



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

B-179257

August 3, 1973

31235

The Honorable Donald E. Johnson
Administrator, Veterans Administration

Dear Mr. Johnson:

Reference is made to letter 1340 dated July 18, 1973, with enclosures, from the Director, Supply Service, Department of Medicine and Surgery, requesting our decision as to the action to be taken concerning an error alleged by Ronal Corporation to have been made in its bid which was accepted on June 27, 1973.

The Veterans Administration Hospital, Bedford, Massachusetts, by invitation for bids No. 518-73-117, requested bids on project No. 801 that called for alterations and expansion of closed circuit TV facilities located in several buildings. In response, the Ronal Corporation submitted a bid offering to furnish the required materials and services for the aggregate total sum of \$27,441. The only other bid, in the aggregate total amount of \$42,147, was submitted by Christopher Electrical Co., Inc. The Government's estimate indicates the cost range of the project to be between \$30,000 and \$40,000.

In evaluating the bids the contracting officer suspected that Ronal had made an error in its bid price of \$27,441, since the price was 34 percent lower than the only other bid of \$42,147 and 14 percent lower than the amount of the Government's estimate. The contracting officer talked with Mr. Ronald A. Levaggi, president of the Ronal Corporation, on June 25, 1973, and advised him that he suspected a possible mistake in the corporation's bid because it was considerably lower than the next lowest bid and it was lower than the Government's estimate. Mr. Levaggi stated that because 80 percent of the work to be performed was electrical work, he would check with his electrical subcontractor and call back the contracting officer. On June 26, 1973, Mr. Levaggi called the contracting office and verified his bid price as being correct. A notice of award was mailed to Ronal on June 27, 1973.

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On June 28, 1973, Mr. Levaggi telephoned the contracting office alleging that his electrical subcontractor had reviewed the work to be performed by him and found that he had omitted from his estimate an area of work costing \$4,500.

In a letter dated June 29, 1973, Ronal advised that its electrical subcontractor had failed to include in his quotation the cost of the work incident to the installation of approximately 120 linear feet of 12-inch by 12-inch duct work. The corporation requested that the contract price of the project be increased by \$4,500 to cover the cost of the omitted work. In support of its allegation of error, the corporation submitted its worksheets and that of its electrical subcontractor. By letter dated July 2, 1973, the Christopher Electrical Co., Inc., protested against any correction of Ronal's bid.

At the time the bids in this case were opened, there was, as stated earlier, some doubt on the part of the contracting officer as to the correctness of the bid submitted by Ronal, and the president of the corporation was advised of the nature of the suspected mistake, and was requested to verify his firm's bid. The record indicates that the corporation's president orally confirmed his firm's bid. After the corporation's president confirmed its bid price, the contracting officer was not only justified in awarding the contract on the corporation's bid as the lowest received, but would have failed in his duty had he done otherwise. 37 Comp. Gen. 786 (1958). See, also, Carnegie Steel Co. v. Connelly, 97 A. 774 (1916); Shrimpton Mfg. Co. v. Drin, 125 S.W. 942 (1910); and Alabama Shirt & Trousers Co. v. United States, 121 Ct. Cl. 313, 331 (1952), wherein the Court of Claims concluded that the Government agents did all that could be expected to protect the plaintiff from its own imprudence, and that the plaintiff could not charge the Government "with having snapped up an advantageous offer made by mistake."

The acceptance, after confirmation, of the bid of Ronal was made in good faith--no error having been alleged until after award--and under the circumstances consummated a valid and binding contract which fixed the rights and liabilities of the parties. The right of the Government to receive performance in strict accordance with the contract terms may not be waived by any officer of the Government in the absence of adequate consideration, and considerations of sympathy for possible hardships or misfortunes to the contractor do not authorize any exception to the rule. See 22 Comp. Gen. 261 (1942); Day v. United States, 245 U.S. 159 (1917).

B-17927

Accordingly, on the present record, there is no legal basis for granting the relief requested. See 47 Comp. Gen. 616 (1968); B-168773, February 13, 1970.

Sincerely yours,

Paul G. Denbling

For the Comptroller Gen.
 of the United States