

DECISION



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

123096

FILE:

DATE: December 20, 1983

B-212960

MATTER OF:

Lion Brothers Company, Inc.

DIGEST:

1. Unsupported allegations of bias by contracting personnel and of their failure to evaluate samples fairly do not meet the protester's burden of presenting sufficient evidence to prove its case.
2. GAO has no authority to determine what information must be disclosed by an agency under the Freedom of Information Act.
3. Protest that awardee might provide nonconforming items raises a matter of contract administration which is the responsibility of the procuring agency, not GAO.

Lion Brothers Company, Inc. protests the U.S. Customs Service's award of a contract to Conrad Industries under request for proposals No. CS-83-9, under which the Customs Service is purchasing an indefinite quantity (maximum 70,000) of embroidered emblems. The protester, who offered the highest price of the four offers received by the Customs Service, submitted samples which were rejected for failure to comply with the solicitation's specifications. Award was made to the lowest-priced acceptable offeror.

We dismiss the protest.

Lion Brothers basically complains as follows:

- 1) there might have been irregularities, unspecified by the protester, with the possible intent of excluding Lion Brothers from award;
- 2) the protester has reasons, again unspecified, to believe that samples were tested inadequately or incompletely; and

3) the awardee might supply items that do not meet the specifications.

We dismiss the first two protest issues because the complaints are speculative and unsupported by any substantive evidence. The protester has the burden of presenting sufficient evidence to establish its position, and unsupported allegations do not meet that burden. A-B Emblem, B-209634, April 8, 1983, 83-1 CPD 375. This Office will not conduct investigations to establish the validity of a protester's speculative statements. Crown Point Coachworks and R&D Composite Structures; North American Racing Company, B-208694; B-208694.2, September 29, 1983, 83-2 CPD 386.

The protester's burden is even greater concerning allegations of bad faith by procuring officials. Where, as here, a protester alleges that such officials acted intentionally to exclude the protester from award, the protester must submit virtually irrefutable proof that the contracting personnel had a specific and malicious intent to harm the protester, since contracting officials otherwise are presumed to act in good faith. Arlandria Construction Co., Inc.--Reconsideration, B-195044; B-195510, July 9, 1980, 80-2 CPD 21. Lion Brothers has submitted no such proof.

In this regard, the protester suggests that it has been hampered in attempts to gather supporting evidence because the Air Force has not provided information requested under the Freedom of Information Act. This Office, however, has no authority to determine what information must be disclosed by the Customs Service in response to Lion Brothers' request. Energy Complexes, Inc., B-209454, July 26, 1983, 83-2 CPD 125. The protester's recourse is to pursue the disclosure remedies under the procedures provided by the Act. Id.

As for the allegation that the awardee might provide nonconforming items, such matters involve contract compliance and administration, which are the responsibility of the contracting agency, not our Office under our bid protest function. Lips Doran, B-212696, September 13, 1983, 83-2 CPD 320.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel