

16070
Ann Harbuckee

DECISION



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

[Protest of Bureau of Indian Affairs Contract Award]

FILE: B-201744

DATE: February 9, 1981

MATTER OF: Shamrock Drilling Service, Inc.

DIGEST:

DLG 06027

Protest filed with GAO more than 10 working days after same protest filed with contracting agency was denied by agency is untimely filed and not for consideration.

Shamrock Drilling Service, Inc. (Shamrock), protests the award of a construction contract on December 1, 1980, under United States Department of the Interior, Bureau of Indian Affairs, invitation for bids No. BIA-0150-80-42.

Shamrock states that on subitem Nos. A-1 and A-8, each requiring the submission of a unit price for the quantity of 10 wells and an extended subtotal price, the awardee bid unit prices of \$20,000 and \$310,000 and extended subtotal prices of \$20,000 and \$310,000, respectively. Shamrock notes that it was provided in the invitation that:

"* * * In the case of discrepancy between Unit Prices and extension to Sub-Total Prices, the Unit Prices will be considered as correct and will be extended to arrive at the corrected Sub-Total Prices. In case of error in the extension of prices, unit prices govern. * * *"

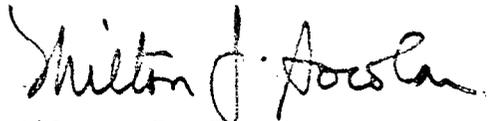
Accordingly, had the contracting officer complied with this provision, the unit prices of the awardee on these subitems would have been extended to \$200,000 and \$3,100,000, respectively, and Shamrock would have been the low bidder.

~~015226~~ 114287

Shamrock protested this matter to the contracting agency by letter of October 22, 1980. The protest was denied in a letter of November 24 from the agency. The basis of the denial was that "The unit price for 10 wells would in effect be the same as a lump sum quantity absent a per unit designation." It was further stated in that letter that the invitation provision entitled "Measurement and Payment" substantiated this conclusion. The letter ended with the advice that "You will be advised of action taken. A copy of the abstract of bids will be furnished." In its protest letter of January 6, 1981, to our Office, received on January 13, Shamrock reiterates the above grounds of protest and states that nothing has been heard from the contracting agency since the November 24 letter.

It is provided in our Bid Protest Procedures at 4 C.F.R. § 20.2(a) (1980) that in order for our Office to consider a protest that has been initially filed with the contracting agency, the protest must be filed with our Office within 10 working days after the protester has "formal notification of or actual or constructive knowledge of initial adverse agency action." Shamrock was advised by letter of November 24 that its protest was denied by the agency. Although the agency advised that Shamrock would be notified as regards future "action taken," this did not negate the denial of the protest.

Since it is apparent that the instant protest was received by (filed with) our Office later than 10 working days after Shamrock had been notified by the contracting agency that its protest had been denied, we must decline to consider the protest and it is dismissed.



Milton J. Socolar
General Counsel