



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-176760

JAN 22 1973

Dear Mr. Secretary:

Reference is made to letter O9CA/WBB:pb dated October 10, 1972, with enclosures, from the Counsel, Naval Facilities Engineering Command, reporting on the request of Ventilation Cleaning Engineers, Inc., that the price on item 2 in contract No. N62470-71-C-0355 be increased from \$3,502 to \$7,004 because of an error alleged to have been made in the bid on that item.

The contractor alleged after the opening of bids that the error occurred when the price on item 2 was copied from the worksheets as \$3,502 instead of \$7,004. In support of the allegation of error, the contractor furnished the worksheets for item 2. The individual who prepared the worksheets swore before a notary public that they were the original worksheets from which the bid was prepared. Additional affidavits were furnished by the individual who prepared the worksheets and the secretary who typed the bid averring that the last page of the worksheets was overlooked when the bid was typed.

The worksheets consist of three pages. The first two pages list the subitems which make up item 2 and a price for each subitem. At the bottom of the column of prices on the second page, it is stated: "BID ITEM 2 COST TOTAL \$3502." The third page stated:

"LABOR - \$3,502

"50% INCREASE FOR OVERHEAD, PROFIT, TRAVEL, MISC
AND CONTINGENCY. DOUBLE ABOVE COSTS FOR UNIT PRICES.

\$3,502

X2

TOTAL BID ITEM #2 --- \$7,004"

After consideration of the documentary evidence submitted to support the claim of error, the contracting officer advised the contractor by letter that the Commander, Naval Facilities Engineering Command, had found that although an error had been committed in bid preparation, the exact amount of the error was not apparent from the documentation submitted. Accordingly, the contractor was offered an option to either accept the contract at the bid price or to withdraw the bid.

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Subsequently, an award was made to the contractor on August 27, 1971. However, on August 30, 1971, the contractor acknowledged receipt of the award and in a separate letter stated that pursuant to a conversation on August 27, 1971, it was confirming that acceptance of the contract was not intended to be a waiver of its right to seek an adjustment in the contract price before our Office.

In the letter of October 10, 1972, the Navy Counsel recommended that the claim be denied as untimely because the contractor accepted award and performed the work without pursuing the claim of error before our Office until almost a year after the contract was awarded. *52 Comp*
 In support of the recommendation there is cited decision B-175779, *Jan 20* July 13, 1972, wherein a protest against award to another bidder was denied as untimely 10 months after adverse action by the contracting agency. That decision involved a protest which was determined to be untimely under the provisions of section 20.2(a) of our Interim Bid Protest Procedures and Standards. However, that decision is inapplicable here since there is not involved a bid protest but a request for equitable relief by way of contract reformation. Further, our Office has held that correction is not precluded even though a bidder signs a contract and proceeds with performance subject to a reservation of claim of error. B-176792, ✓
 September 18, 1972.

With respect to the merits of the case, Counsel provided the following explanation for denial of the request for correction of the bid:

"* * * The Shipyard and this Command declined to permit the correction for these reasons: Since the Government had rejected bids and readvertised because bids were excessive and since item 2 was unchanged, an increase from \$5,192 to \$7,004 for item 2 seemed unlikely. The work sheets submitted recite, page 3, '50% increase for overhead, profit, travel, misc. and contingency' but then proceed to 'double above costs for unit prices,' a 100% increase. The sheet showing these increases could easily have been made up after bid opening, and a 100% increase for the named items is unusually high. It is not clear whether the bid intended was 50% increase, as recited, or the 100% as actually calculated.* Accordingly, the Shipyard made award at the bid price without correction on 27 August 1971. * * *

*Note that increasing the item #2 price 50% for overheads = \$3502 plus \$1751-results in a price \$5253 almost the same as the \$5192 bid on the first advertising."

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Although it is suggested that the worksheets may have been prepared after bid opening, we find nothing of record to substantiate that suggestion. The worksheets are sworn to be the originals from which the bid was prepared and affidavits further confirm such fact. Further, while the written statement on page 3 of the worksheets appears to be incongruous as to whether 50 percent or 100 percent was to be added to the labor cost, the actual computation that follows thereafter and the statement, "TOTAL BID ITEM #2---\$7,004," is indicative of the intended bid. While Counsel points out the total that would result from the addition of a 50-percent factor would be more in keeping with the total bid on item 2 submitted by the contractor on the first invitation, the fact remains that the contractor's computation appearing on its worksheet indicates the intent to have a 100-percent markup. Such a markup is contended to be unusually high. However, we note that the \$7,004 price is substantially less than the \$10,469 Government estimate and the \$8,590 price quoted by the other bidder for item 2 on the original invitation for bids. On the readvertisement, the contractor was the only bidder. The method used by the contractor in arriving at its intended price, while somewhat unorthodox, resulted in a price within the realm of reasonableness. We note also that while it is stated that the specifications remained unchanged even though the procurement was readvertised, the Government's estimate increased from \$4,325 on item 2 to \$10,469. Since the Government upon reconsideration of the specifications considered that a substantial upward revision in the original estimate was in order, it does not strike us as unusual that the bidder possibly came to the same conclusion.

In the circumstances, we conclude that the contract should be appropriately modified to show the amount of \$7,004 as the price for item 2.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

The Honorable
The Secretary of the Navy