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DECISION



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Proc I*

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

FILE: B-189045

DATE: October 4, 1977

MATTER OF: Harco Inc. - Reconsideration

DIGEST:

1. Anticipated profits are not recoverable against Government, even if claimant is wrongfully denied contract.
2. Anticipated contract salary is not recoverable against Government. Post-bid-opening expenses are recoverable only where expenses have been incurred and Government would be estopped to deny existence of contract.

In Harco Inc., B-189045, August 24, 1977, we held that the Departments of the Army and Air Force National Guard Bureau (National Guard) should have rejected the bid of Southwestern Contractors, Inc. (Southwestern), as nonresponsive because a prebid telegram from Southwestern could have been reasonably interpreted to mean that it was not offering a firm fixed-price contract as required by the invitation for bids. However, since Southwestern had reportedly completed more than 50 percent of the contract, we determined that no meaningful remedial action could be taken.

Harco Inc. (Harco) now claims \$10,000 in anticipated profit and \$8,000 in anticipated salary.

We have consistently held that anticipated profits are not recoverable against the Government, even if a claimant is wrongfully denied a contract. Robert Swortzel, B-188764, April 22, 1977, 77-1 CPD 290. Post-bid-opening expenses are recoverable only where the expenses have been actually incurred and the Government would be estopped to deny the existence of a contract. The following four elements must be present to prevail on an estoppel theory:

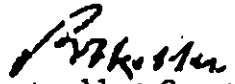
1. the Government must know all the facts;
2. the Government must intend that its conduct shall be acted on or must so act that the bidder has a right to believe that is so intended;

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3. the bidder must be ignorant of the true facts;
and
4. the bidder must rely on the Government's conduct to its injury. T. C. Daeuble - Reconsideration, B-186889,
March 3, 1977, 77-1 CPD 157.

In the instant case, the National Guard never indicated to Harco that it would be awarded the contract. Moreover, Harco did not rely on the National Guard's conduct to its injury. Under the circumstances, the Government would not be estopped to deny the existence of a contract. In addition, the salary expenses claimed by Harco were not actually incurred.

Based on the foregoing, we find no basis to permit the recovery of anticipated profit or anticipated salary. However, we would consider a claim for bid preparation costs if submitted and properly documented as to the amount.


Deputy Comptroller General
of the United States