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

B-177104

JAN 16 1973

Tarashinsky Merchandise Company
254 Manhattan Avenue
Brooklyn, New York 11211

Attention: Mr. Edward Tarashinsky

Gentlemen:

Further reference is made to your letter of September 19, 1972, requesting relief in connection with an error alleged to have been made in your bid upon which Defense Supply Agency sales contract No. 11-2224-006 was based.

The Defense Surplus Sales Office, Philadelphia, Pennsylvania, by sales invitation No. 11-2224 requested bids for the purchase of various items, including item 12 described as 11,060 pounds of cotton mattresses, mixed, scrap. The current market appraisal established for item 12 was \$0.02 per pound. In response, your firm submitted a bid dated June 7, 1972, offering to purchase the mattresses under item 12 at a price of \$0.0169 per pound. Your bid was accepted on June 30, 1972.

It is reported that on July 5, 1972, your firm advised the sales contracting office by telephone that a mistake had been made in your bid in that you had intended to bid on the scrap rubberized nylon under item 13 rather than item 12. In a letter of the same date you confirmed your oral allegation of error and requested that the contract be canceled. In support of your allegation of error, you submitted a copy of page 2 of the sales invitation which shows a price of "0169" for item 13. No price is shown on page 2 for item 12.

Your request for relief was denied by the sales contracting officer, and you appealed his decision to the Armed Services Board of Contract Appeals. The Board dismissed your appeal on the ground it lacked jurisdiction in the matter.

In your letter of September 19, 1972, to our Office, you state that item 70 of scrap sale No. 11-2197 was grossly misdescribed to the detriment of the Government, and that you brought this fact to the attention of the sales contracting officer which resulted in higher

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return in a subsequent sale of the same type of property. Apparently, you feel that since you did the Government a favor by bringing the misdescription to its attention, the Government should reciprocate by granting your firm relief under the subject sale. While your action in bringing the misdescription to the attention of the sales contracting officer is commendable, it may not be accepted as a legal basis for granting the requested relief.

A mistake in bid alleged after contract award may not be corrected unless it can be shown that the contracting officer was, or should have been, on notice of the mistake before award. In this case, there was nothing on the face of your bid to indicate that the price quoted therein for item 12 was not as intended. It is reported that the two other bids on item 12 were in amounts of \$0.0151 and \$0.0138 per pound. Thus, it does not appear that the difference in prices was such as to place the contracting officer on notice of the probability of error in your bid on item 12. In any event, in view of the wide range of bid prices ordinarily received for surplus property, a mere difference in the prices bid would not necessarily place a contracting officer on notice of the probability of error in a bid for the purchase of property, as would a like difference in the prices quoted on new equipment. See Wender Presses, Inc. v. United States, 343 F.2d 961 (1965); and United States v. Sabik Metal Corporation, 151 F. Supp. 683 (1957), affirmed 253 F.2d 956 (1958). See, also, B-173818, October 19, 1974.

In view of the foregoing, and as no error was alleged until after award, it must be concluded that the acceptance of the bid was made in good faith and consummated a valid and binding contract which fixed the rights and liabilities of the parties to the contract.

Accordingly, we find no legal basis for granting any relief in the matter.

Very truly yours,

PAUL G. DEMBLING
For the Comptroller General
of the United States