

DOCUMENT ISSUE

02071 - [A1172157]

[Adjustment in Contract Price]. B-168524. April 21, 1977. 2 pp.

Decision re: Pipe Engineering and Services, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Defense Logistics Agency.

The purchaser of Government surplus property which was misdescribed in the invitation for bids may recover, by the terms of the invitation for bids, only the purchase price paid for the property less the market value of the property actually received by the purchaser. (Author)

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DECISION



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

FILE: B-188524

DATE: April 21, 1977

**MATTER OF: Pipe Engineering and Services, Inc. --
Adjustment in Contract Price**

DIGEST:

Purchaser of Government surplus property which was misdescribed in the IFB may recover, by the terms of the IFB, only the purchase price paid for the property less the market value of the property actually received by the purchaser.

Pipe Engineering and Services, Inc. (Pipe Engineering) has requested reconsideration of the settlement by the Claims Division of this Office of the claim by Pipe Engineering for the market value of merchandise described by an Invitation for Bids (IFB) issued by the Defense Logistics Agency (DLA).

IFB 27-6013 was issued by the DLA for the sale of surplus property. The IFB included Item 282 which included 48 feet of 4-1/4 inch aluminum tubing.

Pipe Engineering submitted the high bid for Item 282 in the amount of \$31.75 and award was made to Pipe Engineering on July 31, 1975. Pipe Engineering removed the property by carrier sometime after September 30, 1975. By letter dated October 8, 1975, Pipe Engineering notified DLA that although the first sub-item of Item 282 was described in the IFB as 48 feet of 4-1/4 inch aluminum tubing, the delivered item was 48 feet of 1/4 inch aluminum tubing. Due to this misdescription, Pipe Engineering claimed \$297.11, consisting of the difference in the fair market price of 4-1/4 inch tubing and 1/4 inch tubing.

On February 4, 1976, Pipe Engineering submitted its claim to this Office. The Claims Division of this Office issued a certificate of settlement in the amount of \$26.73, consisting of the difference between the amount paid by Pipe Engineering, \$31.75, and the approximate market value of the property actually received, \$5.02. Pipe Engineering appealed this settlement to DLA, who has referred the case to our Office for reconsideration.

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Article BB of the IFB for the present sale provided that:

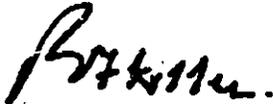
"Notwithstanding any other provisions of this Invitation for Bids to the contrary, and subject to the limitations and conditions set out in subparagraphs a and b below, all of which are of the essence, the Government guarantees to the original Purchaser of the property that the property delivered or offered for delivery under any contract resulting from this Invitation for Bids will be as described in the Invitation for Bids.

"a. That if a misdescription is determined to exist prior to removal of the property from Government control, that the sole and exclusive remedy available to the Purchaser will be refund of the purchase price of the property as to which such misdescription exists, or such portion thereof as the Government may have received.

"b. That if a misdescription is determined to exist after removal of the property from Government control, then the Government will make an adjustment in the purchase price paid for the property commensurate with the market value of the property actually received * * *."

Pipe Engineering claims \$297.11 as the market value of the property described in the IFB plus incidental transportation expenses. Article BB, however, makes it clear that in no event will a purchaser be entitled to a refund in excess of the purchase price paid for the items, which in this case was \$31.75. Moreover, where the property received has a market value, the contract terms require that the market value be considered in making a price adjustment for the misdescribed property. Inasmuch as the claimant does not question the market value attached by our Claims Division to the property received, we see no basis for questioning the settlement by that Division.

Accordingly, the claim is denied.


Deputy Comptroller General
of the United States