

DIGEST

-- L - Cont



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

JAN 23 1973

B-177446

Dear Mr. Secretary:

Reference is made to a letter dated November 10, 1972, with enclosures, from the Deputy Commander, Procurement Management, Naval Supply Systems Command, requesting a decision by our Office regarding rescission of a surplus sales contract, which was awarded to O'Loughlin and Company, Chatsworth, California, under Invitation for Bids No. 66532-2053 at its bid price for Item 87 in the amount of \$3,561.00.

The subject IFB was dated May 30, 1972, and was issued by the Consolidated Surplus Sales Office at the U. S. Naval Supply Depot, Subic Bay, Olongapo City, Republic of the Philippines. Bid opening was scheduled for June 21, 1972.

Item 87, located at the Supply Depot's disposal yard, was described as follows:

"ROLLER, VIBRATOR, Mfd. by Ray Co, Inc., Model Romper, Ser #06C0541D, 2 cylinder diesel engine, D-34287-72, E-11737.

Used, fair.

Weight: 4,100 lbs.

Acq. Cost: \$6,793.91

1 Each"

After receiving the award for Item 87, O'Loughlin advised the Sales Contracting Officer (SCO) by letter of July 28, 1972, that an error had occurred in its bid price due to its mistaken belief that it was bidding on a Ray Co "Rascal" vibratory roller instead of a "Romper", and that this error was not detected until the week preceding the date of the letter. The letter contended that since a new "Romper" could be purchased in the continental United States, it would be economically unreasonable to transport the purchased item from the sale site. The letter requested rescission of the sale, alleging that a review of the prices of the other bidders would clearly establish the existence of the error.

B-177446

By letter of September 2, 1972, O'Loughlin submitted supplemental explanatory information to the SCO regarding the nature of the error. The letter related that the bidder had inspected a considerable quantity of items on the date the determination was made to submit a bid on Item 87. Among the other items was Item 18 of Invitation for Bids 66532-2050, which the bidder identified as a "Raygo Rascal", and which the bidder alleged to be a larger and more expensive unit than the "Romper" model set forth in Item 87. The letter recounts that the error occurred when the bidder mentally transposed the term "Romper" into "Rascal" in bidding on Item 87, and the error was the result of the confusion generated from inspecting some 284 items in the same day. Additionally, it is claimed that the Government contributed to the confusion by erroneously describing Item 18 of IFB 66532-2050 as similar in weight and acquisition cost to Item 87 of IFB 66532-2053. Accordingly, the bid submitted on Item 87 erroneously contemplated the purchase of the "Rascal" model whose comparative weight and value were considerably higher.

The SCO has concluded that the bidder committed a bona fide mistake. The SCO stated that while there was no record of a previous sale of equipment similar to the item in question, its estimated fair market value is \$1,100.00. The SCO admits that he should have been on notice of the error prior to award due to the disparity between the successful bid of \$3,561.00 and the second high bid of \$1,401.28, notwithstanding that substantial disparities between high and second high bids have not been uncommon in sales of some items of Republic of Vietnam Off-Shore Sales Program heavy construction equipment. The SCO further concedes that the item was misdescribed as to weight and acquisition cost, and that the similar descriptions of Items 18 and 87, as well as the fact that all of the 284 items inspected by the bidder were located in the same Property Disposal Yard, may have contributed to the bidder's confusion. The SCO therefore recommended that relief be granted in the form of contract rescission without liability to either party.

Our Office has held that if a bidder commits a unilateral mistake, he is bound by the contract as awarded unless the contracting officer knew, or should have known of the mistake at the time of award. If the contracting officer was actually or constructively on notice of the mistake, the contract is voidable at the purchaser's option. 49 Comp. Gen. 199, 201 (1969).

B-177446

Moreover, where the contracting officer admits that he should have been on notice of the error, and where the evidence in the record establishes that an error was in fact committed, our Office has permitted rescission of the contract without liability as administratively recommended. B-169076, March 9, 1970.

In view of the SCO's admission of constructive knowledge of the mistake, and of the fact that the allegedly erroneous bid was approximately two and one half times the second high bid and more than three times the estimated fair market value of the item, our Office will not object to the proposed rescission of the contract.

The file transmitted with the letter of November 10, 1972, is returned.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

Enclosure

The Honorable
The Secretary of the Navy