



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

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B-178795

September 26, 1973

Lieutenant General Wallace H. Robinson, Jr.  
Director, Defense Supply Agency

Dear General Robinson:

This is in reference to the letter dated July 25, 1973 (DSAH-9), from your Assistant Counsel, reporting on the request by Empire Manufacturing Company (Empire) that its contract, DSA700-73-C-5158, for fitting assemblies, be cancelled because of a mistake in its bid.

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Empire alleges that it failed to obtain and consider all specifications referenced in the invitation prior to submitting its bid, and therefore its bid price covers only a portion of the items in the specified fitting assembly. We have concluded for reasons hereinafter stated that Empire should not be held to its erroneous bid as to do so would be unconscionable.

The record shows that on March 1, 1973, Empire submitted the low bid of \$10.00 for each assembly and that the next two higher bids were \$39.00 and \$39.54. In addition, Empire's first article bid price was also \$10.00, while the next low on this item was \$125.00. Accordingly, the contracting officer advised Empire of the bid prices of the second and third low bidders and the considerably higher prices previously paid for the subject assembly. Subsequently, Empire advised the contracting officer by telephone and in writing that its bid prices were correct. The contracting officer reports that after this verification he no longer suspected a mistake. On March 23, he awarded a contract to Empire.

It appears that the invitation schedule contained an item description which incorporated by reference the applicable specifications and drawings. (Elsewhere, the solicitation provided the necessary instruction for obtaining copies of the specifications.) The item description also referenced a particular Military Standard for the purpose of effecting a revision in the specification as related to this standard.

Empire first alleged a mistake to your agency by letter dated April 16, 1973. The company stated that its bid only covered the

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[Empire's bid was cancelled]

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item described in the Military Standard and that it did not consider that the listed specifications required additional items for a complete assembly. The company also submitted a supplier's quotation, which listed only the item described in the Military Standard, as evidence of its mistake.

As a general rule, award of a contract following verification of a bid pursuant to a contracting officer's request results in a binding contract. 18 Comp. Gen. 942, 947 (1939) and 27 Comp. Gen. 17 (1947). However, this Office has authorized relief, despite a bid verification, where the mistake was so great that it was considered unconscionable to hold the firm to its contract. B-150332, February 20, 1953 and B-170591, January 28, 1971.

With regard to this case, your contracting officer points out that the contractor (1) has provided no information on the cost of supplying the complete fitting assembly required by the contract; (2) knowingly submitted a bid without having obtained essential specifications and a drawing; (3) unequivocally verified its bid price to the contracting officer before the award was made; and (4) would not suffer a great loss if it performed the contract. Under the circumstances, the contracting officer recommends that no relief should be granted on the basis of an unconscionable price. In this connection, our guidance is requested as to when relief may be granted from a mistake in bid after award solely on the basis of an unconscionable price.

In response to the contracting officer's comments, the contractor notes that it did furnish our Office with a copy of a supplier quotation dated April 26, 1973. The contractor states in this regard that:

"The Contracting Officer \* \* \* emphasizes that I have not provided information as to our cost of supplying the complete fitting assembly. May I respectfully state that he did not request it but I did send a copy to your office and a copy is going to Mr. Wilson along with a copy of this letter.

" \* \* \* as you can see by observation of Enclosure 'A' [the supplier quotation] our cost of \$25.00 per assembly exclusive of test cost, packaging cost, inspection cost,

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handling cost, freight cost, and certain component costs, make the next lowest bid of \$38.00 suspicious as being overly low unless they make their own parts and even then it seems to me to be too low."

Concerning the failure to obtain a complete set of specifications and a drawing, the contractor blames its oversight on the fact that the solicitation merely referenced the essential specifications and did not list the parts to be purchased. We agree with the contracting officer that a prudent bidder would have carefully read the solicitation and have listed and reviewed all the required specifications prior to bidding. In this connection, instructions for obtaining copies of the specifications were set forth in the solicitation. However, we do not believe that the contractor's negligence in failing to obtain the complete set of specifications precludes the granting of relief for mistake. Mistakes in bids frequently are caused by negligence on the part of bidders. Nevertheless, relief for such mistakes may be granted in appropriate circumstances.

Furthermore, as stated above, the fact that the bidder verified its bid prior to the award does not preclude relief from a mistake in bid after award if it would be unconscionable to require the contractor to perform the contract at the bid price. B-170691, supra. In this connection, pursuant to AFPR 2-106.3(c)(2), a contracting officer need not accept a low bid which is very far below the other bids and the Government's estimated price, notwithstanding a verification from the bidder.

Finally, while the dollar amount of the loss a contractor may suffer as a result of performing a contract under a mistaken bid should be considered in determining whether enforcement of the contract by the Government would be unconscionable, we believe that unconscionability may exist even where the potential dollar loss is relatively small. Unconscionability is grounded on the theory that where a bidder's mistake "is so great that it could be said the Government was obviously getting something for nothing" relief should be allowed. See B-177432, December 21, 1972.

Here the low bid was approximately 26 percent of the next two higher bids for the production units and less than one-twelfth of the next higher bid for the first article unit. Although the total amount of the contractor's potential loss on the 116 units required

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by the contract could not be very great, we believe that it would be unconscionable for the Government to insist upon performance of the contract at these bid prices. Accordingly, the contract should be cancelled.

The file transmitted with the report of July 25 is returned.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States

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