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Marc Ewan
Proc. II

DECISION



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

FILE: B-188105

DATE: March 10, 1977

MATTER OF: George Condodemetraky

DIGEST:

Bidder who mistakenly wrote down wrong item number in surplus property sale may have bid deposit refunded. Although ordinarily a wide range of bid prices in surplus property sales is not deemed sufficient to put contracting officer on constructive notice of error, when high bid was 6½ times second high bid, which was closely aligned with third and fourth high bids, and where high bid was over two times current market appraisal, contracting officer was on constructive notice of possible mistake and should have sought verification.

Mr. George Condodemetraky has requested rescission of the contract he was awarded by the Defense Property Disposal Regional Office, Columbus, Ohio in connection with sale No. 27-7011 involving Department of Defense surplus personal property. Mr. Condodemetraky submitted a bid of \$820 for item 18, a metal Convair trailer, in fair condition. Upon receipt of notice of award, Mr. Condodemetraky telephoned the contracting officer and advised him that the wrong item number had been inserted on his bid, and that the bid was intended to refer to item 19, an industrial tractor. Mr. Condodemetraky's formal request for rescission, was denied by the Defense Logistics Agency, which did not find evidence of error sufficient to establish a duty to verify. By letter of December 27, 1976, Mr. Condodemetraky requested our review of this matter.

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The general principle applicable to this case is that a purchaser's unilateral mistake in bid will not excuse him from a contract subsequently awarded unless the contracting officer knew or should have known of the mistake. Corbin on Contracts § 610; Wender Presses, Inc. v. United States, 343 F.2d 961 (Ct. Cl. 1965); Saligman v. United States, 56 F. Supp. 505 (E.D. Penn., 1944); Kemp v. United States, 38 F. Supp. 568 (D. Md., 1941). There is no evidence in the present record to indicate that the contracting officer had actual knowledge of error. As to when the contracting officer should be charged with constructive notice of error, the test is one of reasonableness; whether under the facts of the case there were any factors which should have raised the possibility of error in the mind of the contracting officer. See Acme Refining-Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113. The possibility of error must be sufficient to reasonably require the contracting official to make inquiry, which inquiry would lead to the requisite knowledge. See Wender Presses, Inc. v. United States, supra.

A close scrutiny of the highest bid received prior to the making of an award is a required procedure to insure that the high bid is "not so far in excess of" the next highest bid or of the current appraisal as to indicate a mistake. Part 3, chapter VIII, paragraph F 3.e of the Defense Disposal Manual (Defense Supply Agency Manual 4160.21-m, March 21, 1967). The above-cited paragraph does not define the term "not so far in excess of" nor does it describe any ratio at which the high bid should be regarded as so far in excess of the second highest bid or of the current market appraisal as to require verification.

In the instant case, Mr. Condodemetraky's bid of \$820.00 was 6½ times the second high bid of \$126.50, which was closely aligned with the third and fourth high bids of \$121.18 and \$105.00. While, ordinarily, a wide range of bids in surplus property sales is not deemed to be sufficient to put the contracting officer on constructive notice of error because of the many possible uses to which the property may be put, Wender


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Presses, Inc., supra, a grouping of bids below a disproportionately high bid may suggest that a mistake has been made. This consideration was discussed in Wendur Presses, Inc., supra at 964 where the court stated:

"As compared with the differences between the second, third, fourth and fifth bids, none of which are also claimed to have been the result of mistakes, plaintiff's high bid did not tower over the second."

In the instant case, the close alignment of the second, third and fourth high bids exaggerated the disparity between the two highest bids. When added to the fact that Mr. Condodemetraky's \$820 bid was over twice the \$400 current market appraisal of the property, we believe that the contracting officer was on notice of a possible mistake and should have requested verification. See Memphis Equipment Company, B-181884, August 15, 1974, 74-2 CPD 102.

Accordingly, we have instructed the Defense Logistics Agency to refund Mr. Condodemetraky's bid deposit.


Acting Comptroller General
of the United States