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K. B. [unclear]

DECISION



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

FILE: B-189697

DATE: February 1, 1978

MATTER OF: Laurence Hall d/b/a Halcyon Days

DIGEST:

1. Claimant may not be paid expenses allegedly incurred in preparing to perform tree-planting contract because contracting officer did not unequivocally express intention to accept claimant's bid.
2. Government is not entopped to deny existence of contract because record does not show that Government intended that its statements regarding claimants relative chances of award should be acted upon or that claimant reasonably believed Government's statements were so intended.

Laurence Hall, doing business as Halcyon Days, claims compensation for amounts expended under an alleged oral award of a contract under solicitation No. 40-8191-7-492, for tree planting in Prescott National Forest, Arizona.

Bids for the subject solicitation were opened on July 8, 1977. The low bid, submitted by Mr. Hill, was approximately \$1,000 lower than the Government's estimate. While Mr. Hill's bid was being considered, Mr. Hall, the next low bidder, called the contracting officer to determine the status of the award decision. The record shows that the following matters were discussed during the conversation between Mr. Hall and the contracting officer. The contracting officer told Mr. Hall that he believed "everything would be go in his direction" since the apparent low bidder appeared to be apprehensive about the specifications and the Forest Service had "misgivings" about the low quotation. The contracting officer also told Mr. Hall to be thinking about a prework conference which would be held the following week if everything worked out in his favor. The contracting officer stated that although he thought Mr. Hall would be doing the work, there were still "several hitches" involved.

Subsequently the low bidder called the contracting officer to state that his bid was not in error, that he had previously completed similar projects and that he would comply with the specifications. The record shows that the contracting officer then attempted on several occasions to call Mr. Hall but received no answer. Mr. Hall was notified on Thursday, July 14, 1977, that award would be made to Mr. Hill.

Mr. Hall claims to be entitled to reimbursement of his expenses in preparing for contract performance on the basis of an alleged oral contract between Mr. Hall and the contracting officer.

In order for a binding contract to result, the contracting officer must unequivocally express an intent to accept an offer. It is well settled that the acceptance of a contractor's offer by the Government must be clear and unconditional and it must appear that both parties intended to make a binding agreement at the time of the acceptance of the contractor's bid. See 20 Comp. Gen. 605, 609 (1941). Here, the contracting officer did not unequivocally express an intention to accept the claimant's bid. The record shows that the claimant was informed that, while he was likely to receive award, there were still several "hitches" involved. Consequently, when the claimant made preparations for performance, no contract then existed.

The Government may be estopped to deny the existence of a contract where four elements are present:

- 1) the party to be estopped knows the facts;
- 2) the Government intends that its conduct shall be acted on or so acts that the bidder has a right to believe it is so intended;
- 3) the bidder is ignorant of the true facts; and
- 4) the bidder relies on the Government's conduct to its injury.

See Emeco Industries, Inc. v. United States, 202 Ct. Cl. 2006 (1973); 53 Comp. Gen. 502, 506 (1974). Here, the

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record does not show that the Government intended that its statements regarding the claimant's relative chances of award should be acted upon by the claimant. The claimant did not reasonably believe the Government so intended because the contracting officer informed the claimant that it was not low bidder, that it was being considered solely because of the contracting officer's doubts about the apparent low bidder's ability to perform and that certain "hitches" still existed before the contract could be awarded to the claimant. The claimant has not shown that it was ignorant of the true facts at the time of the Government's statements upon which it relied. Moreover the Government did not delay in notifying claimant of the true facts. Contract Emeco, supra. Consequently, the Government is not estopped to deny the existence of a contract with Mr. Hall.

Accordingly, the claim is denied.

Mr. Hall also recommends that the expenditures which occurred in this case could have been avoided if there were a period longer than one week between the anticipated date of award of the contract and the date contract performance was to start. Mr. Hall alleges that the short period of time anticipated in this case disadvantages small businesses which may have greater difficulties transferring personnel and equipment from one operation to another. We are referring this recommendation to the Department of Agriculture for consideration.


Deputy Comptroller General
of the United States