



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

B-179305

40102

October 23, 1973

The Honorable Arthur F. Sampson
Administrator, General Services
Administration

Dear Mr. Sampson:

In a letter dated July 25, 1973, your General Counsel requested a decision as to the action to be taken concerning an error alleged by Mr. Joe Myers of Myers New Steel & Metals to have been made in the bid upon which sales contract No. GS-04-DP(S)-3-2616 was based.

Invitation for bids (IFB) No. 4DPS 73-128 was issued on January 24, 1973, offering for sale 41 lots of electrical copper wire and cable. Bids were opened on February 22, 1973, and the record indicates that Myers submitted high bids on items 23, 24, 25, 27, 32 and 33. The bids were accepted and Notice of Award mailed on February 23, 1973. Payment was made to the custodian and the property was removed by Myers on February 27, 1973.

The items were offered for sale by the lot. Reels and spools of wire and cable were described by single, 2, 3, 4, or more, stranded copper conductors, size, type insulation, and approximate total length in feet. Myers' claim of mistake alleged after award of the contract concerns all six awarded items. We have been advised informally that the items are currently in storage at Myers' place of business.

By letter dated March 5, 1973, to the General Services Administration sales office, Mr. Myers alleged a mistake in bid due to miscalculations in preparing his estimates. Mr. Myers states that after inspecting the sale lots in the disposal area, he phoned his Tallahassee, Florida, office and issued instructions to an employee to weigh a 1-foot length sample taken earlier from like material offered for sale at the Cape Kennedy disposal activity. Mr. Myers states the employee mistakenly selected a 2-foot length and erred by furnishing him with the estimated weight on this sample. Calculating the percentage of recoverable copper, Mr. Myers' estimate was prepared by converting feet to pounds but the bid was made and computed on the approximate number of feet offered in each lot as requested in the invitation. Mr. Myers states that this mistake resulted in his overestimating the weight

[Action To Be Taken Concerning Alleged Error]

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of the lots by approximately 15,000 pounds which caused his bid to be \$7,220 higher for the six items than it would otherwise have been.

The Myers' high bids, the second high bids and the original acquisition costs on items 23, 24, 25, 27, 32, and 33 were as follows:

<u>Item No.</u>	<u>Myers' high bid</u>	<u>Next high bid</u>	<u>Bidder</u>	<u>Original acquisition cost</u>
23	\$2,425	\$1,289	G. H. Simmons	\$5,230
24	858	375	Sierra-Western Electric Cable Co.	2,284
25	2,810	2,046	" "	4,651
27	3,225	2,654	" "	6,033
32	1,703	389	G. H. Simmons	2,014
33	525	458.40	Young Refining	2,985

Ordinarily, a wide range of bid prices in surplus property sales is not deemed to be constructive notice of error because of the many possible uses to which the property may be put. However, our Office has stated that constructive notice exists when the contracting officer, considering all the facts and circumstances of a case, should have known of the possibility of an error in the bid. 53 Comp. Gen. ___ (B-178059, July 17, 1973). For the reasons stated below, we believe the contracting officer was on constructive notice of error with regard to items 23, 24, 25, 27 and 32 and should have requested verification of Myers' bids on those items prior to award.

The items in the IFB are not described as scrap and the contracting officer has indicated that the wire and cable could be reused. However, we have been advised informally that Myers was known to the contracting officer as a scrap dealer. We do not know whether Simmons or Sierra-Western was bidding to purchase items 23, 24, 25, 27 and 32 for reuse or for scrap. If we assume they were purchasing for reuse, then the higher bids of Myers, a known purchaser of scrap, should have placed the contracting officer on notice of the possibility of an error in the Myers'

bids. On the other hand, even if it were assumed that Simmons and Sierra-Western were purchasing for scrap, the difference in bids is such to have placed the contracting officer on notice of the possibility of error. In that connection, our Office has recognized that wide price variations normally are not encountered in the sale of scrap metals because of the established market for this material and the limited uses to which it may be put. 49 Comp. Gen. 185, 202 (1969).

Myers' bid of \$525 for item 33 was only \$66.60 more than the next high bid submitted by Young Refining Co. From the word "refining" in the name of the latter company, we would assume that it was likewise purchasing the metal for scrap. Therefore, we do not believe that the difference in bids for this item was so great as to have placed the contracting officer on notice of the probability of error. Accordingly, we find no legal basis for granting Myers relief from its accepted bid for item 33.

In the July 25 letter it was suggested that if there was one item that the contracting officer should have verified there may be a "ripple effect" extending to the other items bid upon. The theory is that if the bidder had been asked to verify one item, then it may have verified all the similar items with the result that all the errors alleged might have been detected by the bidder before award. However, the "ripple effect" is not for application. Whether the bidder is entitled to relief from an award on any item depends strictly on whether the contracting officer knew or should have known from the circumstances at the time of award of the possibility of an error. From the information that the contracting officer had before him at the time of award, relief would only be appropriate for the items indicated above.

It is our understanding that items 25, 27 and 32 are intact in Myers' possession. Therefore, Myers should be allowed to return these items. After the items are returned, Myers should be refunded the purchase price. With regard to items 23 and 24, we understand that Myers has removed the insulation from the wire. Since Myers has changed the condition of the latter items, it should not be allowed to return them. However, Myers should be refunded an amount not to exceed the difference in price between its bid and the next high bid on each of those items.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

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