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**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Superior Services, Inc.

**File:** B-258675.2

**Date:** January 17, 1996

### DECISION

Superior Services, Inc. protests the Department of State's alleged failure to take appropriate corrective action in response to an earlier protest, B-258675, that Superior filed against the evaluation of proposals and award decision under solicitation No. S-BL-400-94-C-1113. Superior contends that although the agency re-evaluated proposals, it did not notify unsuccessful offerors of its ultimate award decision. We dismiss the protest.

On September 23, 1994, the United States Embassy in Lima, Peru awarded a contract to Empresa de Servicios Sol, Ltda. ("Emerso") for food services to be provided at the embassy. Superior protested the award, alleging improprieties in the evaluation of proposals. In response to the protest, the agency reviewed its source selection and determined to take the following corrective action: revise its evaluation scoresheets to be consistent with the terms of the solicitation, re-evaluate all of the technical proposals in accordance with the revised evaluation scoresheets, conduct new discussions with all offerors remaining in the competitive range, request revised proposals and/or best and final offers as appropriate, and make a new source selection. In light of the proposed corrective action, we dismissed Superior's protest as academic.

The record shows that in December, 1994, the agency took the proposed corrective action and determined that Emerso's proposal again received the highest combined technical and cost score and therefore represented the best value to the government. Although the State Department confirmed the award to Emerso, it failed to notify the offerors of the results of the reevaluation process.

In the meantime, however, the agency has determined that because of budget constraints, it no longer has the need for the food services that were to be provided under this contract. Accordingly, it has terminated Emerso's contract for the convenience of the government and does not expect to procure these services in the future.

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Superior acknowledges that the termination of the contract and cancellation of the underlying solicitation render the protest essentially academic, since there is no remedy available. However, the protester argues that it should be entitled to fees and costs expended in pursuing its protest, based on the agency's failure to notify the firm of the award.

The agency concedes that its failure to notify the protester of the results of the corrective action was a serious oversight and reports that this failure occurred because of changes in personnel. Nevertheless, any impropriety on the agency's part in this matter does not provide a basis to sustain the protest and allow Superior the recovery of its costs. Such failure is only procedural in nature. See L.L. Rowe Co., B-220973, Feb. 27, 1986, 86-1 CPD ¶ 204. Our authority to allow the recovery of protest and bid or proposal preparation costs is conditioned by our determination that a solicitation, proposed award, or award does not comply with statute or regulation, see 4 C.F.R. §§ 21.6(d) and (e) (1995), Superior is not entitled to monetary relief for what constitutes only a procedural deficiency. Further, since the contract has been terminated because the services are no longer needed, any issue concerning the validity of the award is rendered academic.

The protest is dismissed.

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