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

B-176772 May 23, 1973 50959

Harris-Intertype Corporation
Gates Division
123 Hampshire Street
Quincy, Illinois 62301

Attention: Mr. T. W. Miehoff
Government Marketing
Administrator

Gentlemen:

Reference is made to your letter of August 10, 1972, and subsequent correspondence, requesting an increase in the price of contract N63185-71-C-0321, awarded to your firm on August 26, 1971, by the Department of the Navy's Resident Officer in Charge of Construction, Pacific (ROICCPAC), San Bruno, California, based upon a mistake in your proposal alleged after award.

The record states that the subject contract was awarded pursuant to a Request for Proposals issued April 27, 1971, for the procurement of repair parts for Gates Radio Broadcast Transmitters and Monitors.

On May 26, 1971, your firm submitted an offer in the sum of $135,632.79, but revised the offer to $239,893.44 by letter of June 28, 1971. The solicitation contained 134 pages, breaking down the numerous items in minute detail, with the usual quantity and pricing columns provided.

By letter of July 16, 1971, the procuring activity corrected an extension error so as to reduce the price to $239,865.94, and enclosed a new set of Standard Form 33 for reexecution to reflect the latest revision. Included therein was a new attached "Page 3 of 134" summarizing all the material to be furnished, and replacing "DIVISION 2," previously furnished. The award was made pursuant to the requested reexecution.

By letter of April 17, 1972, to the Defense Contract Administration Services Region (DCASR), St. Louis, charged with the responsibility of administering the contract, you requested reformation of the contract

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price in the sum of $9,000, claiming that the summarization of material on page 3 of the subject RFP depicted an obviously erroneous figure of $35,512.77 for each of the series 6,000, 7,000 and 8,000 repair parts instead of the $38,512.77 allegedly shown on the final page of each of the VP-50 Parts List series. It was further alleged that this latter listing, which included a subtotal, commercial export pack cost, and estimated transportation charges, was correct while the $35,512.77 figure in the summarization was in error.

Attached to that letter was a "Continuation Sheet, Page 3 of 134" showing a summarization of materials by item numbers, with 12 items summarized at a total of $239,865.94, including the three referenced series at $35,512.77 each.

By letter of July 18, 1972, DCASR, St. Louis, denied your request, contending that you were bound to the contract price in the amount awarded, and advising your firm that if any further application for relief was to be made, it should be submitted to our Office.

In your letter to our Office of August 10, 1972, you claim evidence of the error was provided by the fact that the subtotal of each of the series in question was $35,538.77, exclusive of export pack and estimated transportation charges, which is more than the sum of $35,512.77 shown on the referenced summarization sheet, and if the subtotal prices were still shown for each Repair Parts listing as originally submitted, the obvious $3,000 error for each series would have been apparent.

You contend that "DIVISION 2," identified as page 2A-1, in the sum of $239,893.44, submitted with your letter of June 28, and which later became page 3 of the Continuation Sheet, clearly showed an "obvious error" in the form of a figure $35,512.77 for each of the 6,000, 7,000 and 8,000 series part lists, and that this obvious error was still shown on the extension page 3 (Continuation Sheet) at the time you signed the contract on July 16, 1971, but that the error was obscured when the Navy revised your page 3 with its own page 3 which deleted the summarization breakdown, and broke down the final contract price of $239,865.94 only as a price of $229,638.94 for parts, and $10,227.00 as estimated freight charges to be paid by the contractor.

The Department of the Navy advises that page 3 of the Continuation Sheet showing $35,512.77 as the total for each of the 6,000, 7,000

and 8,000 series is not a sheet in the ROICC's files and is not known to the ROICC. Furthermore, by letter of January 10, 1973, the Navy states that it is unable to locate page 2A-1, wherein the purported errors were first evidenced. The Navy advises that it perhaps, in the course of checking and correcting the error referenced in the July 16, 1971, letter, used that page as a manuscript for the revised total of $239,865.94. However, it contends that the invoice sheets submitted in support of your alleged error, encircled in red, were not before the Navy at the time of award.

Nevertheless, the record does state that the ROICC's office apparently checked the extensions with regard to the proposal of June 28, 1971, and that office is believed to have run machine tapes as a matter of routine in order to check the addition. The record states that while the tapes for this contract cannot be found, evidence that a check was made was provided by the July 16, 1971, letter from ROICC correcting one extension.

While it is factually disputed whether the ROICC had the documents which purport to show your error before him at the time the contract was awarded, it is legally well established that relief from a contract will not be granted for a unilateral mistake unless the contracting officer knew or had reason to know of the mistake prior to the acceptance of the bid. B-176517, September 6, 1972.

Since you did not directly apprise the Government of the alleged mistake until some eight months after award, there is no showing of any actual knowledge. Therefore, the only question is whether the Government officials should have known of the alleged mistake.

In this regard, contractors will naturally seek to impose upon contracting officials a rather high level of responsibility for error detection. However, the test is one of reasonableness; whether under the facts and circumstances of the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer. Wender Presses, Inc. v. The United States 170 Ct. Cl. 483, 486 (1965).

The position of our Office is that the contracting officer is not normally required to make a detailed analysis of a contractor's price breakdown, but only to note any discrepancies between the offered price and a reasonable price. B-167795, March 16, 1970. Especially is this the test to be applied in a situation as existed here where only one bid is received and there are no other bids which can be used for comparison of prices.

There is nothing in the record to support a conclusion that the modified price of $239,893.44 submitted with your letter of June 28 was unreasonable. However, inasmuch as one extension error in that price was detected, it would appear that some price analysis was in fact performed. Our review of the record indicates that due to the hundreds of individually priced items, small errors were uncovered after award in most of the subtotals. A recheck of the series at issue indicated figures varying less than three thousand dollars per series from the claimed subtotal of $38,532.77 for each of the three series.

Bidders are charged with the responsibility for the preparation of bids at prices which they believe to be accurate and sufficient for the realization of a reasonable profit in performing the contract, 47 Comp. Gen. 732, 742 (1968). While it is possible that you did in fact incur the loss in question because of the alleged pricing mistakes, we are unable to conclude under the circumstances cited above that the ROICC did not reasonably undertake his error detection duty, or that the figure of $239,893.44 and summarization sheet page 2A-1 of "DIVISION 2" (even assuming the ROICC actually had it) set forth a figure so conspicuously out of line as to charge him with constructive knowledge of the alleged mistake. Accordingly, any error that was made in the bid price appears to have been unilateral--not mutual--and, therefore, not such as to justify the granting of the requested relief. See B-167795, March 16, 1970. Consequently, it must be held that the acceptance of your offer consummated a valid and binding contract.

Accordingly, your claim in the matter is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States