



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: November 21, 2008

CBCA 1266

THOMAS P. WEBBER,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Thomas P. Webber, pro se, Petersham, MA.

Gabriel N. Steinberg, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

STEEL, Board Judge.

On January 30, 2008, appellant Thomas P. Webber purchased for \$46,000 a twenty-three foot SeaArk 150 boat with twin Mercury 200 HP EFI outboard motors and a trailer, offered by the General Services Administration (GSA) on its GSAAuctions website. He complains that he ultimately learned that the starboard motor did not work, despite pre-purchase inspection and alleged assurances that the boat ran. The contracting officer denied his claim for partial reimbursement of \$5000 from the Government for repair of the motor. Mr. Webber timely appealed to this Board. The case is decided upon appellant's election under the Board's Rule 52, small claims procedure, upon the record.

Prior to bidding on the items, on January 22, 2008, Mr. Webber inspected the boat, asking a Government representative if he could run the three-year-old outboard motors. He apparently was told that running the outboards was not possible because the boat was out of the water, but that the representative believed that the outboards were running when the boat

was last used. Mr. Webber thereafter bid \$46,000 and won the auction, entering into contract no. 41QSC108123005.

On February 7, 2008, Mr. Webber took delivery of the boat, motors, and trailer. On February 8, 2008, he towed the boat to the SeaArk factory in Arkansas for hull refurbishing. The factory removed the motors in order to paint the hull, testing them before and after removal. The production manager reported to Mr. Webber that the starboard engine would not start. On April 8, 2008, Mr. Webber towed the boat and motors to Atlantic Boats in Massachusetts, where he learned the powerhead on the starboard motor would have to be replaced at a cost of about \$6000. On May 19, 2008, 103 days after removal of the boat, he requested a partial refund of \$5000 from GSA.

The bidding documents offering the boat on the GSA website, GSAAuctions.gov, stated:

2001 23 FT SEAARK, #234174 W2117 . . .
REPAIRS MAY BE REQUIRED . . .
THE CONDITION OF THE PROPERTY IS NOT WARRANTED.

The general terms and conditions of sale agreed to by Mr. Webber included the following:

2. CONDITION AND LOCATION OF PROPERTY

Unless otherwise provided in the Invitation, all property listed herein is offered for sale “as is” and “where is.” Unless otherwise provided in the Invitation, the Government makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size or description of any of the property or its fitness for any use or purpose.

. . . .

16. ORAL STATEMENTS AND MODIFICATIONS.

Any oral statement or representation by any representative of the Government, changing or supplementing the Invitation or Contract or any Condition thereof, is unauthorized and shall confer no right upon the Bidder or purchaser

In addition, the Government warrants that the property listed in the GSAAuctions website will conform to its written description. Thus, if an item has been inadequately described, such as by a gross omission about the functionality of an item, the purchaser may file a claim, and the property may be considered as mis-described. However,

When items are awarded but removal may or may not have occurred, the successful bidder must (1) submit a written notice to the Sales Contracting Officer within 15 calendar days from the date of award

Appellant concedes that his written notice was not provided to the sales contracting officer for more than 103 days.

Mr. Webber was on notice that the boat, motors, and trailer were offered as is. Further, he was aware that he was not entitled to rely on any oral statement or representation by a representative of the Government about the condition of the items for sale. Finally, he failed to submit a written notice of mis-description within fifteen calendar days of the award. He cannot recover any portion of the expense of repair. *Patrick C. Sullivan v. General Services Administration*, CBCA 936, 08-1 BCA ¶ 33,820.

Decision

The appeal is **DENIED**.

CANDIDA S. STEEL
Board Judge