

DOCUMENT RESUME

02720 - [A1872915]

[Contract Rescission]. B-189162. June 30, 1977. 2 pp.

Decision re: Bay Asphalt Paving Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Corps of Engineers.

Authority: P.P.R. 1-2.207. B-188785 (1977). B-177517 (1973). B-177099 (1973).

Contractor and the Department of the Army requested authorization to rescind a contract for paving because of confusion relating to an amendment to the solicitation. It appeared that the Government misled the contractor concerning the terms of the solicitation, so the contract may be rescinded as requested by the Department and the contractor. (RRS)

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DECISION



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

FILE: B-189162

DATE: June 30, 1977

MATTER OF: Bay Asphalt Paving Company

DIGEST:

1. Oral representation by design project engineer that item in IFB would not be required did not alter IFB requirement where no amendment was issued to implement such change.
2. Since Government was responsible for misleading contractor as to Government's needs and since Government had actual notice prior to award of bidder's intention not to abide by terms of IFB, contract may be rescinded as requested by agency and contractor.

The Department of the Army has requested authorization from our Office to permit the Corps of Engineers to rescind its contract (No. DACA41-76-C-0056) with Bay Asphalt Paving Company (Bay Paving) for bituminous overlay and concrete curb replacement at the United States Army Reserve Center, Bay City, Michigan. Bay Paving also requested that the contract be rescinded. The Corps intends to readvertise if rescission is permitted.

The requests stem from confusion relating to amendment 0001 to the invitation for bids (IFB). Amendment 0001 made many modifications to the IFB, among them the addition of a seal coat requirement. The vice president of Bay Paving discussed the seal coat requirement with the design project engineer, the official designated in the IFB as the individual to whom inquiries should be addressed, who told him that the requirement was unnecessary and would be deleted. Nothing was said to the contracting officer and no amendment was issued to delete the seal coat requirement.

The bids were opened on June 9, 1976. Only one other bid was received under the IFB but it was rejected since the bidder failed to acknowledge amendment 0002. Since Bay Paving's bid was about 31 percent below the Government estimate, Bay Paving was requested to review its bid and submit written verification thereof. Bay Paving replied by letter dated June 11, 1976, "Please be advised that we have reviewed our bid and feel that it is correct. We will comply with DACA41-76-B-0037-001 Section 2A (Para. 2.3 Sealcoat deleted per Mr. Wyatt [the design project engineer])."

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The contracting officer failed to recognize the significance of the seal coat deletion in Bay Paving's verification and awarded the contract to Bay Paving. When Bay Paving failed to return the signed contract with performance bond as required, the contracting officer called Bay Paving's vice president, who explained that he would not sign the contract until the seal coat requirement was deleted. The contracting officer then realized the significance of the seal coat deletion in Bay Paving's verification.

It appears that the Government misled the contractor into believing that the terms of the written IFB could be altered orally, as was done here, without any written amendment being issued as required by the Federal Procurement Regulations (FPR) § 1-2.207 (1964 ed. amend. 139).

Since the Government was responsible for misleading the contractor and since the Government had actual notice of Bay Paving's intention not to abide by the terms of the IFB before award, the contract may be rescinded in accordance with the agency's and contractor's requests. L.Z. Hizer, B-188785, May 23, 1977; B-177517, March 19, 1973; B-177099, February 7, 1973.

Deputy

R. Z. Keller
Comptroller General
of the United States