

DECISION



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

60421

FILE: B-185519

DATE: January 26, 1976

MATTER OF: Bimco Corporation

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~~99413~~

99201

DIGEST:

Rescission of contract, based upon unilateral mistake, can only be allowed where contracting officer had actual or constructive notice of probability 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 necessarily put contracting officer on notice of possible error because of the many uses to which property may be put. Thus the contract may not be rescinded.

The Department of the Air Force has requested a decision regarding the bid of Bimco Corporation (Bimco) for the sale of surplus Government property. Bimco's bid in question is for Lot 22 under invitation for bids No. 1993. Lot 22 was described as follows in the solicitation:

"One lot of vibration testing equipment, electronic, shaker-amplifier, remote control console, 7000 lbs. minimal shaker force, 5 to 2000 CPS frequency range, mfr: Ling Electronics, Inc., model: R-1007."

The acquisition cost for the equipment, which was manufactured in 1958, was \$58,720.

The following is a list of all bids received for Lot 22 on October 24, 1975:

Don Brown Products	\$ 61.00
Leonard Rubin-Engineering	226.99
C&H Sales	479.00
Victory Sales	518.00
Bimco Corporation	1,399.99

When Bimco was notified that award for Lot 22 had been made to it for \$1,399.99, Bimco stated that its intended bid price was \$399.99. The error was alleged to have been made by the secretary who inadvertently read the dollar sign on the work papers to be the figure 1, thereby making the bid price \$1,399.99 instead of \$399.99.

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 Presses Inc. v. United States, 343 F.2d 961 (Ct. Cl. 1965). Ordinarily a wide range of bid prices in surplus property sales is not deemed to be sufficient to put the contracting officer on constructive notice of the possibility of error because of many possible uses to which the property may be put. Wender Presses Inc. v. United States, supra, at 964. See Chernick v. United States, 372 F.2d 492, 496 (Ct. Cl. 1967), in which the Court of Claims 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; among such factors are obvious wide range of bids, and gross disparity between the price bid and the value of the article which was the subject of the bid. * * *"

The record before this Office indicates that Bimco's bid of \$1,399.99 for Lot 22 was 2.70 times greater than the second high bid of \$518. But the second highest bid was 2.28 times greater than the fourth and 8.49 times greater than the fifth highest bids. Further, the Air Force 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.

B-185519

After reviewing the agency file, we agree that the contracting officer was not placed on constructive notice of possible error in the bid of Bimco. The wide range on a percentage basis between the various bids would not without more, have reasonably raised the presumption of error. Therefore, there is no legal basis on which the sales contract with Bimco can be rescinded. Absent such legal basis, rescission may not be granted.

R. G. Keller
Deputy Comptroller General
of the United States