

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

DENIED: October 2, 2002

GSBCA 15885

TIM ANTRIM,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Tim Antrim, pro se, Miami, FL.

Adele Ross Vine, Office of Regional Counsel, General Services Administration,
Kansas City, MO, counsel for Respondent.

Before Board Judges **BORWICK**, **DeGRAFF**, and **GOODMAN**.

GOODMAN, Board Judge.

Appellant, Tim Antrim, appeals from a General Services Administration (GSA) contracting officer's final decision assessing liquidated damages arising from appellant's failure to make payment for Government property which he purchased in an internet auction. As set forth below, we deny the appeal.

Findings of Fact

1. GSA maintains an internet site at www.GSAAuctions.gov, on which it sells through auction various surplus, seized, and forfeited Government property (GSA's website). The site allows individuals and companies to register as bidders and thereafter submit bids for the property offered at auction. The website reads in relevant part:

The site offers the general public the opportunity to bid electronically on a wide array of Federal assets. The auctions are completely web-enabled, allowing all registered participants to bid on a single item or multiple lots within specified time frames.

Appeal File, Exhibit 5 at 1.

2. Appellant properly registered to participate on the GSA auction site. He registered as an individual, not a company, and registered the following contact information: his personal e-mail address, his home mailing address, and his office phone number. He did not register his office mailing address, office e-mail address, home phone number, or a fax number. Conference Memorandum (Sept. 12, 2002). Appellant marked the box at the bottom of the registration form next to the Terms and Conditions, acknowledging the terms and conditions of the sale. Appeal File, Exhibit 17.

3. At some time before February 26, 2002¹, appellant submitted a bid over the internet on the GSA auction site for used telephone equipment. The amount of the bid was \$200. Complaint.

4. When appellant submitted his bid, the GSA website contained various web pages available to anyone accessing the site as to the terms and conditions under which the auctions were held. The following excerpts are relevant to this appeal:

Sale of Government Property Online Sales Terms and Conditions

Acceptance Period. By marking the required box next to the Terms and Conditions located at the bottom of the registration form and submitting a bid, the bidder agrees to the Terms and Conditions of sale and to pay for and remove the property, if the bid is accepted, by the dates and times specified in each lot. . . .

Notification of Sale Results. Successful bidders will be notified by e[-]mail and must contact the regional sales office within 48 hours from the date the e[-]mail notifications was sent. Bid results will not be furnished via telephone or fax.

¹ Neither appellant nor respondent was able to supply to the Board the date when appellant submitted his bid.

Payment and Removal. Property must be paid for within 48 hours and property removed within 10 days from the time & date of the e[-]mail notification of sale results, unless otherwise specified in the contract. . . .

Default. Bidders are cautioned to bid only on items they are prepared to pay for and remove all items in accordance with the Terms and Conditions of this sale. Failure to pay for and remove all items awarded within the specified time could result in termination of the contract. The bidder also may be subject to paying liquidated damages. . . .

If after the award, the Purchaser breaches the contract by failure to make payment within the time allowed by the contract . . . the Purchaser shall lose all right, title, and interest which he/she might otherwise have acquired in and to such property as to which a default has occurred. The Purchaser agrees that in the event he/she fails to pay for the property in the prescribed period(s) of time, the Government shall be entitled to retain (or collect as liquidated damages) a sum equal to the greater of (a) 20 percent of the purchase price of the items(s) as to which the default has occurred, or (b) \$200 whichever is greater

Appeal File, Exhibit 5.

5. Appellant stated that he probably knew when he submitted his bid that he would thereafter be traveling to Venezuela, as he often travels to South America on business. Conference Memorandum (Sept. 12, 2002).

6. Appellant made a business trip to Venezuela and was out of the country from February 25 until March 11, 2002. Complaint. Usually he has the ability to retrieve e-mail and voice mail messages, but he was in a remote area and unable to do so during the time he was in Venezuela. Conference Memorandum (Sept. 12, 2002).

