



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20541

B-173688

JUL 10 1973

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The Honorable Claude S. Brinegar
The Secretary of Transportation

Dear Mr. Secretary:

Reference is made to a letter of May 16, 1973, with enclosures, from the Director, Logistics Service, Federal Aviation Administration (FAA), requesting our decision, pursuant to Section 1-2.406-4(1) of the Federal Acquisition Regulation, relative to the request of the White Plains Electrical Supply Co., Inc. (White Plains), for a price adjustment under a contract awarded to it, based upon an alleged mistake in bid after award.

The contract in question, No. DOT-FA72AC-1159, was awarded by FAA, Aeronautical Center, Oklahoma City, Oklahoma, to White Plains on June 14, 1972, as a result of Solicitation No. AC73-2-1160, issued on May 3, 1972.

White Plains in a letter dated January 31, 1973, alleged that it had made an error in its bid because its supplier had furnished it improper cost data and that this error should have been apparent to Government officials at the time of bid opening because of the wide discrepancy in bid prices. It is also alleged that, since White Plains' bid prices were extremely low in comparison to all others received, the Government contributed to the error by snapping up the bid of White Plains. Consequently, White Plains requested an upward adjustment of the contract price to the levels of the second low bidder or to a level sufficient to cover its increased costs.

The solicitation sought bids on two items of electrical power cable. The solicitation provided for award, by item, of an indefinite delivery type contract with stated minimum quantity guaranteed to be purchased under each item. The quantity of cable required was to be determined at the time of award.

Four bids were received and opened on June 1, 1972, with the results as follows:

720234

091396

(Prices quoted are dollars per foot)

Item 1

<u>Guaranteed Quantity</u>	<u>White Plains Electrical</u>	<u>Corro Wire & Cable</u>	<u>General Cable Corp.</u>	<u>Okonite Company</u>
6,000 ft.	.931	1.10	1.115	1.193
10,000 ft.	.918	1.10	1.115	1.169
20,000 ft.	.9125	1.05	1.115	1.149

Item 2

30,000 ft.	.7118	.825	.932	.943
40,000 ft.	.7014	.825	.932	.941
80,000 ft.	.6972	.815	.932	.939
100,000 ft.	.6970	.815	.932	.939

While it appears from the workpapers submitted by White Plains' supplier that an error may have been made as alleged, the primary question for consideration is not whether an error was made in the price quotation of the contractor, but whether a valid and binding contract was consummated by its acceptance by the Government.

Our Office has consistently stated that where a mistake in bid is alleged after award of a contract, in the absence of any mutual mistake, as here, we will grant relief only when the contracting officer was on actual or constructive notice of the error or probability of error prior to award. 52 Comp. Gen. _____ (B-177482, April 16, 1973); 45 id. 700 (1966).

There was nothing on the face of the White Plains' bid to indicate that an error in price had been made. The difference between White Plains' prices and those of the other bidders was not so great as to warrant our concluding that the contracting officer was placed on actual or constructive notice of error or the possibility of error. B-176354, September 1, 1972; B-175298, March 28, 1972; 49 Comp. Gen. 272 (1969). If the contractor submitted its bid based upon erroneous quotations from its supplier, that is ordinarily a matter for adjustment between them.

In view of the foregoing, it is our opinion that any error made in the quotation of White Plains was unilateral, not mutual, and that acceptance of the offer by FAA without notice thereof consummated a valid and binding contract which fixed the rights of the parties thereto.

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For these reasons, we conclude there is no basis for granting any relief to White Plains or for payment of any amount in excess of the contract price.

The file furnished with the letter of May 16 is returned.

Sincerely yours,

PAUL G. DEMBLING

Acting Comptroller General
of the United States