of the awards you received for the week should have alerted the contracting officer of the possible error because the bids showed your firm was charging less to transport chickens to Rama, North Carolina, than to Birmingham, Alabama, a destination nearer the location of your firm.

The general rule regarding allowance of an upward price adjustment arising from an error in bid alleged after award, as here, is that acceptance of the bid results in a valid and binding contract unless the contracting officer had actual or

constructive notice of the probability of error in the bid at or prior to the time of the award, 45 Comp. Gen. 700, 706 (1966).

Our Office requested information from AMS as to the computer procedure utilized in making awards of this type of procurement to determine if bidders were adequately protected against receiving contract awards where obvious or other mistakes might have been made. It is clear that the procedure used does not permit the contracting officer to make certain preaward comparisons of offers, such as are mentioned by you, for purposes of ascertaining the possible existence of a mistake. But, as can be seen from the following quote below from a supplemental report to our Office from AMS dated March 15, 1973, the system utilized is the only practicable and feasible method for evaluating offers for chickens and similar products in consideration of the multiple offers and destinations involved, and the severe week-to-week time constraints imposed upon AMS. Moreover, we note that, in fact, this method does provide for various preaward checks which, in our view, adequately protect bidders from the consequences of mistakes in their bids.

The contracting office is equipped with data processing equipment, including a Remote Access Computer Terminal (RAX). Awards (acceptances) are made by linear programmed computer. This means each offer must be properly and accurately coded so that absolute accuracy is attained. The linear program guarantees that the Department's cost is the lowest possible considering the number of possibilities expressed in each offer.

Purchase units (72,000 pounds in the case of chicken) are bought at more than 400 destinations and combination of destinations located throughout the United States. Only about 50 destinations are normally listed in a weekly invitation to offer.

Several checks are made in order to assure the necessary accuracy. Each offer is examined to determine obvious mistakes and to make sure the information supplied conforms to all requirements as indicated in the announcement containing details of the program.

Apparent mistakes of a serious nature such as on prices, discounts, volume offered, etc., are corrected by a telephone call to the vendor to ascertain the facts. These calls are made before the data are entered in the computer. The contracting officer's action is guided by Article 9 of GMS Purchase Document No. 1 and the applicable

provisions of the contracting handbook containing Agency policy, copy of which is enclosed. Mistakes of a less serious nature such as parent company identification, etc., are corrected as time permits but before new offers are received. Legal counsel is solicited on these matters when appropriate.

It would be very difficult and impractical for us to establish a verification system which would eliminate mistakes such as the one made by the B. C. Rogers Company. The chicken purchase program operates on a tight time schedule. Offers are received by 1 p.m. on a Friday, acceptances are made by a press release on Tuesday afternoon (which also lists our needs for the following period), and offers based on these needs are received again the following Friday. In addition, we also operate other programs (canned boned poultry, turkey, etc.) in a similar manner during the same time we are buying chicken.

Extending the time frame so as to allow sufficient time for the calling of each vendor so that he could verify his written offer would not avoid mistakes and would not be in the best interest of the Department. The broiler industry does business on a weekly basis. We have to follow this format if we are to get the quantities needed in our program. Within the time period in which we work, we cannot call each of the 15 to 30 vendors to verify the lengthy offers submitted each week. Even if we could do this, such a procedure would not necessarily prevent the kind of mistake made by the B. C. Rogers Company.

Furthermore, AMS has informally advised our Office that all offer prices are compared for purposes of detecting possible mistakes with the weekly market price of whole chickens delivered at New York adjusted to reflect cutting, packaging and transportation and the range of prices submitted by all offerors to all destinations.

There is no evidence of record to indicate that the Government had actual notice of the mistake prior to award. Insofar as constructive notice of error is concerned, we do not believe that your offer price, when subjected to the various comparisons and other checks employed by AMS, placed the contracting officer on such notice. Your price for Rama of \$0.3176 per pound was within the range of prices submitted by all offerors to all destinations. Furthermore, the adjusted weekly market price was computed by AMS to be \$0.3320 per pound, reflecting a 4 1/2-percent difference.

Moreover, even if the contracting officer had for comparison the three offer prices at Rama, the disparity between your price and the next lowest was approximately 4 percent. In this regard, we quote again from the AIB supplemental report:

It has also been suggested that we array the offerings by destination, hoping that such an array would point out mistakes. We have done this in the past but found it served no useful purpose. It has been our experience that a wide difference (1 cent per pound in the case of B. C. Rogers) in price by firms at the same destination does not necessarily indicate that a mistake was made. Wide differences in price at the same destination occur frequently due to rapid changes in market prices and conditions and the respective position (long or short) of each vendor. * * *

We do not believe that a change in our system would prevent the kind of error claimed by B. C. Rogers Company, which, incidentally, is the first of this kind in many years of operation.

The AIB procedures for the examination and evaluation of offers reflect the time limitations inherent in the purchase program whereunder a detailed examination of offers is impossible. In view of this consideration, we believe that the contracting officer exercised reasonable prudence and judgment when he reviewed your offer under the procedures and found no indication of mistake.

Therefore, acceptance of the bid in these circumstances constituted a valid and binding agreement for which no relief may be granted.

Sincerely yours,

PAUL G. DEWELING

For the Comptroller General
of the United States

BEST DOCUMENT AVAILABLE