

DECISION



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

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FILE: B-182895

DATE: May 29, 1975

MATTER OF: Autoclave Engineers, Inc.

DIGEST:

1. Contractor's allegation of unilateral mistake in offer after award does not provide basis for contract adjustment since contracting agency personnel adequately discharged their verification duty by calling to offeror's attention fact that its offered price appeared to be unreasonably low and offeror thereafter verified its offer.
2. In negotiated procurement, contracting officer, who reasonably had no suspicion of specific mistake in an offer but requests verification advising offeror that its offer is "unreasonably low," adequately discharges verification duty in view of restrictions on disclosure of information during the preaward period. See ASPR § 3-507.2 (1973 ed.).
3. In absence of guidance in section III of ASPR for resolving suspicion of error in offeror's price after receipt of offers, GAO suggests that DOD provide procedures to be followed when mistake is suspected before award in negotiated procurement.

Request for proposals (RFP) N62477-73-C-0002 was issued on December 10, 1973, by the Commanding Officer, Chesapeake Division, Naval Facilities Engineering Command (NFEC), Washington, D.C., for the design, fabrication, assembling, installation and testing of a hyperbaric facility at the United States Naval Academy, Annapolis, Maryland. By March 20, 1974, the closing date for receipt of proposals, three proposals were received as follows:

Autoclave Engineers, Inc.	\$137,980
Hahn & Clay	181,404
The Bethlehem Corp.	258,900

The Government estimate was \$200,960.

The Navy reports that in view of the disparity between the offer of Autoclave Engineers, Inc. (Autoclave), and the other two offers and the Government estimate, an error in Autoclave's offer was suspected. The record discloses that Mr. Frank Gorman, the Navy's Resident Engineer in Charge of Construction under the contract, telephoned Autoclave on March 28, 1974, and requested verification of its offer, stating that it appeared to be unreasonably low. Mr. Gorman states that Autoclave was not informed of the other offerors' prices, the number of offers received nor the Government estimate since this was a negotiated procurement.

In a telephone conversation on April 1, 1974, Autoclave verified that its offer was as intended and that no changes were necessary. Award of a firm-fixed-price contract in the amount of \$137,980 was made to Autoclave on April 12, 1974.

By letter dated June 18, 1974, to NFEC, Autoclave advised NFEC that its price did not include installation and setup at the site as required and requested that the contract price be increased in the amount of \$28,217 to cover these costs. Autoclave states that it assumed that amendment No. 1 which deleted the services of a supervising erector, also deleted the requirement for installation and setup. Autoclave concedes that this was an incorrect assumption and that its price should have reflected this item. Autoclave's request for an increase in contract price was denied by the Navy and subsequently forwarded by the Navy to our Office for consideration.

Where, as in the instant case, a mistake in an offer is not discovered until after award, the general rule is that the bidder or offeror must bear the consequences of its mistakes unless the contracting officer knew or should have known of the mistake at the time the bid or offer was accepted. See 48 Comp. Gen. 672 (1969); Matter of Titan Environmental Construction Systems, Inc., B-180329, October 1, 1974.

In the present case, the contracting officer suspected a mistake in Autoclave's offer and therefore properly requested verification. Generally, upon verification of a bid price in which a mistake is suspected, the contracting officer has a duty to make an award to the low bidder, and an award made on such a basis results in an enforceable contract. See Matter of General Time Corporation, B-180613, July 5, 1974. We have indicated that in negotiated procurements contracting officers must seek verification when on actual or constructive notice of a possible mistake in proposals. See B-172596, May 11, 1971; 48 Comp. Gen. 672 (1969).

The issue for our resolution is whether the contracting officer properly discharged his verification duty.

Under formally advertised procurements, Armed Services Procurement Regulation (ASPR) § 2-406 (1974 ed.) sets forth specific procedures for the procuring activity to follow whenever a mistake in a bid is suspected. However, section III, ASPR (1974 ed.), which sets forth the procedures to be followed in negotiated procurements, contains no procedure to be followed when an error is suspected in an offeror's price after receipt of offers.

The record discloses that in requesting verification of Autoclave's offer, the only information furnished Autoclave was that its offer appeared to be unreasonably low. The record does not indicate that the procurement activity had any basis for suspecting a specific mistake. On April 1, 1974, after being advised that its offer appeared to be unreasonably low, Autoclave telephoned the activity on April 1, 1974, and stated that its offer was as intended and that no changes were necessary.

ASPR § 3-507.2 (1974 ed.), which sets forth procedures to be followed with regard to disclosures of information during the preaward or preacceptance period, precludes the disclosure of the number or identity of the offerors or any information to a potential supplier which alone or together with other information may afford him an advantage over others. In view of these restrictions and since no specific mistake was suspected or alleged prior to award, we believe that the procurement activity's verification duty was adequately discharged when it informed Autoclave that its offer was unreasonably low.

Accordingly, acceptance of Autoclave's verified offer consummated a valid and binding contract and no legal basis exists for allowing a price adjustment in Autoclave's contract. However, by letter of today to the Secretary of Defense, we are suggesting that section III of ASPR provide appropriate procedures to be followed when a mistake is suspected before award in a negotiated procurement.


Deputy Comptroller General
of the United States