

17493 Mr. Boyle



**DECISION**

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

*[Request for Reconsideration]*

FILE: B-196543

DATE: March 25, 1981

MATTER OF: Iberville Services, Inc.--Reconsideration

**DIGEST:**

Despite "on-the-spot verification," contract reformation based on mistake in bid discovered after award may be allowed where contracting officer still should have had reasonable doubt as to correctness of bid price because record shows that total bid price was 14.3 percent below Government estimate and bid on alternate 2 was substantially below Government estimate for that work but bidder was not so advised. Payment may be made on quantum valebant or quantum meruit basis for reasonable value of service and materials actually furnished, not to exceed amount claimed.

Iberville Services, Inc. (ISI), requests reconsideration of our decision in the matter of Iberville Services, Inc., B-196543, July 11, 1980, 80-2 CPD 25, which denied ISI's claim for contract reformation. ISI and the contracting agency have provided certain new and clarifying information which presents a substantially different situation from the one considered in the July 11, 1980, decision. After considering the new information, we conclude that ISI's claim should be allowed; the prior decision is modified accordingly.

The record in the prior decision revealed that the Federal Energy Administration's (now the Department of Energy (DOE)) invitation for bids (IFB) No. 13-70150--for certain fill construction at the Strategic Petroleum Reserve's Bayou Choctaw storage complex--required, among other tasks, the furnishing

~~246125~~ 114716

and installation of concrete weight coating to Government-furnished 24-inch pipe. The IFB specified that the "[c]oating shall be 3.6 inches of 140 lb. per cu. ft. concrete." Addendum No. 2 deleted the 3.6 inches of concrete weight coating and substituted a 1.6 inches of concrete coating requirement. Addendum No. 3 restored the thickness of the concrete weight coating to 3.6 inches.

Two bids were opened at the scheduled time and both bidders had representatives at the bid opening. The abstract of bids showed the following results:

Iberville Services, Inc.	\$ 845,247
Love Engineering Co. (Love)	2,765,100

Upon opening Love's bid, the contracting officer's representative declared it nonresponsive since it included several pages of qualifications. Upon opening ISI's bid, the contracting officer orally requested ISI to return within 3 hours with a statement confirming its bid price. ISI subsequently returned with a statement verifying that its bid was numerically correct.

Nine days later, the contract was awarded to ISI. After award, ISI discovered that the contract called for 3.6 inches of concrete weight coating instead of 1.6 inches, which was the thickness upon which ISI's bid had been based. Nevertheless, ISI performed the contract in accordance with its terms; however, ISI submitted a claim for \$58,122.74 representing the additional cost of the 3.6 inches of concrete weight coating.

ISI based its claim on the following: (1) addendum No. 3 requiring a restoration of the 3.6 inches of coating requirement was ambiguous; (2) the pertinent addenda were received only a short time before bid opening; and (3) the contracting officer, by pressuring ISI into an "on-the-spot verification," did not properly carry out his bid verification duties. DOE recommended that ISI's contract be reformed in the amount claimed.

On reconsideration, ISI states that its bid price for the work of \$845,247 should have been compared to the Government estimate of \$987,000. DOE confirms that the Government estimate for the work performed by ISI was that amount and not \$716,000 as the agency originally reported. From DOE's and ISI's comments, it appears that ISI's bid could be compared to the Government estimate, as follows:

	<u>Government Estimate</u>	<u>ISI</u>
Base Bid	\$271,000	\$398,247
Alternate 2 (involved concrete weight coating)	716,000	447,000
Total	\$987,000	\$845,247

Regarding the bid opening, DOE explains that the responsibility for conducting the bid opening was assigned to a contract specialist, who took those actions at bid opening which would normally be taken by the contracting officer. After receiving the "verification" from ISI, he returned to Washington, D.C., and processed the procurement action leading to the issuance of the award letter signed by the contracting officer. DOE reports that the contract specialist at bid opening thought that ISI had a mistake in its bid--the difference between the Government estimate and ISI's bid on alternate 2 put him on notice of a suspected error; he therefore sought verification, but did not provide the bidder with sufficient opportunity to ascertain whether a mistake had been made. When the contracting officer reviewed the procurement action before sending the notice of award, he appears to have been satisfied with the verification received from ISI, even if he had suspected a mistake in the ISI bid because of the disparity between the bid and the Government estimate.

