

1/207 T. M. Hoff.

DECISION



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

FILE: B-195358

DATE: August 23, 1979

MATTER OF: Levin Metals, Inc.

DIG 2621

[Request for Contract Rescission]

DIGEST:

1. Where contracting officer is on constructive notice of possibility of error in bid and neglects to seek bid verification, contract awarded is subject to reformation or rescission since no valid and binding contract was consummated by acceptance of bid.
2. Clear and convincing evidence of bid actually intended must be submitted to permit reformation, and absent such evidence, rescission is appropriate.

The Defense Logistics Agency recommends rescission of Item 2 of Sales Contract No. 41-9103-004 awarded to Levin Metals, Inc. (Levin), for 129,000 pounds of copper base alloy scrap under invitation for bids 41-9103.

Levin submitted the high unit bid of \$0.4917 for Item 2. After award to Levin, the company alleged that its bid on Item 2 had been in error and requested that its unit bid be reduced to \$0.2917 per pound or, in the alternative, that the contract be rescinded as to Item 2. The next high bid for Item 2 was \$0.28599 per pound; the only other bid was \$0.2799 per pound and the current market appraisal was \$0.36 per pound.)

Generally, when a bid has been accepted, the bidder is bound to perform the resultant contract and must bear the consequences of its unilateral mistake. Saligman v. United States, 56 F. Supp. 505 (E.D. Pa. 1944). However, our Office has allowed the rescission or reformation of such a contract where a contracting officer having actual or constructive notice of the possibility of an error neglects to seek verification of the bid, since no valid and binding contract is consummated by acceptance of the bid. 37 Comp. Gen. 685 (1958); Ubique Ltd., B-180610, August 12, 1974, 74-2 CPD 90.

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This 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. See 49 Comp. Gen. 199, 202 (1969). In sales of scrap metal our Office has found that where disparities such as evidenced in this case exist between the erroneous bid and the second high bid and between the erroneous bid and the current market appraisal, and especially where there is also a comparatively narrow range among the low bids, the contracting officer is on constructive notice of the possibility of error. H & L Auto Service, Inc., B-191069, February 9, 1978, 78-1 CPD 114; Commercial Metals Co., B-185255, November 28, 1975, 75-2 CPD 365; M & M Metals, Inc., B-180128, January 29, 1974, 74-1 CPD 40; 49 Comp. Gen., supra.

Therefore, we conclude that the contracting officer was on constructive notice of the possibility of a mistake by Levin and should have requested Levin to verify its bid.)

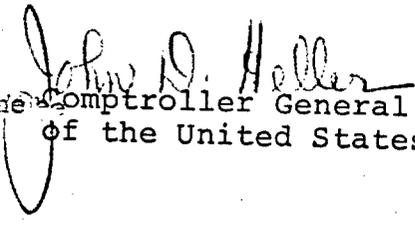
(However, to permit reformation, clear and convincing evidence of the bid actually intended must be submitted. Graybar Electric Company, Inc., B-186004, April 6, 1976, 76-1 CPD 228. In this instance, the agency asserts that the evidence submitted in support of the mistake is not clear and convincing as to the bid intended, although it is sufficient to establish the existence of a mistake. Thus rescission, not reformation would be appropriate.) We agree.

For example, Levin asserts the mistake occurred because the party preparing the bid misunderstood the estimator during a telephone conversation and inserted .4917 instead of the .2917 intended. The work papers to support the estimate, however, do not clearly indicate how the price was derived, since there is a discrepancy between the weight of the material offered for sale and the weight used to calculate the bid.

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Accordingly, the award for Item 2 in Sales Contract No. 41-9103-004 may be rescinded as administratively recommended.


For the Comptroller General
of the United States