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Place
Proc I.

DECISION



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

FILE: B-187655

DATE: April 4, 1977

MATTER OF: Texas Turbo Jet, Inc.

DIGEST:

No legal basis exists to grant relief for freight cost incurred in removal of property awarded under surplus sale contract discovered to be misdescribed after award when contract stipulated relief to which contractor was entitled (refund of purchase price) and that relief was granted and contractor accepted refund of purchase price as full settlement of all claims under supplemental agreement to contract.

Texas Turbo Jet, Inc. (TTJ), requests reimbursement of \$500 in freight costs incurred incident to the purchase and subsequent return of items misdescribed in a contract awarded under surplus sales invitation for bids (IFB) 31-6706, by the Defense Logistics Agency, Defense Property Disposal Service (DPDS),

The claim results from the July 29, 1976, sale of two aircraft engines to Texas Turbo Jet under contract 31-6706-051. Items 22 and 23 were described as reciprocating aircraft engines used only 3.7 hours each since their last overhaul. Buyers were advised that the log books were available for each engine. After award of the contract, an agent for Texas Turbo Jet removed the engines from the Naval Air Station, Jacksonville, Florida, and delivered the items on September 1, 1976, to the carrier for shipment to Dallas, Texas. After the engines were received, Texas Turbo Jet discovered that items 22 and 23 actually had, respectively, 168.7 hours and 422.9 hours of use since their last overhaul. By letter dated September 3, 1976, Texas Turbo Jet forwarded documentation of error to the contracting officer. The contracting officer agreed that there was a misdescription and Texas Turbo Jet was advised that DPDS would either make a money adjustment or refund the purchase price upon the return of the engines to the Government.

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Supplemental agreement No. 1 signed by a Texas Turbo Jet representative on September 14, 1976, authorized return of the engines to Carswell Air Force Base, Texas, at Texas Turbo Jet's expense no later than October 7, 1976. The agreement stated that the Government's refund of the purchase price would constitute full and complete satisfaction under the contract's limited guaranteed descriptions clause and that Texas Turbo Jet waived any and all claims, causes of actions or other rights which may have accrued, or would accrue in the future under the contract. A refund of the purchase price was made shortly thereafter.

The Texas Turbo Jet claim is based upon the freight cost incurred for shipment of the engines to Texas and not for the subsequent cost of their return to the Government. It is alleged that the removal cost was incurred solely because the engines were misdescribed.

The terms and conditions governing the sale and resulting contract contained a "Guaranteed Descriptions" clause stating that if a misdescription is determined to exist after removal of the property from Government control then the Government will accept return of the misdescribed property at the purchaser's expense and refund the purchase price. Furthermore, the clause limits recovery against the Government in misdescription situations to an amount no greater than refund of the purchase price.

In a very recent case, involving an identical "Guaranteed Descriptions" contractual clause, we denied a similar claim for transportation expenses incident to the purchase and return of misdescribed property because the contract on its face contained provisions stipulating the monetary relief to which the contractor was entitled and the contractor was granted the relief. National Hardware Supply, B-187011, February 9, 1977. The instant matter also involves the claimant's acceptance of a supplemental agreement to the contract stipulating that the refund of the purchase price constituted full and complete satisfaction under the contract and a waiver of any and all past and future claims, causes of actions, or other rights thereunder.

Accordingly, there is no legal basis to grant the relief requested.


Acting Comptroller General
of the United States

