



18066 Boyle
COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

May 7, 1981

B-202801

~~not available to public reading~~

The Honorable Bill Goodling
Member, United States House
of Representatives
2145 Market Street
Camp Hill, Pennsylvania 17011

Dear Mr. Goodling:

We refer to your letter dated March 26, 1981, with enclosures, requesting our comments concerning, in effect, the ~~right of Miller and Norford, Inc.~~ (MNI), to recover anticipated profits in the amount of \$26,000 from the Federal Government by withholding tax payments to be paid to the Internal Revenue Service (IRS).

From the enclosures, it appears that MNI was the apparent low bidder for certain general construction work to be performed at the Harrisburg International Airport at a price of \$1,256,458. The contract was to be awarded by the Pennsylvania Department of Transportation. Since the project was substantially funded through a grant from the Federal Aviation Administration (FAA), the State had agreed to and was obligated to comply with certain grant conditions. One condition required the low, responsive bidder to submit a subcontracting plan, which included a goal of 8-percent minority-owned business participation and 2-percent women-owned business participation. MNI's plan showed participation of 3-percent minority and 0-percent women participation. The State believed that MNI's plan was based on MNI's best effort but, after consultation with FAA, the State Bureau of Aviation determined that MNI's plan was not acceptable. Later, the State awarded the contract to the second low bidder, Lobar, Inc., at a price less than \$10,000 more than MNI's price.

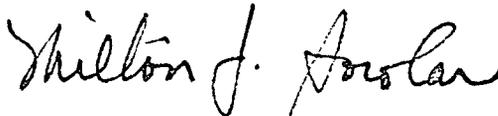
576833

MNI essentially contends that it did all that it could do to encourage minority participation by permitting minority firms to match the low bids of non-minority firms for potential subcontracts. MNI apparently believes that it would not have been proper to award subcontracts to minority firms at prices in excess of the low bid merely to increase the percentage of minority subcontract participation. MNI concludes that it lost the contract because it would not pay more than necessary to minority firms; consequently, it was not awarded the contract, it lost anticipated profits of \$26,000, and award to Lobar increased the cost of the work by about \$10,000. Accordingly, MNI claims entitlement to its anticipated profits.

We have been presented with claims for damages by unsuccessful bidders in direct Federal procurements. In those cases, we point out that there exists no legal basis for allowing recovery of anticipated profits. See, e.g., Jekyll Towing and Marine Services Corporation, B-199199, December 2, 1980, 80-2 CPD. 413. Similarly, we are aware of no legal basis to permit recovery of anticipated profits by unsuccessful bidders for contracts awarded by grantees under federally funded grants.

Thus, without considering the merits of MNI's position, we must advise you that even if MNI should have received the award, it would have no legal basis to withhold payment of taxes due to the IRS.

Sincerely yours,



Acting Comptroller General
of the United States