

PL-11

**DECISION**



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

10,675

FILE: B-194154

DATE: July 9, 1979

MATTER OF: Delora Haidle- [Reconsideration of Prior  
DECISION]

**DIGEST:**

1. In negotiated small purchase which all parties treated as advertised procurement, contracting officer's application of rules regarding responsiveness and ambiguous bids does not provide basis for overturning award, since it is not clear that protester would have submitted winning proposal and contracting officer acted in good faith in applying advertising rules.
2. Clarification of price, in negotiated small purchase, does not constitute auction; term connotes direct price competition between offerors, not discussions between offeror and Government in which competitive standing with regard to price is not disclosed.

Delora Haidle, one of three offerors of janitorial services for the Eureka, Montana, Ranger Station under a solicitation issued by the Forest Service, requests reconsideration of our decision of April 6, 1979.

On that date, we summarily denied Mrs. Haidle's protest against award on grounds that her bid had been properly rejected as nonresponsive. We also found her price to be ambiguous. See Delora Haidle, B-194154, April 6, 1979, 79-1 CPD 243. For the following reasons, we find no basis for overturning the award.

In Mrs. Haidle's protest and our decision, the solicitation, No. R1-14-79-5, was erroneously referred to as an invitation for bids, indicating procurement by formal advertising. After the decision was issued, we received a Forest Service report on the protest which reveals that this was a negotiated procurement under the authority for small purchases (under \$10,000).

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However, all parties treated it as if it were an advertised procurement.

As issued on January 5, 1979, the solicitation covered janitorial services for 12 months; Mrs. Haidle mailed a "sealed bid" on January 12, 1979, offering to perform for a unit price of \$350 a month or for a total of \$4,200. On January 15, 1979, the Forest Service shortened the contract period to 11 months and amended the solicitation accordingly.

Mrs. Haidle states that when she received the amendment, she telephoned the contracting officer, who told her she must acknowledge it in writing before January 22, 1979 (the closing date for receipt of initial proposals), but that she should not write a new figure on the amendment sheet because it would be "confusing at time of bid opening." Consequently, Mrs. Haidle states, she attempted to make clear what her bid stood for by returning the amendment with the following notation:

"Present bid will stand, based on  
11-month contract.

"\$4,200 per 12 months."

Mrs. Haidle further states that she assumed her 12-month price would be pro-rated, and that she has lost \$3,850 (\$350 x 11) in income this year because the Forest Service did not consider her bid, but awarded a \$4,100 contract to the next-lowest offeror.

In our decision of April 6, 1979, we stated that Mrs. Haidle's bid was nonresponsive because it failed to conform to the amended solicitation, which required janitorial services for 11 months. Even assuming Mrs. Haidle's notation meant her price would be 11/12 of \$4,200, we added, the bid was properly rejected because it was subject to two reasonable interpretations, one responsive and the other non-responsive, and could not be explained after opening.

The contracting officer's log of his January 16, 1979, telephone conversation with Mrs. Haidle states:

"She told me she had received amendment 1, but she had already submitted a bid which reflect [sic] a price for 11 mo., although schedule of items stated 12 months. \* \* \* "

This, we believe, tends to confirm Mrs. Haidle's statement that she expected her unit price to be pro-rated.

We note, moreover, that the regulations which apply to small purchases, Federal Procurement Regulations (FPR) §§ 1-3.600 - 603-2 (1964 ed.), provide for use of requests for quotations, permit the contracting officer to obtain quotations orally, and require only "reasonable" competition, meaning a sufficient number of quotations from qualified sources to assure that the procurement is fair to the Government, price and other factors considered. Id., § 1-3.603-1(a)(1).

If the contracting officer had been aware of and/or had followed these regulations, which are even more flexible than those for standard negotiated procurements, he could have asked Mrs. Haidle to clarify her price. Such clarification would not have constituted an auction, because in negotiation, that term connotes direct price competition between two offerors, not discussions between an offeror and the Government when the offeror's competitive standing with regard to price is not disclosed. Washington School of Psychiatry, B-192756, March 14, 1979, 79-1 CPD 178 at 11.

We believe the use of solicitation forms with a blank for unit prices also contributed to the misunderstanding. Mrs. Haidle completed the unit price, but we note that the awardee merely circled 12, which indicated the number of months on the schedule of items, wrote 11 above it, and filled in a total, \$4,100, ignoring unit price.

Unfortunately, we cannot be certain, except from Mrs. Haidle's post-award protest, what price she actually intended to offer. We do not find any evidence of fraud or intentional misconduct on the part of the contracting officer, who believed he was correct in applying the rules regarding responsiveness and ambiguous bids to this procurement. Our prior decision is therefore affirmed.

By letter of today, however, we are advising the Secretary of Agriculture that in future small purchases, the Forest Service should use the more informal methods of negotiation prescribed by the regulations.



Deputy Comptroller General  
of the United States