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**DECISION**



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

**FILE: B-191247**

**DATE: March 9, 1978**

**MATTER OF: John E. Bauer**

**DIGEST:**

Where Government surplus property was sold by lot which was misdescribed as including certain missing items, purchaser may recover only purchase price and not mileage and per diem costs incurred by purchaser in connection with the sale.

John E. Bauer has appealed from a disallowance by our Claims Division of his claim for \$366.85 for mileage and per diem costs incurred in making an unsuccessful trip from Las Vegas, Nevada to the Defense Property Disposal Office (DPDO), Alameda, California to pick up surplus meteorological components and accessories purchased under contract No. 41-7223-052, issued by the Defense Property Disposal Region (DPDR) Ogden, Utah.

The solicitation incorporated by reference the instructions, terms and conditions in the "Sale by Reference" pamphlet of December 1975. This pamphlet cautioned bidders to inspect the property prior to submitting a bid and stated that the property was offered "as is" and "where is" with no warranty as to quantity, quality, weight or description. It further provided that when property is offered for sale by the "lot" and notice of loss is made prior to removal of the property, the liability of the Government shall not exceed refund of the purchase price.

Item 158 for which Mr. Bauer's bid was accepted was listed in the solicitation as including meteorological instruments and various apparatus.

The solicitation contained a "Guaranteed Descriptions" clause, the pertinent parts of which provide:

**"30. GUARANTEED DESCRIPTIONS.**

Notwithstanding any other provision of this Invitation for Bids to the contrary, and subject to the limitations and conditions set out in subparagraphs a and b below, all of which are of the essence, the Government guarantees to the original Purchaser of the property that the property delivered or offered for delivery under any contract resulting from this Invitation for Bids will be as described in the Invitation for Bids.

"a. That if a misdescription is determined to exist prior to removal of the property from Government control, that the sole and exclusive remedy available to the Purchaser will be refund of the purchase price of the property as to which such misdescription exists, or such portion thereof as the Government may have received.

\* \* \* \* \*

"d. The foregoing guarantee is in lieu of all other guarantees, express or implied, and all other obligations on the part of the Government to deliver or offer for delivery property as described in the Invitation for Bids and shall not entitle the Purchaser to any payment for loss of profits or any other money damages, special, direct, indirect, or consequential; nor shall any recovery of any kind against the Government under this provision be greater in amount than refund of the purchase price of the specific material found to have been misdescribed."

Upon arrival at DPDO, Mr. Bauer found that the 78 pawls and the 2 lenses, which were listed under item 158 and which Mr. Bauer states were the most valuable components in the lot, were missing and two other components were misdescribed. DPDO determined that the loss and misdescriptions were due to the fault of the Government and refunded Mr. Bauer's \$100.00 purchase price.

Mr. Bauer contends that as the pawls and lenses were missing, they were not misdescribed, that his remedy is therefore not limited by the "Guaranteed Descriptions" clause and that fairness requires the Government pay for the expenses he incurred as a result of its error.

The question as to whether missing property comes within the term "misdescribed" property as used in the solicitation need not be resolved here. This case involves a sale by lot and a lot described as including property which, in fact, is missing is misdescribed. Therefore, under clause 30 the sole remedy available is refund of the purchase price. Clause 30(d) expressly states that the purchaser is not entitled to any payment of money damages. Pipe Engineering and Services, Inc., B-188524, April 21, 1977.

Accordingly, the claim is denied.

Deputy

*W. K. Miller*  
Comptroller General  
of the United States



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

IN REPLY  
REFER TO: B-191247

March 9, 1978

The Honorable Howard W. Cannon  
United States Senate

Dear Senator Cannon:

We refer to your letter to our Office dated January 24, 1978 in regard to the claim of John E. Dauer concerning the appeal from a disallowance of our Claims Division for mileage and per diem costs.

Our denial of Mr. Bauer's claim on December 29, 1977 has been reviewed by our Office of General Counsel which was unable to find a legal basis for payment. Therefore, by decision of today, copy enclosed, the claim has again been denied.

Sincerely yours,

Deputy

*R. F. Kimm*  
Comptroller General  
of the United States

Enclosure