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DECISION



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

B-208496

FILE:

DATE: September 7, 1982

Delbert Bullock

MATTER OF:

DIGEST:

1. As a general rule, a bid improperly returned to the bidder cannot be resubmitted after bid opening and considered for award.
2. There is no legal basis for allowing an unsuccessful bidder to recover anticipated profit.

Delbert Bullock protests the refusal of the Forest Service to accept a bid he submitted in response to invitation for bids (IFB) No. R1-11-82-51. The solicitation is for the construction of roads at Helena National Forest. We summarily deny the protest.

An agent of Mr. Bullock tendered a bid in response to the IFB on June 18, 1982, prior to the time set for bid opening. Bids submitted in response to another solicitation, IFB No. R1-11-82-60, issued for the construction of trails, were also scheduled to be opened on June 18. That bid opening, however, was postponed by an amendment to the solicitation. Mistakenly, Mr. Bullock's bid on the road construction requirement was immediately returned to his agent with a copy of the amendment to the trail construction solicitation. The opening of bids submitted in response to the road construction solicitation took place as scheduled. Days later, Mr. Bullock discovered that the amendment applied to the trail construction solicitation rather than to the road construction solicitation. He immediately tendered his unopened bid to the contracting officer who refused to accept it.

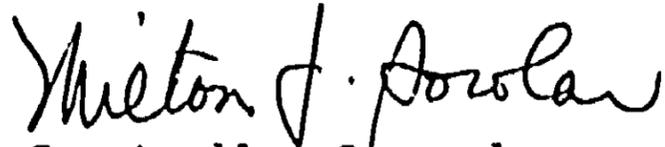
As a general matter, when a bid has been returned to a bidder, the bid cannot be considered for award if the bidder resubmits the bid after bid opening even if the return to the bidder was improper. See Dina Contracting Corporation, B-156487, August 31, 1976, 76-2 CPD 208. However, in certain limited circumstances, where it was clear the integrity of the competitive bidding system would not be compromised, we have

permitted bids to be resubmitted and considered for award when they were erroneously returned to the bidders. See 50 Comp. Gen. 325 (1970).

Here, we have been informally advised by the protester that the sealed bid envelope, which remains in the protester's possession, has not been stamped or marked in any way which would prove that it was in fact the same envelope and bid submitted prior to bid opening. Under the circumstances, we conclude that the contracting officer properly refused to accept the bid after opening; to have accepted it would have compromised the integrity of the competitive bidding system. See Jantron, Inc., B-200251, November 28, 1980, 80-2 CPD 404.

Mr. Bullock, who contends that his bid would have been the lowest bid submitted, claims damages in the form of anticipated profits lost because of the Government's actions. We deny this claim since there is no legal basis for allowing an unsuccessful bidder to recover anticipated profit. See Keco Industries v. United States, 428 F. 2d 1233 (Ct. Cl. 1970); Heyer Products Co. v. United States, 140 F. Supp. 409 (Ct. Cl. 1956).

The protest is summarily denied.



Acting Comptroller General
of the United States