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Alleged Mistake in Bid

The Honorable William M. Brodhead
Member, United States House of
Representatives
24261 Grand River Avenue
Detroit, Michigan 48219

Dear Mr. Brodhead:

By letter of April 1, 1981, you requested reconsideration of our decision B-200907, in the matter of G.J.K. Metals, Inc. The General Services Administration had accepted the company's offer and awarded it a contract for purchase from the Government of 500 carats of industrial diamonds at a total price of \$30,655. The company sought to void the contract on the ground that it had made an error in submitting its bid at the price accepted. We ruled in the decision you ask us to reconsider that there is no proper basis for relieving the company of its obligations under the contract as made.

Under Federal contract law and regulation bidders for Government contracts clearly have the right to withdraw their bids where an error has been made in any bid submitted. Indeed, where error is reasonably to be suspected, the Government is under obligation to provide bidders with an opportunity to verify the correctness of their bids before acceptance of the suspect offer. Mere allegation of error, in the absence of a patent reason for suspecting the accuracy of a bid, provides no sufficient basis for allowing the bid to be withdrawn. To maintain integrity in the bidding system demands more; evidence to support the allegation is essential. It would be difficult to preserve the rationale of the system and the confidence of bidders in it if after bid opening any bidder dissatisfied with the results could avoid his obligation simply by alleging an error in his bid.

In the case under reconsideration we concluded that the high bid submitted by G.J.K. Metals, Inc., for industrial diamonds was within a reasonable range to be expected. In essence, we concluded that the amount of the company's bid did not put the contracting officer on such notice of possible error as to place him under a duty to seek verification of the bid. When the company itself alleged error, it was afforded an opportunity to provide evidence to substantiate the allegation. It was only after the company failed to come forth with substantiating evidence that the contract was awarded.

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In holding that the company is bound by the terms of the contract awarded, we did not purport to assert that the bid as submitted was free of error. It may well not have been the bidder's intended bid. Nevertheless, we cannot resolve the important issues of contract obligation involved on what, in the absence of competent evidence, would amount, in the final analysis, to speculation.

You refer in your letter to the company having been advised by a GSA official that there would not be a problem regarding the alleged mistake and that the contract would not be awarded. You also refer to the company having ultimately provided documentary proof of the error alleged.

The General Services Administration, as stated in our decision, denies having said the contract would not be awarded. Even assuming, however, that there was no misunderstanding on the company's part, any erroneous advice given would not provide a basis for circumventing the legal and regulatory requirements for resolving issues raised by an allegation of mistake made in the bid submitted. Such erroneous advice in no way affected the actions of the parties or resulted in any change in their positions. As to proof of the mistake, it was not offered until some 2½ months after contract award with full opportunity to present such evidence in connection with the award when it was made.

Although we appreciate that an error may indeed have been committed, it clearly would have been unilateral on the part of the contractor. With full consideration of the contractor's assertions having occurred and with full contemporaneous opportunity provided to the contractor to substantiate its assertions, it is our view that the contractor is legally bound to suffer the consequences of any error it may have made.

Sincerely yours,

MILTON J. SOCOLAR

Acting Comptroller General
of the United States