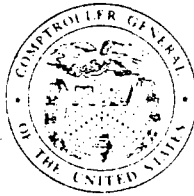


DECISION



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

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97758

FILE: B-184738

DATE: November 11, 1975

MATTER OF: Myers New Steel & Metals, Inc.

DIGEST:

Where bid price on contract item was approximately 100 percent higher than current market price and contracting officer was aware that item purchased was totally unrelated to bidder's business, contracting officer should have been on notice of possibility of mistake prior to award and should not have accepted bid without verification.

Recission of contract as recommended by agency may be allowed.

The Office of the Federal Supply Service, General Services Administration (GSA), requests our decision as to the propriety of the proposed recission of GSA sales contract No. GS-04-FW(S)K5-0002 with Myers New Steel & Metals, Inc. (Myers), of Tallahassee, Florida. The sale was awarded on April 24, 1975, for Item 3, one lot of used IBM cards, estimated weight 10 tons, for a price of \$2,505.00.


By letter dated May 5, 1975, Myers notified GSA that due to a typographical error it had mistakenly bid on Item 3 instead of Item 4, scrap aluminum. As evidence of the error, Myers submitted its bid preparation papers which show the figure \$2,505.00 (the figure bid on Item 3) beside the encircled Item 4. Myers further alleges that since it engages in the scrap metal business and not scrap paper business, it is apparent that it intended to bid on Item 4 (scrap metal) and not Item 3 (IBM cards).

The abstract of bids shows that there were 11 bids on Item 3, ranging from the high bid of \$2,505.00 submitted by Myers to a low bid of \$50.00. Although the second high bid was \$2,000.00, the average bid of the other 10 bidders was \$519.52. In addition, it is reported that Myers' bid price was about 100 percent higher than the current market price of used IBM cards (approximately \$1,200 for 10 tons).

It is a general principle, frequently stated by this Office, that if a bidder makes a unilateral error in bid, the bidder is bound by the award and must bear the consequences of its unilateral mistake. Saligman v. United States, 56 F. Supp. 505 (D.C.E.D. PA. 1944); B-180610, August 12, 1974, 74-2 CPD 90. However, if the contracting officer was actually or constructively on notice of the possibility of a mistake, but failed to take proper steps to verify the bid, the contract may be rescinded in the event of a mistake. 49 Comp. Gen. 199 (1969); B-181512, July 5, 1974, 74-2 CPD 12.

GSA reports that the contracting officer was aware that Myers was purchasing an item unrelated to its business. In this connection, the contracting officer indicates that, to his knowledge, Myers, who has made purchases from GSA for at least 5 years, has bid on only one item other than scrap metal, namely, an electronic lot, about 2 years ago. Under these circumstances, we agree with GSA that the disparity between the bid price and current market price, and the limited use of the item for Myers' business, should have put the contracting officer on notice of the error prior to award, and the bid should not have been accepted without verification. Chernick v. United States, 372 F. 2d 492 (1967); B-180824, April 12, 1974, 74-1 CPD 194.

Accordingly, we conclude that Item 3 of the contract may be rescinded without liability to Myers.


Deputy Comptroller General
of the United States