

DECISION



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

7574

FILE: B-191992

DATE: September 7, 1978

MATTER OF: Cap'n Sam's Cruises

DIGEST:

Bidder who mistakenly put decimal point in wrong place causing error over \$10,000 may have resulting contract for surplus property rescinded. Ordinarily wide range of bid prices in surplus property sales is not deemed sufficient to put contracting officer on constructive notice of error, but when high bid was nearly six times second high bid, which was closely aligned with third and fourth high bids, and nearly two times current market appraisal, contracting officer was on constructive notice of possible mistake and should have sought verification.

The General Services Administration (GSA) has requested a decision from our office as to whether it may rescind Cap'n Sam's Cruises' (Cap'n Sam's) contract to purchase item 36 under sales invitation No. 4FWS-78-17 issued by GSA concerning surplus property. The rescission is requested because of an alleged error noted in Cap'n Sam's bid after award.

Item 36, having an estimated fair market value of \$7,000 by GSA in evaluating bids, was described in the invitation as follows:

"Boat, USCG, 30' UTM, S/N CG #30386; 1954 Md1. Fiber-glass, engine inoperative, needs top, extensive repairs to interior required, orig. cost \$35,872, boat is floating, no other information available. Inspection encouraged prior to placing bids."

Bids were opened on December 8, 1977. A contract was awarded to Cap'n Sam's on December 9, 1977, without prior verification of Cap'n Sam's bid of \$12,999.99 by the contracting officer. After notification of award, Cap'n Sam's alleged a mistake in bid of one decimal point so that its intended bid would have been \$1,299.99. GSA believes that

affidavits from Cap'n Sam's representative who submitted the bid and its secretary who typed the bid, supported by the notes of conversation between the two, are clear and convincing evidence that a mistake in bid was made by Cap'n Sam's. We agree.

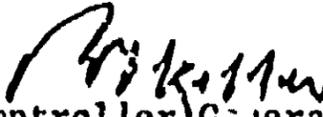
The general principle applicable to this case is that a purchaser's unilateral mistake in bid will not excuse him from a contract subsequently awarded unless the contracting officer knew or should have known of the mistake. Corbin on Contracts § 610; Wender Presses, Inc. v. United States, 343 F.2d 961 (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). There is no evidence in the present record to indicate that the contracting officer had actual knowledge of error. 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.

In the instant case, Cap'n Sam's bid was nearly six times higher than the next highest bid of \$2,187. The second, third and fourth highest bids were \$2,187, \$1,099, and \$852 respectively. While, ordinarily, a wide range of bids in surplus property sales is not deemed to be sufficient to put the contracting officer on constructive notice of error because of the many possible uses to which the property may be put, Wender Presses, Inc., supra, a grouping of bids below a disproportionately high bid may suggest that a mistake has been made. This consideration was discussed in Wender Presses, Inc., supra at 964 where the court stated:

"As compared with the differences between the second, third, fourth and fifth bids, none of which are also claimed to have been the result of mistakes, plaintiff's high bid did not tower over the second."

In the instant case, the relatively close alignment of the second, third, and fourth high bids exaggerated the disparity between the two highest bids. When added to the fact that Cap'n Sam's bid was nearly twice the \$7,000 current market appraisal by GSA of the property, we believe that the contracting officer was on notice of a possible mistake and should have requested verification. See George Condodemetraky, B-188105, March 10, 1977, 77-1 CPD 182; L. & K Surplus, Inc., B-183329, March 26, 1975, 75-1 CPD 182.

Accordingly, Sales Contract No. GS-04-FW(S)-8-0225 may be rescinded without liability to Cap'n Sam's as administratively recommended.


Deputy Comptroller General
of the United States