

DECISION



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

FILE: B-213160

DATE: May 15, 1984

MATTER OF: Donald Owen & Associates, Inc.

DIGEST:

1. Low bid which contained no exception on its face to the specification that building shall be occupied during construction should not have been rejected as nonresponsive to the requirement; however, since low bidder and only other bidder made a mistake in not preparing their bids on the basis of the requirement, their bids should have been rejected for that reason.
2. Even if claimant is wrongfully denied a contract, lost profit and cost of pursuing a protest are not recoverable.

Donald Owen & Associates, Inc. (Owen), protests the rejection of its bid and the award of a contract to Cree Construction Co., Inc. (Cree), under Department of the Navy invitation for bids (IFB) No. N62474-83-B-4817 for repairs and alterations to Naval Submarine Base building 1006, Bremerton, Washington.

We deny the protest against the rejection and sustain the protest against the award.

Two bids were received under the IFB. Owen submitted a bid price of \$149,950; the Cree bid price was \$171,000. Subsequently, contracting agency officials met with each of the bidders to discuss their bids. During the separate discussions, each of the bidders, supported by corroborating statements from the same two subcontractors who were to perform for each of them, stated that its bid was based upon the building being unoccupied. This was contrary to IFB specifications paragraph 01011.15(a), which stated that the building shall be occupied during construction.

During the discussions, Owen refused to perform the asbestos removal work with the building occupied. Owen's bid was rejected subsequently as nonresponsive. On the

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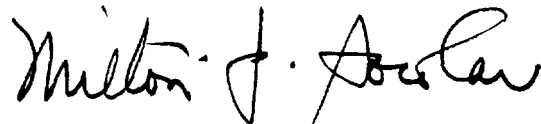
other hand, during the discussions with Cree, Cree agreed to perform in accordance with the specifications. Cree's bid was accepted.

Owen's bid should not have been rejected as nonresponsive. A bid is responsive where it offers on its face to perform without exception the exact thing called for in the IFB. Boskind Development, Inc., B-213679, December 2, 1983, 83-2 CPD 639. Owen's bid contained no exception on its face to the occupancy requirement and, therefore, it was responsive.

However, neither Owen's bid nor Cree's bid should have been accepted. Both bidders made a mistake in not preparing their bids on the basis of the necessary requirements in the IFB and their bids should have been rejected for that reason. 51 Comp. Gen. 423, 424 (1972). In making an award to Cree without receiving bids prepared on the basis of the necessary requirements, there was no assurance that the Cree bid represented the best price for the work.

Given the fact that the contract was awarded in September 1983 and that it called for completion within about 5 months, no corrective action would appear to be possible at this time.

Since we have decided that Owen's bid should not have been accepted, it is not necessary for us to consider its claim for lost profits and attorney's fees based upon its failure to receive award. However, we note parenthetically that, even if the claimant is wrongfully denied a contract, compensation for lost profit and the cost of pursuing a protest is not recoverable against the government. Keco Industries, Inc. v. United States, 428 F.2d 1233 (1970); Robert Swortzel, B-188764, April 22, 1977, 77-1 CPD 280; Kent Uniform Company, B-188931, July 25, 1977, 77-2 CPD 46.



Acting Comptroller General
of the United States