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

J. Botaford
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DECISION

FILE: S-188065

DATE: February 14, 1977

MATTER OF: Ansam Metals Corporation

DIGEST:

Where weight of item of surplus property is significantly overstated in sales document and sales office is aware of misdescription, contract price based on incorrect weight may be reformed.

The Defense Logistics Agency (DLA) has referred to this Office the claim for relief of Ansam Metals Corporation, the high bidder on item 74, a ship propeller, under surplus sales invitation for bids (IFB) No. 41-6376, issued by DLA's Defense Property Disposal Region, Ogden, Utah.

Although the propeller was offered as a unit, the IFB item description contained an estimate of its weight. The weight was estimated to be 34,900 pounds, but due to a typographical error the digits were transposed and the weight was listed in the IFB as 43,900 pounds. The sales preparation office discovered the mistake after the invitation had gone to print, and so informed the sales office in Ogden. The record shows that the sales office changed the weight on the property list, but the contracting officer was apparently not informed of the error and the item description was never corrected.

Ansam Metals Corporation was awarded the contract for item 74 on April 6, 1976. The propeller was paid for and removed on May 25, 1976. By letters of July 6, 1976, Ansam complained that the propeller weighed only 35,960 pounds. Ansam stated that it wanted the propeller for scrap metal and computed its bid at \$.3923 per pound. It therefore requested a refund of \$3,114.86, an amount equal to the difference between the IFB's estimated weight and the actual weight multiplied by the per pound bid.

Article BB of the invitation, entitled "Guaranteed Description", contains the following disclaimer:

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"* * * PROVIDED FURTHER THAT THE GOVERNMENT DOES NOT WARRANT OR GUARANTEE ANY OF THE FOLLOWING:

"(c) Estimates as to the 'weight' of the property offered for sale by the 'unit' or by the 'lot.'"

and also states the following:

"Notwithstanding any of the exceptions stated in subparagraph b(2)(a) through (g) above, however, the Government will accept return of any property determined to have been misdescribed, to a location specified by the contracting officer at the Purchaser's expense, and refund to the Purchaser the purchase price or such portion thereof as the Government may have received, provided timely notice of the misdescription has been furnished to the Contracting Officer in accordance with the requirements of such paragraph b(2) above."

Generally, when Government surplus property is sold with an express disclaimer of warranty as provided above, the successful bidder is not entitled to a refund of money paid for property because of any erroneous description. 51 Comp. Gen. 185 (1961). Furthermore, Subparagraph b(2) of Article 55 requires that the purchaser furnish written notice to the contracting officer that the property is misdescribed within 30 calendar days from the date of removal of the property. Ansam's remedy under this provision is foreclosed because it failed to provide the contracting officer with timely notice of its complaint and would not be practicable in any event since rescission is the only remedy provided under the clause and Ansam, some time after sending its July 6 letter and with the knowledge of the contracting officer, disposed of the propeller.

Relief is available, however, under General Condition 2 of the General Sale Terms and Conditions (Standard Form 114C, January 1970 Edition), which was incorporated by reference. General Condition 2 requires the sales office to use the "best information available" in describing property. We have held that General Condition 2 will insulate the Government from liability arising out of an inadvertent misdescription by holding activity employees where the sales office is unaware that the property was misdescribed and used the best information available in describing the property in the sales document. 52 Comp. Gen. 698 (1973). In the present case, it is clear

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that while the contracting officer was not informed of the error, the sales office did possess knowledge of the misdescription and, therefore, the best information available to describe the property was not used.

Under these circumstances, and since it appears that the other bidders also bid for the propeller on a per pound basis and therefore would not be prejudiced, we concur with DIA's recommendation that the contract be reformed to reflect a bid price based on \$.3923 per pound.


Deputy Comptroller General
of the United States