



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

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E-175760

July 12, 1973

Communications Company
P.O. Box 520
Coral Gables, Florida 33134

Attention: Mr. Harry Tubb
Government Contracts Manager

Gentlemen:

We refer to your letter of April 9, 1973, requesting reconsideration of our decisions E-175760 of June 15, 1972, and January 26, 1973, in which we held that you were not entitled to relief from a mistake in your bid alleged after the award of a contract under invitation for bids No. DJ-A-71-30, issued by the Department of Justice.

We have carefully considered the arguments advanced in your letter of April 9, 1973. Nevertheless, we cannot conclude that the contracting officer was on constructive notice of the possibility of an error in your bid.

The pertinent facts are stated in our prior decisions and will not be repeated here. You maintain that the numerous components listed in item 3 should have caused even the most unknowledgeable practitioner (buyer) to have some doubt about the reasonableness of your \$14.00 unit price for the item. Item 3 covers installation kits to permit the basic item, a two-way radio, to be used as a mobile transceiver. The item description states that the kit shall include "all necessary mounting brackets, speaker assembly (mobile), cables, antennas, and miscellaneous hardware necessary * * *" for mobile use. The administrative report points out that:

* * * the make-up of components for this item would not necessarily be standard throughout the industry; in other words, individual companies may be responsive to the requirement by offering those components necessary to permit use of their basic radio as a mobile unit. Accordingly, an estimate of "fair" price for the composite Item 3, as bid by Communications Company, would be difficult to determine.

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Since the number of components would vary from manufacturer to manufacturer, the item description is an unreliable basis for charging a contracting officer with constructive notice of a mistake in your bid. More importantly, since the invitation stated that a single award would be made, the Department considered "Items 1 through 3 in the aggregate with no attempt to breakout separate items." Because only one award for all three items would be made, bidders were free to submit an unrealistic price for Item 3. And, the Department advises that it is not unusual for bidders to price accessory items considerably below market prices or, occasionally, at no charge.

While your suggestion that the contracting officer could have contacted other suppliers of communications equipment to determine whether the price quoted by your firm for item 3 was reasonable is not without merit, we cannot say under the facts and circumstances involved that the contracting officer was required to take such action. In this regard, the following comment from B-164645, January 27, 1969, cited in 49 Comp. Gen. 273, 274 (1969), is pertinent:

Mistake-making contractors will naturally seek to impose upon contracting officers a rather high level of brilliance for the purpose of detecting error. See Wander Presses, Inc. v. United States, 170 Ct. Cl. 403, 406. However, the test is 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" (Walch, Mistakes in Bid, 18 Fed. B.J. 75, 83) without making it necessary for the contracting officer to assume the burden of examining every bid for possible error by the bidder. See Salomon v. United States, 56 F. Supp. 505, 508 * * *

Accordingly, our decisions of June 19, 1972, and January 26, 1973, are affirmed.

Sincerely yours,

Paul G. Dumbling

Acting Comptroller General
of the United States