



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

91607

40005

B-178402

October 1, 1973

A. C. Ball Company  
1697 Industrial Road  
San Carlos, California 94070

Attention: Richard B. Metz  
Assistant Treasurer

Gentlemen:

Further reference is made to your letter of April 5, 1973, with enclosures, requesting relief from contract No. DAAFO3-73-C-1028, awarded by the Army Weapons Command, Rock Island, Illinois, under invitation for bids No. DAAFO3-72-B-1595 issued June 2, 1972.

The invitation solicited bids for 124 internal ring gears for tanks. Eleven timely bids were received, ranging in price with first article approval from your bid of \$212.50 per ring gear to a bid of \$400.00 per ring gear. On July 25, 1972, you were awarded a contract with first article approval for a total amount of \$26,350.00.

You refused to undertake performance of the contract and in a letter of September 28, 1972, to the contracting officer requested either rescission or reformation based upon a claimed mistake in bid. By notice dated December 20, 1972, the contracting officer terminated the contract for default.

By letter dated January 8, 1973, you appealed the default termination to the Armed Services Board of Contract Appeals (ASBCA), and simultaneously requested that the contracting officer refer your appeal to our Office for decision. On February 16, 1973, the Board advised you that it would defer action on the appeal pending a decision by our Office on the question of the existence of a valid contract. In these circumstances, and since the question to be decided is one of law, we deem it appropriate for our Office to consider the matter.

You request rescission of the contract on the grounds that you made a mistake in bid and that the Government knew or should have known of the mistake before the bid was accepted for award. You refer to your letter to the contracting officer dated September 28, 1972, stating that tooling costs of approximately \$4.250 were not amortized in the

719971

B-178402

addition of normal overhead and profit of 50 percent, making the correct bid price \$301.50 without first article; and that the cost of 2 first articles would be about \$9.00 a unit more, making the correct bid with first article \$310.50.

You further claim that the contracting officer should have been aware of the mistake since the Government cost estimate for the ring gears was \$249.00 each, and the contracting officer should have known that the items could not be profitably produced in accordance with the specifications at your bid price. In further support of your position, you assert that there existed a price variation of 10 percent between your bid and that of the next lowest bid, and that the range of the bid prices was very great. You believe that of significant importance is the fact that the previous contractor for the same item raised its bid for this procurement 40 percent over its previous successful bid even though the quantity for this procurement was three items greater than under the last contract.

Regarding the argument that the range of bid prices should have alerted the contracting officer to the possibility of mistake, it appears to us that the difference between your bid price and other bid prices was not so great as to constitute constructive notice of error. Although the spread between your low bid (\$212.50 each) and the high bid (\$400 each) was considerable, the contracting officer noted prior to award that the bid price of two other bidders were within 13 percent of your bid. For a case involving an identical percentage discrepancy, see 47. Comp. Gen. 365, 368 (1968), where we stated the following:

"\* \* \* the difference between your low aggregate offer and the next lowest aggregate offer was only 13 percent. In our view, this 13-percent discrepancy was not sufficiently great to have placed the contracting officer on notice of the claimed mistake. \* \* \*. The acceptance of the bid under the circumstances involved, consummated a valid and binding contract which fixed the rights and liabilities of the parties thereto. See Edwin Dougherty and M. H. Ogden v. United States, 102 Ct. Cl. 249, 259, and Saligman v. United States, 56 F. Supp. 505, 507."

With regard to your argument concerning the Government cost estimate of \$249.00 per unit, which was based on a prior procurement, we note that three bids lower than the Government estimate were received. Also, while you state that it should have been apparent that the ring gears could not be profitably produced at your bid price, it is not the job of the contracting officer to insure that profit has been computed

B-178402

In the submission of bids, the "responsibility for the preparation of bids is on the bidder who is presumed to be qualified to estimate the price which can be charged in order for a bidder to realize a reasonable profit. See Frazier-Davis Construction Company v. United States, 100 Ct. Cl. 120, 163", B-165297, December 6, 1968.

Finally, we see no basis for charging the contracting officer with knowledge that the prior contractor for this item submitted a higher bid price on this procurement. Furthermore, even if he was aware of this fact, we do not believe that such knowledge would necessarily be of particular significance or impose any obligation upon the contracting officer to take any particular action in view of the several other lower bids received.

Accordingly, we believe that acceptance of your bid resulted in a valid and binding contract and that you are liable under the terms thereof.

For the foregoing reasons, your request for relief is denied.

Sincerely yours,

Paul G. Demblin  
Acting Comptroller General  
of the United States