

DECISION



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

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FILE: B-182935

DATE: June 2, 1975

MATTER OF: Hong Hua Machinery Works, Ltd.

DIGEST:

Prior decision denying request for withdrawal of one item bid due to mistake from nine items awarded by "knock-down" on each item at auction sale is affirmed on reconsideration. Additional arguments that (1) claim of error raised prior to leaving sale site and (2) contract reveals bid was at higher price and percentage of acquisition cost than any other item awarded to bidder during auction sale do not affect previous conclusion that contracting officer lacked notice of error, or was chargeable with constructive notice of the possibility of error in bid at time of award.

Hong Hua Machinery Works, Ltd. (Hong Hua), of Taipei, Taiwan, Republic of China, requests that we reconsider our decision, Hong Hua Machinery Works, Ltd., B-182935, April 17, 1975, which denied its request to withdraw item 64 from the nine items of contract No. 27-5128-061 awarded as the result of an auction sale under invitation for bids 27-5128 issued by the Defense Property Disposal Region Office, Columbus, Ohio.

Item 64 was described in the invitation as being in "Used--Good Condition," and bidding started at \$25,000 (34.12 percent of its \$73,270 acquisition cost). Bidding progressed in \$1,000 increments until \$45,000 and then increased by increments of \$5,000 until "knocked-down" to Hong Hua at \$55,000. The tape recording of the sale disclosed that the auctioneer carefully called out and repeated the higher bids, including the final bid of Hong Hua.

In requesting reconsideration, Hong Hua's letter dated April 26, 1975, states that its contract contains eight other items which were awarded at prices that did not exceed \$10,000, and which ranged, for seven of the eight items, well below each item's acquisition cost. Since the \$55,000 bid for item 64 resulted in an award at 75.06 percent of the original cost, Hong Hua contends, in effect, that this constitutes grounds for relief from its alleged mistake in bid due to


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difficulties with the English language during the auction sale. To further support its position, Hong Hua points out that after the close of the auction its representative claimed that an error had been made prior to leaving the sale site.

As we stated in our decision, a bid at an auction sale is an offer to purchase the property in accordance with the terms of sale for the amount bid. Here, the terms of sale provided that the "knocking-down" of the item would constitute award. Once an award has been made, the contractor is bound by its unilateral mistake unless the contracting officer knew or should have known of the mistake prior to award.

We continue to be of the opinion that there is no legal basis to grant the relief requested. The allegation of error was clearly not raised by Hong Hua's representative until after the award by "knock-down" of the item. Moreover, the gradual bidding pattern at the sale precluded any suspicion of mistake by the contracting officer. Under these circumstances, the fact that a postaward review of the contract revealed Hong Hua's bid for one item to be its highest bid and at a higher percentage of acquisition cost than for any other item awarded cannot be used to charge the contracting officer with constructive notice of the possibility of error at the time of award. Rather, the presence of constructive notice here must be determined upon the information existing at the time of the "knock-down" award and not upon subsequent circumstances discovered thereafter.

Accordingly, our decision of April 17, 1975, is affirmed.


Deputy Comptroller General,
of the United States