

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

FILE: B-185093

DATE: January 2, 1976

MATTER OF: Eveready Machinery Company

**DIGEST:**

Where contracting agency admits that contracting officer should have been on notice prior to award of possibility of error in bid modification since telegraphic bid modification for surplus sale listed 38 items in ascending sequence except for contested Item 12, which was listed between Items 111 and 113, contract awarded for Item 12 at price increased by modification is rescinded.

Invitation for bids (IFB) No. 27-5312 was issued by the Defense Property Disposal Service (DPDS) for the sale of 322 different numbered items of machine tools, shop equipment, and special industry machinery. Eveready Machinery Company (Eveready) submitted bids on a number of the items. Its bids were listed on an invitation page with the bid price item number listed on the same line. The items were listed in ascending numerical order with three of the listed items (Items 13, 14 and 127) out of sequence. Furthermore, the bid included a telegraphic modification received before the May 29, 1975 bid opening, which listed 38 of the items in numerical sequence, except for Item 12, which appeared in the telex after Item 111 and before Item 113. With regard to Item 12, the telex modification stated that \$1,000 should be added to Eveready's bid for that item.

Item 12 was listed in the sales invitation as a "Shearing and Squaring Machine" in poor condition, total cost of \$3,664. Eveready's listed price in the invitation page for Item 12 was \$199.99. Adding \$1,000, the total bid price became \$1,199.99, at which price Eveready was the high bidder for Item 12, the next low bids being \$757 and \$555. Accordingly, on June 5, 1975, Item 12 was awarded to Eveready for \$1,199.99.

On June 9, 1975, Eveready's president telephoned DPDS, stating that the telegraph company had made a mistake in transmission. A follow-up letter from the contractor stated that the

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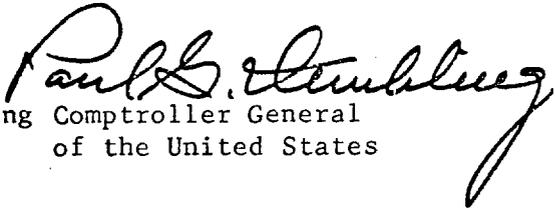
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\$1,000 increase listed in the telex for Item 12 should have been listed for Item 112 instead. The contractor requested that the award for Item 12 be withdrawn.

DPDS recommends contract rescission on the basis that the contracting officer should have known of the error prior to award because Item 12 was out of sequence in the telex message. In the agency's opinion, it should have been obvious to the contracting officer that the modification listed Item 112 and therefore verification should have been sought.

Where an error in bid is alleged after award of a contract, our Office will grant relief only if the evidence establishes the existence of the error and the mistake is mutual or the contracting officer was on actual or constructive notice of the error prior to award. 48 Comp. Gen. 672 (1969). Constructive notice is said to exist when the contracting officer, considering all the facts and circumstances of a case, should have known of the possibility of error, and neglected to take proper steps to verify the bid. 44 Comp. Gen. 383, 386 (1965).

Eveready has submitted documents supporting its allegation, including a worksheet wherein Item 112 is modified by a \$1,000 increase, and Item 12 is marked "ok." In view of the contracting agency's admission that the contracting officer should have been on notice of the possibility of error in the bid modification, and of the fact that all items listed in the modification, other than Item 12, corresponded in sequence to the items listed in the bid sheet, our Office will not object to a rescission of the contract.

  
Acting Comptroller General  
of the United States