

DECISION



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

FILE: B-190704

DATE: January 9, 1978

MATTER OF: Department of Agriculture - Francisco Ojeda

DIGEST:

1. Where contracting officer requested verification of bid prices from low bidder, advising him of disparity (19 and 15 percent, respectively) between his prices and Government estimates-- allegedly the only basis for suspecting the possibility of mistake, but did not advise bidder of greater disparity (34 and 36, respectively) between his low bid prices and next low bid prices, request for verification was inadequate.
2. Where contract is entered into after bidder verifies prices in response to inadequate request for verification, no binding contract is created and since bidder cannot show clear and convincing proof of bid prices actually intended contract may be rescinded.

The Department of Agriculture, Forest Service, requests our decision concerning a mistake in bid alleged after award. Forest Service solicitation No. R-6-3-77-24 was issued for the procurement of precommercial thinning and slash disposal services. These services were divided into 17 items with award to be made on an item-by-item basis. Francisco Ojeda (Ojeda) received award on item Nos. 1 and 2. Ojeda now requests that he be excused from performing that contract due to financial setbacks that he has suffered and due to mistakes made in computing his bid prices.

The bid prices received by the Forest Service on item Nos. 1 and 2 were as follows:

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<u>Bidder</u>	<u>Item 1</u>	<u>Item 2</u>
Ojeda	\$15,575.85	\$ 8,356.40
McNelly Thinning	23,788.15	-----
N.W. Greentree, Inc.	24,418.50	14,045.00
Willamette Timber Systems, Inc.	25,642.10	14,287.40
Ed Eastman	32,468.40	13,084.00

The Government's estimates for these items were \$19,217 and \$9,790, respectively.

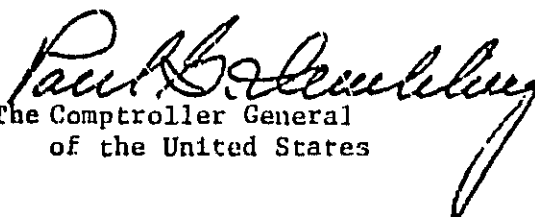
Because the Ojeda prices on these items were approximately 19 and 15 percent, respectively, below the Government estimates, the contracting officer, while still believing the Ojeda prices to be reasonable, advised Ojeda of the price disparities and requested Ojeda to confirm the correctness of his prices. The contracting officer also advised that he had no specific reason to suspect an error in bid other than those price disparities. Ojeda assured the contracting officer that his bid prices were correct and that an award as soon as possible was desired. Award was made to Ojeda for item Nos. 1 and 2 on August 19, 1977.

On August 30 Ojeda advised the contracting officer that he would be unable to perform the contract. As the facts subsequently showed, Ojeda had suffered unspecified financial setbacks which made contract performance impossible; in reliance on advice to the effect that award probably would not be made to Ojeda, allegedly given by a person in the contracting officer's office, Ojeda had expended all his money on a trip to Texas to visit a sick friend; and Ojeda would have bid \$6,159.80 more but for his failure to thoroughly read and comprehend the procurement specification and to visit the worksites before bidding.

We believe that Ojeda may be excused from contract performance for the following reason. The Ojeda prices on these two items were, in addition to the above-noted disparity between them and the Government estimates, approximately 34 and 36 percent, respectively, below the next low bid prices on these items. The contracting officer did not advise Ojeda of this fact. Had he done so, we believe, it is likely that these much greater disparities would have caused Ojeda to have discovered that its prices were too low. Section 1-2.406-1 of the Federal Procurement Regulations (1964 ed.) requires that a bidder must be informed of the specific reasons for the request that he verify his bid prices. In this case Ojeda was advised of the reasons only in part and, consequently, we must conclude that the request for verification was not adequately made. Franklin Co., Inc., B-187693, November 23, 1976, 76-2 CPD 446.

B-190704

Because no binding contract was entered into on account of the inadequate request for verification, the contract may be properly subjected to either rescission or reformation. 49 Comp. Gen. 446 (1970). In the instant case, however, since the bidder has not presented clear and convincing evidence of its intended bid prices, we believe the contract should be rescinded. Graybar Electric Company, Inc., B-186004, April 6, 1975, 76-1 CPD 228.

  
For The Comptroller General  
of the United States