Finally, DOE advises that although it has no knowledge of what efforts, if any, were made by ISI after bid opening but prior to award to ascertain

any potential mistake in its bid, it is clear to DOE that--despite ISI's acknowledgement of Addendum 3 requiring the 3.6-inch weight coating--ISI believed that the requirement for concrete coating was 1.6 inches up to that point in performance when it was informed otherwise and began to perform in accordance with the 3.6-inch concrete coating requirement. It is not clear to DOE whether ISI would have discovered the mistake until the Government informed it of the 3.6-inch requirement because of the confused nature of the bid documents provided to ISI and its competitor.

In conclusion, DOE requests that favorable consideration be granted to ISI's reconsideration request.

As stated in the prior decision, when, as here, a unilateral mistake in bid is alleged after the award of a contract, our Office will grant relief only if the contracting officer was on actual or constructive notice of the error prior to award and failed to take proper steps to verify the bid. In that situation, no valid and binding contract is consummated by the Government's acceptance. Murphy Brothers, Inc., B-189756, March 8, 1978, 78-1 CPD 182. In determining whether there was a duty to verify bid prices, we have stated that 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. Philadelphia Corrugated Container Company, B-194662, May 24, 1979, 79-1 CPD 375.

The July 11, 1980, decision was based on the fact that ISI's bid was \$130,000 above the Government estimate, and the estimate appeared to be correct; therefore, we did not believe that the presumption of error should have been raised in the contracting officer's mind. Now, it appears that ISI's bid was 14.4 percent, or \$141,753, below the Government estimate instead of \$130,000 above the Government estimate and ISI's price on alternate 2 was substantially below the Government estimate for that work. Thus, based on the new facts, our concern is whether a reasonable doubt as to the

correctness of ISI's bid should have remained requiring further effort by the contracting officer after what was essentially an "on-the-spot verification."

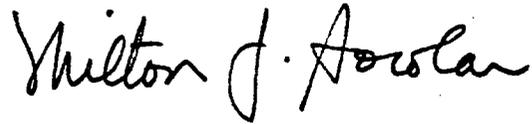
In a similar matter, John P. Ingram, Jr., B-191867, November 8, 1978, 78-2 CPD 332, we concluded that a reasonable doubt should have remained after the unqualified "on-the-spot verification" because the bidder was not informed of a particular unreasonable discrepancy in its bid. In Y. T. Huang and Associates, Inc., B-192169, December 22, 1978, 78-2 CPD 430, we concluded that the verification request was inadequate because the contracting officer did not divulge the amounts of the other bids, the large disparity between the low bid and the next low bid, nor the exact amount of the Government estimate. Further, our decision in Zeigler Steel Service Corp., B-195719, January 14, 1980, 80-1 CPD 40, applies also; there, the low bidder was only asked to check the prices on its bid, the contracting officer did not direct the low bidder to the items where a mistake was suspected, and the contracting officer did not inform the low bidder that its price for one item was less than half of the only other bid price for that item. The instant situation is similar to these since the record does not indicate that ISI was advised by the contracting specialist that its bid on alternate 2 was substantially below the Government estimate for that work. In sum, the "verification" request was nothing more than a confirmation request which does not discharge the verification duty. See Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393.

Consequently, we conclude that the Government had constructive knowledge of a mistake and the contracting specialist did not adequately discharge his verification duty; thus, no contract was effected at the award price. ISI therefore should receive payment for the increased weight coating on a quantum valebant or quantum meruit basis for the reasonable value of the service and materials

B-196543

6

actually furnished by ISI to the Government not to exceed the amount claimed. The prior decision is modified accordingly.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

Acting Comptroller General  
of the United States