



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

B-177445

April 13, 1973

30407

Mr. Frederick J. Hass
750 Las Gallinas Road
San Rafael, California 94903

Dear Mr. Hass:

We refer to your letter of November 10, 1972, [requesting for rescission of General Services Administration (GSA) contract No. GS-09-DP-(S)-0606, because of a misdescription of property in Sales Letter No. 9DPS(SF)-73-30 under which the contract was awarded.

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The Sales Letter was issued by GSA on August 28, 1972, and contained the following description of property under Item 17:

- WRENCHES, open end, consisting of approx. the following
 - 3/8 x 9/16, 2196 ea.,
 - 7/16 x 1/4, 2139 ea.,
 - Adjustable 2873 ea.
 - 14/16 x 1", 20 ea.
 - 1-1/16 x 1-1/8, 35 ea.
 - 13/16 x 7/8, 275 ea.
 - 11/16 x 3/4, 150 ea.
 - 7/8 x 3/4, 100 ea. UNUSED

When GSA opened bids for the sale on September 20, 1972, it noted that you were the highest bidder for this item at \$911, and the contracting officer therefore awarded you the contract for the item on September 27, 1972. After the property had been paid for, and delivery had been made, you requested a refund because there were no adjustable wrenches in the lot, as represented. Thereafter, GSA denied your request and advised you of your right to submit the matter to this Office.

The record shows that the California State Agency for Surplus Property reported the property in question to GSA for sales action, and the Agency's description of the item was carried forward by GSA into the Sales Letter. There is no indication that the GSA sales office had any knowledge of the misdescription. The Deputy Chief Surplus Property Officer, Department of Education, State of California, by letter of December 18, 1972, to GSA, confirmed the misdescription shown on its reporting document for the item, in pertinent part as follows:

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Upon investigation of facts leading to the preparation of this lot I find that the "adjustable" wrenches were actually "combination" or "alligator" type wrenches and the term "adjustable" was used because the wrench is applicable to a range of nut sizes.

The Sales Letter issued by GSA carried the following pertinent provision preceding the description of the property:

This Office is offering for sale the following property, "as-is, where-is" on a competitive bid basis. This Offering is subject to the General Sale Terms and Conditions (Standard Form 114C, January 1970 Edition), and Special Sealed Bid Conditions (Standard Form 114C-1, January 1970 Edition), which are incorporated herein by reference, and such other special terms and conditions as may be contained herein. A copy of Standard Form 114C and Standard Form 114C-1 are on file and will be made available upon request.

On page 6 of the Sales Letter bidders were warned: "BIDDER IS CAUTIONED TO INSPECT THE PROPERTY."

Condition No. 1 of the General Sale Terms and Conditions (Standard Form (SF) 114-C, January 1970 Edition) also invites, urges and cautions the bidder to inspect the property to be sold prior to submitting a bid. Condition No. 2 further advises bidders that the property is offered for sale "as is" and "where is" and states that the description of the property is "based on the best information available to the sales office," without warranty as to quantity, kind, character, quality, weight, size or description.

In this regard, we have been advised by representatives of GSA and the Defense Supply Agency that the phrase "best information available to the sales office" was placed in the January 1970 revision of SF 114C to implement our holding in B-160014, October 27, 1966. In that case, we made the following statements in denying a request for an adjustment in the price of a sales contract which arose out of a misdescription of surplus sales items by employees of a holding activity:

Surplus sales offices receive property for disposition from many holding activities which, in turn, have acquired the items from a still greater number of using activities which are the installations declaring the goods surplus. Sales personnel generally rely upon the records

certified to them by the holding activities in preparing the property descriptions which are inserted in disposal invitations and are under no duty to make any inspection of the items themselves in preparing for the sale. Relief can only be granted where the misdescription is the result of some act on the part of sales personnel themselves. The rule of "let the buyer beware" prevails with respect to misdescriptions resulting from the fault of employees of the holding activities.

* * * * *

Since the erroneous description involved in this case originated at the holding activity level and was in no way compounded by the Government sales personnel, we must deny your request for an adjustment in the contract price.

Since the phrase in question was inserted in SF 114C to assure that the Government would be insulated from liability arising out of a misdescription of property by holding activity employees, we must conclude that, in the absence of bad faith (or such gross negligence as to necessarily imply bad faith) on the part of holding activity employees in describing sales items, rescission of a surplus sales contract containing the above phrase cannot be granted where the sales office had no knowledge of such misdescription and used the best information available in describing the property in the sales document. See Lipshitz & Cohen v. United States, 269 U. S. 90 (1925); Alloys and Chemicals Corporation v. United States, 163 Ct. Cl. 229 (1963). In this regard, we are advising GSA that, to the extent prior decisions of this Office may be inconsistent with the foregoing, they should no longer be followed. Cf. B-176387, January 3, 1973; B-173680, December 10, 1971; 50 Comp. Gen. 28 (1970); B-167926, January 15, 1970.

Based on our review of the record in the instant case, we must conclude that the description of the property by the GSA sales office was made on the basis of the best information available to that Office, as set out in the turn-in document from the California State Agency for Surplus Property. Further, there is no indication that GSA had any knowledge of the misdescription, or that the State Agency acted in bad faith in describing the wrenches.

In the circumstances, and since the error would have been readily apparent to you if you had inspected the wrenches prior to

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bidding as you were cautioned to do by the sales letter, we
must deny your request for rescission of the sales contract.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

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