7. On February 26, 2002, bidding closed for the item for which appellant had submitted a bid.

8. On February 26, 2002, an e-mail message was sent from GSA to the appellant's personal e-mail address advising him that he was the high bidder. The message read in relevant part:

Congratulations! You are the high bidder for the "MISC COMMUNICATIONS EQUIP"

Here are the details of your bid:

Item name: MISC COMMUNICATION EQUIP
Item Description: MISC COMMUNICATION EQUIP
Your Bid Amount: 200 USD per lot

Please remit your payment to the Regional Sales Office within 48 hours from the time and date this e[-]mail notice was sent to you. Additionally, the property must be removed within 10 days from the time and date this e[-]mail notification was sent to you. If you fail to make payment or remove the property within the time specified in Accordance with the Terms and Conditions, your contract will automatically terminate and you will lose all rights, title, and interest to your property, and may be liable for liquidated damages.

Appeal File, Exhibit 11.

9. Appellant did not forward payment or remove the property within the time frame specified in the e-mail message. On March 4, 2002, the contracting officer left a voice mail message on appellant's office telephone giving him a two-day extension to respond.

10. On March 7, 2002, a letter was sent to appellant's home address which informed him that he was in default of the contract of sale and was being assessed \$200 in liquidated damages. Appeal File, Exhibit 14.

11. Appellant returned from his business trip on March 11, 2002, and found the March 7, 2002, letter in his mail at home. On March 12, 2002, he went to his office and reviewed his e-mail, including the e-mail notice dated February 26, 2002, notifying him of the award. He also retrieved the voice mail message from the contracting officer of March 4, 2002, giving him a two day extension to make payment. Complaint.

12. By letter dated April 8, 2002, addressed to appellant's home address, GSA sent appellant a second notice requesting payment of liquidated damages in the amount \$200 plus eighty-five cents interest to date. Appeal File, Exhibit 16.

13. Responding to the second notice by e-mail, appellant stated to GSA that he did not believe the assessment of liquidated damages was "fair" under the circumstances. Appeal File, Exhibit 18.

14. The GSA contracting officer issued a letter dated April 29, 2002, acknowledging appellant's dispute of the liquidated damages assessment and stating that appellant was in breach of the contract of sale and in default, and that liquidated damages were due and interest would continue to accrue until paid. Appeal File, Exhibit 17.

15. By letter dated May 8, 2002, addressed to appellant's home address, GSA sent appellant a final notice of liquidated damages, demanding payment of \$200 and \$11.69 interest. Appeal File, Exhibit 19.

16. Appellant filed a Notice of Appeal which was received by this Board on May 28, 2002, and docketed as GSBCA 15885. Referring to the e-mail message of February 26, 2002, the voice mail message of March 4, 2002, and the letter of March 7, 2002, appellant states in his notice of appeal:

I do not believe I am liable for bid or liquidated damages since I was not properly notified of award.

This communication from GSA took place while I was out of the country and I did not have adequate voice or internet communications to retrieve this information.

In my opinion, . . . the government sending notification to a free internet e-mail box is not "official notification." Working for a government contractor, I am accustomed to receiving a certified letter or something of that nature. I have stated to the GSA on numerous occasions that I was out of the country and did not know I was awarded the contract. Their response is always "you are responsible for checking your e-mails".

Notice of Appeal, at 2.

17. Appellant also questioned the assessment of liquidated damages in his notice of appeal. He stated:

Another concern I have is the liquidated damages. The GSA claims that I was the high bidder at \$200.00. The amount of liquidated damages they are charging me is \$200.00. What if I would have bid \$500.00? Would the liquidated damages then be \$500.00? The government assesses the amount of liquidated damages by the amount you bid? Does the contracting officer understand the purpose of liquidated damages[?]

Notice of Appeal at 2.

18. By letter dated June 23, 2002, appellant designated the notice of appeal as his complaint.

19. The Government filed an answer dated July 12, 2002.

20. During a conference with the Board on August 20, 2002, both parties agreed to submit the appeal for decision on the written record pursuant to GSBCA Rule 111.

