

PK-LL

12635



DECISION

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

FILE: B-194476

DATE: January 24, 1980

MATTER OF: SSR Incorporated — DL603688

DIGEST:

1. [Claim for proposal preparation costs filed more than two years after claimant's protest to agency was denied is dismissed because claimant did not protest agency's refusal to change its award decision to GAO and issues in claim and protest to agency are essentially the same.]
2. Where agency pays for services rendered pursuant to purchase order, claim based on allegation that value of services exceeded purchase order amount and were provided in belief that follow-on contract on sole-source basis would be awarded is denied since there is no legal authority to pay more than purchase order amount for services rendered under purchase order. Moreover, since competition was available, agency could not properly have made sole-source award.

SSR, Incorporated (SSR) has submitted a claim for costs of \$8,327.63 incurred in 1977 in connection with SSR's efforts to obtain a contract from the Department of Health, Education, and Welfare (HEW) to provide editing and other services in support of the preparation of the "Third Special Report to Congress on Alcohol and Health." SSR's claim appears to be based on alternative theories that it is entitled to proposal preparation costs or it should receive compensation for extra services it was induced to perform under a purchase order with HEW.

AGC00022

008400

111375

SSR contends that it was induced to accept a small purchase order for preliminary work on the report because it was led to believe it would receive a larger follow-on contract on a sole-source basis. SSR further contends when negotiations between it and HEW collapsed, HEW "auctioned off" the work which was based on its contributions without giving SSR an opportunity to compete. SSR argues the facts reflect less than subjective good faith on the part of the program and procurement officials of HEW and therefore entitle it to proposal preparation costs.

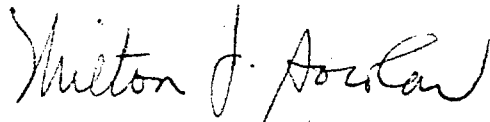
A claim for proposal preparation costs is necessarily predicated on an allegation of improper agency action in connection with the claimant's proposal. We have provided for consideration of such allegations through our Bid Protest Procedures, 4 C.F.R. Part 20 (1979), which with their specific timeliness requirements for filing, "are intended to provide a fast, efficient, vehicle for the resolution of contract formation disputes," and normally claims for proposal preparation costs "are decided in connection with a protest and based on the record established in that protest." DWC Leasing Company, B-186481, November 12, 1976, 76-2 CPD 404. We have declined to consider such claims when the claimant did not file or otherwise pursue a timely protest because of our belief that consideration of the claim would undermine the timeliness provisions of the Procedures. See DWC Leasing Company, supra; Documentation Associates--Claim for Proposal Preparation Costs, B-190238, June 15, 1978, 78-1 CPD 437.

Here, SSR protested to the agency by letter dated April 20, 1977. By letter of May 12, 1977, HEW denied SSR's protest, which raised essentially the same issues SSR raises in support of the instant claim. Under our Procedures, SSR then had 10 days from the date it received HEW's letter to file a protest with our Office. See 4 C.F.R. 20.2(a). However, SSR did not file a protest. Under these circumstances, we do not believe it to be appropriate for us to now consider the same subject matter of that protest merely because it is raised, more than 2 years later, in the context of a claim

for proposal preparation costs. See Documentation Associates--Claim for Proposal Preparation Costs, supra; Department of Commerce--Request for Reconsideration, B-186939, December 16, 1977, 77-2 CPD 469.

As an alternative to its claim for proposal preparation costs, SSR argues it should be paid for the actual value of services it rendered under a \$1,920 purchase order requiring preparation of time and process schedules for the subsequent report writing contract. SSR contends it would not have contributed the amount of "know-how" and work it did had it not been induced to believe that SSR would obtain the report writing contract on a sole-source basis. We know of no legal basis upon which SSR could be paid more than the \$1,920 for which it contracted to perform the services. Moreover, the record indicates that although the agency's program personnel may have initially intended to use SSR's services on a sole-source basis, the contracting officer subsequently determined competition was available and the agency did, in fact, obtain a competitive contract at a price substantially below that proposed by SSR. Under such circumstances, no authority existed for a sole-source contract or for any commitment by the program personnel to make a sole-source award. As with all who deal with the Government, SSR is charged with notice of all statutory and regulatory limitations upon the authority of the agency officials with whom it deals. See Jackson v. United States, 551 F. 2d 282 (Ct. Cl. 1977); Prestex, Inc. v. United States, 320 F. 2d 367 (Ct. Cl. 1963).

The claim for proposal preparation costs is dismissed; the claim based on extra value of service is denied.



For the Comptroller General
of the United States