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

31019

B-178713

June 6, 1973

The Honorable Rogers C. B. Morton
The Secretary of the Interior

Dear Mr. Secretary:

This is in reply to your letter dated May 10, 1973, and enclosures, from the Deputy Assistant Secretary of the Interior, requesting a decision as to whether Maydwell Hartzell Utility Equipment Corporation (Maydwell) may be relieved of its obligations under contract No. 1150014200281, awarded pursuant to formal advertising procedures by the Bureau of Indian Affairs, Phoenix, Arizona.

It is reported that on February 28, bids were received in response to solicitation No. 2411, covering four items of electrical line material. Three responsive bids were received for Item No. 1, Crossarms, as follows:

Bidder	Unit Price	Total Price
1) Maydwell Hartzell Utility Equipment Corporation	$ 9.93	$4,965
2) Anixter Pruzman Co.	11.44	5,700
3) Graybar Electric Co., Inc.	9.91*	4,955

*Not considered for award as bid was submitted on all-or-none basis for all four items and combination of bids from other bidders was lower than its total

A contract for Item No. 1 was awarded to Maydwell on March 7, 1973. However, by letter of March 14, Maydwell alleged a mistake in its bid and requested permission to withdraw the bid. Maydwell

"[Request for Relief from Contractual Obligations]

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apparently overlooked the acceptance deadline in the quotation from its crossarm supplier as it did not restrict the acceptance time of its bid. By the terms of the solicitation a bid could be accepted within 60 days unless a different period was specified by the bidder. Maydwell's supplier's quotation could be accepted by "February 20, 1973." Maydwell has stated that while there is no such date, it was the manufacturer's intention that the quotation would be void two days after bid opening.

As a general rule, relief will not be granted for a contractor's unilateral mistake alleged after the bid or offer has been accepted by the Government unless the circumstances are such that the Government was or should have been on notice of the probability of mistake, thus necessitating verification before the acceptance of the bid or offer. Hensley Pressure, Inc. v. The United States, 170 Ct. Cl. 483, 343 F. 2d 1951 (1965); Gallagher Co. v. United States, 56 F. Supp. 505 (1944); and 45 Comp. Gen. 305 (1965). However, relief has been allowed after award when a mistake is so great that it could be said the Government was obviously getting something for nothing. See Kopp v. United States, 34 F. Supp. 568 (1941), in which the low bid was less than one-tenth of the next two higher bids. Also, we have authorized relief, after verification, where the mistake was so great that it was considered unconscionable (or inequitable) to hold the firm to its contract. B-150382, February 20, 1963; B-170591, January 28, 1971.

Your Department's submission states that there is no question that Maydwell failed to limit the acceptance time of its bid to reflect the restriction imposed by its supplier, but that such error is unilateral rather than mutual. While there is nothing on the face of the bid to put the contracting officer on notice of the error, the contracting officer, nevertheless, has recommended that the contract be cancelled since to force the contractor to deliver at the current lower prices would subject it to a substantial loss. It is reported that the current selling price for crossarms in the Phoenix area is in excess of $14.50 each. In view of these circumstances the Deputy Assistant Secretary has suggested that "sustaining the award could well be considered unconscionable."

It is clear that Maydwell's failure to specify a bid acceptance time consistent with its supplier's bid was a unilateral mistake. There was no error in the unit price offered for the crossarms, and on the record before us we find no sufficient basis for concluding that the contracting officer should have been on notice of an error in Maydwell's bid.

Furthermore, we are unable to agree with the suggestion in your Department's request for a decision that "sustaining the award could well be considered unconscionable" although it is reported that Haydrill tried to obtain the crossarms from other sources but was unable to find a supply which it could furnish the Government at its bid price. While the cost of the crossarms may have increased with the passage of time to the indicated current price of $14.50, the record does not show the price at which the items could have been procured by Haydrill from its supplier at the time of the award had Haydrill chosen to honor its contract rather than request the withdrawal of its bid.

In any event, it is clear that had the award not been made to Haydrill, the Government could have secured the crossarms by an award to the next-low bidder at a price of $11.44. It also seems evident that if Haydrill is excused from its contract the Government will have to pay a higher price for the items than the price available to it from the other source at the time of the award. We do not find, under these circumstances, that a case has been made on either legal or equitable grounds which would require the loss involved in a procurement to be borne by the Government rather than by the contracting party solely responsible for the mistake. In addition, we do not consider the differences in prices to be so great as to warrant consideration of relief on the basis of unconscionableness. See B-177432, December 21, 1972, and the decisions cited therein.

For the reasons stated above, rescission of the contract is not authorized.

The file transmitted with the letter of May 18, 1973, is returned.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States