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

04700

FILE: B-188946 DATE: December 23, 1977

MATTER OF: Miller's Sawmill, Inc.

DIGEST:

Despite bidding patterns experienced by Forest Service indicating wide variation in bid prices for timber, contracting officer was on notice of the possibility of mistake where contractor's bid for pine sawtimber was approximately 100 percent higher than the appraisal price and 53 percent higher than the next highest bid; where contractor's bid for oak sawtimber was 144 percent higher than the appraisal price and 22 percent higher than the next highest bid; and where total price bid was 25 percent higher than next highest bid.

Miller's Sawmill has requested relief from a mistake in its sealed bid on the Forest Service, Department of Agriculture's Bear Pen Timber Sale No. 18. The facts of the case are not in dispute, and there is no evidence that Miller's Sawmill made other than a bona fide, unilateral mistake as to the price it bid on the sale. George Condodemetraky, B-188105, March 10, 1977, 77-1 CPD 182 states the general rule as to unilateral mistakes as follows:

> "The general principle applicable to this case is that a purchaser's unilateral mistake in bid will not excuse him from a contract subsequently awarded unless the contracting officer knew or should have known of the mistake. Corbin on Contracts § 610; Wender Presses, Inc. v. United States, 343 F. 2d 961 (Ct. Cl. 1965); Saligman v. United States, 56 F. Supp. 505 (E.D. Penn., 1944); Kemp v. United States, 38 F. Supp. 568 (D. Md., 1941). * * * As to when the contracting officer should be charged with constructive notice of error, the test is one of reasonableness; whether under the facts of the case there were any factors which should have raised the possibility of error in the mind of the contracting officer. See Acme Refining-Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113. The possibility of error must be sufficient to reasonably require the contracting official to make

> inquiry, which inquiry would lead to the requisite knowledge. See Wender Presses, Inc. v. United States, supra."

Miller's Sawmill was awarded a timber sale contract by the Forest Supervisor, Mark Twain National Forest on March 15, 1977. Three days later, after receiving a copy of the award document, Mr. Miller, the firm's Secretary-Treasurer, informed the contracting officer that he had made a mistake in calculating his bid price and asked that the contract be rescinded on the basis of that mistake. The Forest Supervisor informed Mr. Miller on March 28, 1977 that he had no authority in such matters, and that Mr. Miller should write this Office in order to have the matter considered.

The Forest Service asserts that the contracting officer should not have been on notice of a possible mistake, because there was no substantial deviation from normal bid patterns. According to the Forest Service:

> "The high bid on this sale was about 20 percent higher than the average of all sales in that area. This is well within the normal range of variation. Even more to the point, an offering which was held only 6 days prior to the sale in question sold for rates equivalent to or slightly above the rates on the Bear Pen Sale. Another factor is that the index price for pine lumber had been showing substantial increases just prior to the offering of this sale. The net result of all these factors is that although the prices on this sale were high, they were not unprecedented and could have been expected from recent market changes in lumber."

Prior or contemporaneous procurements may be sound bases from which to draw inferences as to the existence of mistakes in bids. See, Reconsideration of F. R. Stanfield Company, B-178336, August 1, 1974, 74-2 CPD 70. While these factors tend to dispel any question of mistake, the issue before us is whether, in light of the sale in question, it did so.

The solicitation requested bids for 82 hundred cubic feet (CCF) of pine sawtimber and 1178 CCF of mixed oak sawtimber. Forest Service regulations (36 CFR § 221.7(d) (1976)) require Forest Service personnel to advertise the timber at its "appraised value." The appraisal's objective is to "establish fair market value." 36 CFR § 221.7(a). The "advertised" rate for the pine sawtimber was $23.12 CCF and for the oak sawtimber $13.19 CCF.

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The bidding on the sale was as follows:

	Pine Sawtimber (CCF)	Oak Sawtimber (CCF)
Miller's	$46.21	$32.27
	28.50	26.50
	26.10	26.10
	25.30	25.30
	22.85	26.06
	30.[illegible]5	20.25

Miller's bid for pine sawtimber was approximately 100 percent higher than the appraisal price and approximately 53 percent higher than the next highest bid for pine sawtimber. For oak sawtimber Miller's bid was 144 percent higher than the appraisal price and 22 percent higher than the next highest bid. This resulted in Miller's total bid being evaluated at $41,803.28 which was approximately 25 percent higher than the next highest bid of $33,390.00.

The fact that the lumber market is unstable does not explain why the claimant would bid $41,803.28, when the other bids ranged from a high of $33,390 to $26,335. We believe that this disparity in bid prices was sufficient to raise the question of possible error in Miller's bid. In such cases we grant reformation or recision of the contract as appropriate, Commercial Industrial Development Corporation, B-187495, March 22, 1977, 77-1 CPD 199, once the bidder has provided sufficient evidence of mistake. In this case, as the Forest Service notes, Miller has offered but, as yet, has not supplied any evidence, such as work papers, to show the fact and nature of the mistake alleged. Consequently, relief can be granted if the contractor establishes mistake in bid.

We understand that the sales timber has been substantially removed by Miller. Accordingly, payment by Miller for such timber should be made at its intended bid price or in an amount no less than the next highest bid, whichever is higher.

R. F. Keller

Deputy Comptroller General
of the United States