Discussion

GSA maintains a website through which it auctions surplus, seized, and forfeited property. Finding 1. At some time before February 26, 2002, appellant properly registered as a user of the GSA auction website and submitted a bid of \$200 for used telephone equipment. Appellant marked the box at the bottom of the registration form acknowledging the terms and conditions of sale. Findings 2, 3. He registered his personal e-mail address, home mailing address, and office phone number. He did not register his office e-mail address, office mailing address, home phone number, or a fax number. Finding 3. The Terms and Conditions of Sale posted on the GSA auction website informed bidders that they would be notified by e-mail if they were the high bidder and they would be required to

thereafter pay for the items within forty-eight hours and remove same within ten days after award. Finding 4.

Appellant states that at the time he submitted his bid, he probably was aware that he was going to Venezuela on a business trip, as he travels often to South America for business. Finding 5. He began his business travel on February 25, 2002, and while he was in Venezuela he was in a remote location and could not check his e-mail or retrieve voice mail. Finding 6.

On February 26, 2002, after the bidding had closed, the Government notified appellant via e-mail sent to his personal e-mail address that he was the high bidder for the used telephone equipment. The e-mail stated that appellant must pay for the item within forty-eight hours and remove the property within ten days. Findings 6-8. When appellant did not respond, the GSA contracting officer left a voice mail message at appellant's office phone on March 4, 2002, allowing appellant an additional two days to pay for and remove the property. Finding 9. When no response was forthcoming from appellant, GSA sent a letter to appellant's home address dated March 7, 2002, informing him he was in default of the contract and would be assessed \$200 in liquidated damages. Finding 10.

When appellant returned home on March 11, 2002, he found the March 7, 2002, letter. When he went to his office the next day, he retrieved the February 26, 2002, e-mail notification of award and the voice mail message of March 4, 2002, from the contracting officer. Finding 11. The Government thereafter sent several notices informing appellant that he was required to pay \$200 in liquidated damages, plus interest, as he had failed to pay for and remove the property within the time frame required by the terms and conditions for sale. Findings 12, 15.

Appellant contacted GSA and asserted that he was not liable for liquidated damages. The contracting officer issued a final decision dated April 29, 2002, which appellant appealed to this Board. Findings 13, 14.

Under the circumstances presented above, we find that the appellant was properly registered and submitted a valid bid. In the registration process, he checked the box on the registration form acknowledging the terms and conditions of sale, which included the method of notification of award via e-mail, the requirements for timely payment and removal of the property, and the assessment of liquidated damages for failure to comply with the time requirements for payment and removal of property. He submitted the high bid for an item and was notified by e-mail. Appellant was then obligated to make payment and remove the property in the time periods specified in the terms and conditions of sale.

In contesting the assessment of liquidated damages, appellant asserts several arguments. First, he states that he did not receive valid notification, as the notice of award was sent to a "free e-mail address," rather than by certified mail. He couples this argument with the fact that he was out of the country and was unable to retrieve e-mail or voice mail. Both of these arguments lack merit. The terms and conditions of sale to which appellant agreed specifically stated that notification of award would be sent via e-mail, the same method which he used to submit his bid. Appellant was notified by use of the e-mail address which he registered. Whether he paid for his own e-mail service or received it for free is not

relevant. The fact that appellant traveled outside the country and was not able to retrieve his e-mail or voice mail also does not relieve him of the obligation that was created by the acceptance of his bid.

The terms and conditions of sale also clearly and unambiguously stated the basis for the calculation of liquidated damages. Appellant was in breach of the contract of sale when he failed to pay for and remove the property in the time periods required. The liquidated damages were properly assessed.

Decision

The appeal is **DENIED**. Appellant is obligated to pay the liquidated damages of \$200 plus interest.

ALLAN H. GOODMAN
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

MARTHA H. DeGRAFF
Board Judge