

DECISION



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

FILE: B-190425

DATE: December 23, 1977

MATTER OF: Business Machine Traders

DIGEST:

1. Purchaser of surplus property whose bid price on two items was 7.3 times the current market appraisal and four times the next high bid for one item and eight times the current market appraisal and 1.9 times the next highest bid for the other item may be afforded relief since contracting officer was on constructive notice of possibility of mistake in bid because of substantial disparity between erroneous bid and next high bid and because successful high bids on similar items were likewise inconsistent with erroneous bid.
2. Where bidder shows mistake in bid and intended bid would displace other bidder, relief may be given to amount of second high bid since contract has been fully performed and rescission is not feasible.

Invitation for Bids (IFB) 27-7086 was issued by the Defense Property Disposal Region, Columbus, Ohio, for the sale of various articles of surplus Government property including items of office equipment.

Business Machine Traders (Traders) was the high bidder on Items 61 and 62, in unit price amounts of \$402.79 for each respective item. Item 61 consisted of 6 typewriters, while Item 62 consisted of 5. Typewriters contained in each item were in used, poor condition and were offered on a "price per lot" basis. Traders was awarded these items under contract No. 27-7086-287.

By letter of January 28, 1977, Traders notified the contracting officer that an error had been made in preparing the bid for Items 61 and 62 in that when the bidder inspected the machines the manner in which they were displayed led him to assume that the 11 typewriters comprised a single lot. Accordingly, he intended to bid \$402.79 for 11 typewriters instead of \$402.79 for Item 61 and \$402.79 for Item 62. No evidence establishing the intended bid has been submitted.

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However, Traders has requested the Government to "renegotiate" the sales price of the two items whereby Traders would pay 20 percent above the next high bid.

The contracting officer states that since each pallet on which the typewriters were displayed was clearly marked with the Item No. and Sale No., he should not be charged with constructive notice of the mistake. The agency, however, determined that the evidence is sufficient to impute constructive notice of a possible mistake with regard to Items 61 and 62 to the contracting officer and recommends that relief be given.

The agency bases its recommendation upon the fact that Traders' bid was four times that of the second high bid and 7.3 times the current market appraisal for Item 61, and 1.9 times the next highest bid and eight times the current market appraisal for Item 62. Further, Traders' bid of \$402.79 for Item 61 computes to \$67.13 per typewriter and to \$80.56 each for Item 62, compared to calculated prices ranging from \$12.46 to \$34.19 per typewriter in its other successful high bids on substantially similar machines.

We have consistently held that while the existence of a substantial disparity between the erroneous bid and the next high bid and the current market appraisal is by itself insufficient to charge a contracting officer with constructive notice of error, bids inconsistent with other bids submitted by the same bidder on similar items, when coupled with disparity, may constructively place a sales contracting officer on notice of error. New Westminster Marine Sales and Service, Ltd., B-183913, June 9, 1975, 75-1 CPD 351. Therefore, we concur with the agency that the disparity between Traders' bid on Items 61 and 62 and that of the second high bid, combined with the inconsistency between Traders' bid on Items 61 and 62 and the other successful high bids for similar equipment, was of a magnitude to charge the contracting officer with constructive notice of error and cause him to request verification of the bid.

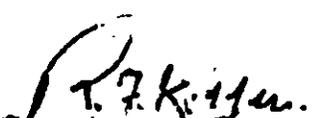
Traders requests that it be given relief by adjusting the item prices for Items 61 and 62 to an amount equal the second high bid for each item plus 20 percent. The agency, on the other hand, recommends that the price to be paid for Item 61 be changed to \$219.70 and that \$207.79 be paid for Item 62. The basis for the agency recommendation is what it finds to be Traders' "intended" bid for Items 61 and 62. Traders has stated it intended to bid \$402.79 for the 11 typewriters covered by both items. By computing a unit price of \$35.61 per typewriter, the agency found

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the bidder's intended price to be \$219.70 for Item 61 and \$183.09 for Item 62.

If a bidder can show not only that he made a mistake, but also the amount he intended to bid, relief may be given in the event no other bidder is displaced. A. Spierings Bid - Error In Bid, B-181121, May 28, 1974, 74-I CPD 287; B-177176, November 7, 1972. In the instant case, however, the next high bidder would be displaced with respect to Item 62 in the event that Traders' intended bid price of \$183.09 was accepted. Although the only relief available to the contractor in this situation normally would be rescission of the contract, here Traders has paid for and received Item 62 and the contract has been fully performed. Where all obligations arising under a contract have been discharged, it is not feasible to grant rescission. United Mineral & Chemical Corporation, B-183756, July 8, 1975, 75-2 CPD 20. Therefore, in similar cases, our Office has provided the relief to which the contractor is entitled by permitting him to pay an amount equal to the second high bid. See, e.g., Luria Brothers Company, Inc., B-187992, January 4, 1977, 77-I CPD 6. Accordingly, we agree with the agency's recommendation that Traders pay \$207.79 for Item 62.

The second high bid for Item 61 was \$100.00. Since no other bidder will be displaced by acceptance of Traders' intended bid for that item, we also concur in the agency's recommendations that the contract price for Item 61 be changed to \$219.70.


Deputy Comptroller General
of the United States