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DECISION



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

FILE: B-191198

DATE: July 25, 1978

MATTER OF: Industrial Surplus, Inc.

DIGEST:

Rescission of contract for sale item, based upon unilateral mistake, can only be allowed where contracting officer had actual or constructive notice of possibility of error and failed to verify bid. Here, contracting officer was not placed on actual or constructive notice of error since bid was clear and wide range of bid prices for used surplus property does not put contracting officer on notice of possible error because of many uses to which property may be put. Thus, contract for item may not be rescinded.

Invitation for bids (IFB) No. 27-8001, for the sale of surplus machine tools, service and trade equipment, and air treatment equipment, was issued by the Defense Property Disposal Service, Defense Logistics Agency, Columbus, Ohio. Industrial Surplus, Inc. (Industrial), submitted the high bid of \$2,780 for item 138, a heat treating furnace. Award was subsequently made to Industrial. After award, Industrial alleged that it had made a mistake in its bid for Item 138 and had, in fact, intended its bid to be for a grinding machine described by Item 139.

Industrial submitted its work sheets which indicated that certain figures were written next to Item 139, while Item 138 was "unmarked." Industrial requested rescission of its contract for Item 138, and the sales activity denied Industrial's request.

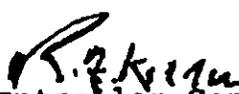
Where a bid has been accepted the bidder is bound to perform and must bear the consequences of its unilateral

mistake unless the contracting officer was on actual or constructive notice of the error prior to award. Saligman v. United States, 56 F. Supp. 505 (E.D. Pa. 1944); Wender Prasses, Inc. v. United States, 343 F. 2d 961 (Ct. Cl. 1965). Ordinarily a wide range of bid prices is not deemed to be sufficient to put the contracting officer on constructive notice of the possibility of error because of the many possible uses to which the property may be put. Wender Prasses, Inc. v. United States, supra, at 964. See Chernick v. United States, 372 F. 2d 492, 496 (Ct. Cl. 1967), in which the court stated:

* * * * The test of what an official in charge of accepting bids 'should' have known must be that of reasonableness, i.e., whether under the facts and circumstances of the case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer. * * *

The record before this Office indicates that Industrial's bid of \$2,780 for Item 138 was approximately 5 times greater than the second high bid of \$559. But the second highest bid was approximately 18 times greater than the third and 55 times greater than the fourth highest bids. Further, the sales activity's report states that they found nothing which would place the Government on actual or constructive notice that an error had been made since the bid was clear and the difference in bids is not unusual on sales of surplus property as a buyer that has a known use for the item quite often bids considerably more than others.

After reviewing the agency file, we agree that the contracting officer was not placed on constructive notice of possible error in the bid of Industrial. The wide range on a percentage basis between the various bids did not reasonably raise a presumption of error. Therefore, there is no legal basis on which the sales contract with Industrial can be rescinded.


Deputy Comptroller General
of the United States