



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Devices, Inc.

File: B-228065

Date: August 24, 1987

DIGEST

Where protester seeks anticipated profits in connection with contracting agency's determination that, although protester's low offer was not received late as the agency had previously stated, termination of substantially performed contract was impracticable, the request is dismissed since anticipated profits may not be recovered even in the presence of error in government action.

DECISION

Consolidated Devices, Inc. (CDI), seeks anticipated profits it allegedly lost as a result of the rejection of its low offer under request for proposals (RFP) No. N00104-87-R-TU09 issued on a brand-name-or-equal basis by the Department of the Navy for 310 each torque wrenches. In view of the Navy's determination that although initially rejected as late, CDI's offer should have been considered for award, but termination of the substantially completed contract would be impracticable, the protester requests relief in the form of an award to CDI for an equal number of torque wrenches or the firm's potential gross profits on the contract in the amount of \$8,125. We dismiss the request.

FACTS

Offers were received on April 24, 1987, at 11 a.m., as scheduled by solicitation amendment 0001. CDI states that on June 3, it received a letter dated May 21 from the contracting officer stating that CDI's offer was received after the time specified in the solicitation and, therefore, could not be considered. Under cover of letter dated June 10, CDI forwarded to the Navy contracting office a copy of a Sender Activity Summary form from Federal Express (the carrier of CDI's bid) showing that the government acknowledged receipt of its offer by signature at 10:27 a.m. on April 24. CDI also subsequently provided the contracting

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office a copy of the Federal Express delivery record that supported previous documentation of receipt of CDI's offer by the appropriate official as indicated in CDI's June 10 letter.

The Navy subsequently determined that CDI's offer was, in fact, timely received and, thus, should have been considered for award. CDI states that at this juncture the Navy informed the firm that the wrench it offered was being technically evaluated to determine whether it was equal to the (brand name) "Snap-On" part number called for in the solicitation.

The record indicates that the Navy determined the wrench offered by CDI was equal to the brand name, but upon inquiry the Navy was informed that performance of the contract was substantially complete and termination at that point would result in costs to the government of more than 66 percent of the total contract price. The Navy then determined that in view of the substantial completion of performance, it would be impracticable to terminate the contract and award it to CDI.

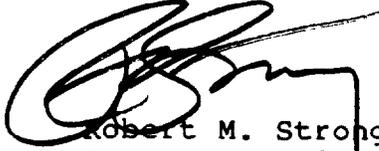
DISCUSSION

CDI, in essence, requests that we direct the Navy to purchase from CDI 310 torque wrenches at the price it offered under the subject solicitation (even though there is no indication in the record now before us that the Navy has issued another solicitation for such items or that it even has a present need for them). Alternatively, CDI requests its potential gross profits on the contract. The protester phrases its requests for relief as alternatives, but we note that the first request is but a means of essentially rephrasing the request for anticipated profits.

Here, the contracting agency has conceded that it improperly rejected CDI's low, technically acceptable offer as late but states that termination of the contract it did award is impracticable because it has been substantially performed. CDI's correspondence with our Office is solely concerned with the remedy to which it believes it is entitled under the circumstances.

There is no legal authority that permits the recovery of anticipated profits, even in the presence of wrongful

action. See Smoke Busters, B-219458, Nov. 1, 1985, 85-2 C.P.D. ¶ 501, and Effective Learning, Inc.--Request for Review of Prior Claim Decision, B-215505, Feb. 19, 1985, 85-1 C.P.D. ¶ 207. Accordingly, the matter is dismissed. See Robert Swortzel, B-188764, Apr. 22, 1977, 77-1 C.P.D. ¶ 280.



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