

DOCUMENT RESUME

02360 - [A1372359]

[Claim for Damage to Bid Sample]. B-187730. May 11, 1977. 3 pp.
+ enclosure.

Decision re: Clauss Cutlery Co.; by Paul G. Dembling (for Elmer
E. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other General Government
(806).

Organization Concerned: Federal Supply Service.

Authority: 51 Comp. Gen. 583. 34 Comp. Gen. 180. 53 Comp. Gen.
810. 41 C.F.R. 5A-2.409-71(b). B-181760 (1974).

The protester alleged that its submitted bid sample was damaged by the Government, causing it to fail the required testing. The agency handled the sample in accordance with established procedures designed to adequately protect samples and denies knowledge of how or when the damage was incurred. Since the record does not otherwise affirmatively establish that the damage was the fault of the agency, the protest was denied. The agency's failure to advise the bidder of test results prior to the award was consistent with applicable regulations.
(Author/SC)

Marilyn Eaton
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DECISION



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

FILE: B-187730

DATE: May 11, 1977

MATTER OF: Clauss Cutlery Company

DIGEST:

Protest alleging that submitted bid sample was damaged by Government, causing it to fail required testing, is denied since agency handled sample in accordance with established procedures designed to adequately protect samples and denies knowledge of how or when damage was incurred, and record does not otherwise affirmatively establish that damage was fault of agency. Agency's failure to advise bidder of test results prior to award was consistent with applicable regulations.

Invitation for bids (IFB) No. FTAP-A2-60895-A was issued by the Federal Supply Service, General Services Administration (GSA) on June 22, 1976, for various types of shears, scissors, scrapers, and nibbling tools to be furnished on a requirements basis between November 1, 1976 and October 31, 1977. The solicitation required submission of two samples of each type of item bid upon and stated that failure of a sample to conform to GSA specifications would result in rejection of a bid based on that sample.

Clauss Cutlery Company (Clauss) was low bidder for Item No. 1, 9-inch shears, after application of the Buy American Act differential to the price of the only other bidder, Kingshead Corporation (Kingshead) of Hackensack, New Jersey, an importer of Italian shears. Clauss' bid was rejected, however, because one of its samples failed to cut completely through three thicknesses of cotton sheeting, as required by paragraph 4.5.1 of Interim Federal Specification GGG-S-0278a (June 16, 1964) and Interim Amendment No. 4 (March 1, 1971). The GSA laboratory report also showed that on the tested sample, the cutting action ceased one-half inch from the points of the shears. Award to Kingshead was made on October 18, 1976.

On the day following award, Clauss' president met with GSA representatives and learned that of the two samples, one had been sent from Washington, D.C. to Kansas City, Missouri, for the required laboratory tests; the other had not been tested. Examination of the tested pair revealed that the blades had been bent, resulting in looseness which in turn caused the points not to cut.

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The untested pair, demonstrated by Clauss' president cutting through a folded handkerchief, did cut cleanly. Clauss then protested, arguing that the tested sample was damaged while in the hands of the GSA and that the firm did not have an opportunity to comment on the test results before award.

GSA states that it has no reason to believe the Government mishandled or damaged Clauss' bid sample, and points out that the shears could have been damaged during shipment from Clauss to GSA. In this regard, GSA's National Tools Center has provided a detailed description of the procedures it utilizes in handling bid samples. Under those procedures, samples received by mail are hand-carried to a sample room and examined before opening for external damage. Access to the storage area is controlled by a buzzer and a gate which is released only from the inside. Samples are stored in the packages in which they have been received until bid opening, when they are examined by three persons, including the contracting officer. If testing by the Kansas City laboratory is required, shipment is by registered mail. For shipment in this case, the GSA log shows that one of Clauss' samples and three of Kingshead's, in their original packages, were placed together in a standard commercial fiberboard box, cushioned with closed-cell polypropylene, wrapped, and sealed bearing "Fragile" and "Handle with Caution" labels. The samples were shipped to Kansas City on August 4, 1976, and returned to GSA on September 3, 1976.

On the basis of this record, we are unable to conclude that GSA acted improperly either in handling or evaluating the Clauss bid sample. The record shows only that Clauss submitted two bid samples, that the one selected for testing was found to be unacceptable after it was handled in accordance with established procedures which appear to be reasonably designed to afford adequate protection to the samples, and that the unacceptability of the shears was due to certain damage presumably incurred at some point after manufacturing. While it cannot be said with certainty that the shears were not damaged while in GSA's possession, neither can it be concluded that the damage resulted from mishandling by GSA. Accordingly, we find that the protester had not sustained its burden of proving its allegation that GSA was responsible for the damage. Cf. 51 Comp. Gen. 583 (1972). Accordingly, and since the bid sample, as tested, was not acceptable, the Clauss bid was properly rejected. 34 Comp. Gen. 180 (1954); Boston Pneumatics, Inc., B-181760, November 15, 1974, 74-2 CPD 265.

As for Clauss' complaint that it was not permitted to comment on the test results before award was made to Kingshead, GSA Procurement Regulations (GSPR) specifically prohibit disclosure of

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inspection or test data prior to award. 41 C.F.R. 5A-2.408-71(b).
The validity of this regulation has been upheld. R & O Industries,
Inc., 53 Comp. Gen. 810 (1974), 74-1 CPD 221.

The protest is denied.

Paul B. Lumbly
For the Comptroller General
of the United States



Marilyn Eaton
Proc. II

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

IN REPLY
REFER TO: B-187730

May 11, 1977

The Honorable Delbert L. Latta
House of Representatives

Dear Mr. Latta:

Your letters of January 18, 1977 and November 2, 1976, expressed interest in the bid protest of Clauss Cutlery Company of Fremont, Ohio, against award of a contract by the General Services Administration (GSA) under invitation for bids No. FTAP-A2-60895-A.

A copy of our decision of today denying the protest is enclosed.

As you know, our Procurement and Systems Acquisition Division is looking into matters related to GSA procurements for scissors and shears. The results of that review will be reported to you separately.

Sincerely yours,

Paul G. Lunsberg
For the Comptroller General
of the United States

Enclosure