

DECISION



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

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FILE: B-219458 DATE: November 1, 1985
MATTER OF: Smoke Busters

DIGEST:

1. GAO will not disturb a small purchase contract where after award the contracting agency discovers that protester's timely lower quotation had been misplaced since agency's error was not the result of a conscious or deliberate effort to exclude the protester from consideration.
2. Recovery of quotation preparation expenses and the cost of filing and pursuing the protest is denied where a protest is found without merit. Recovery of lost profits is not permitted under any circumstances.

Smoke Busters (SB) protests the award of a contract to Medina Reforestation (Medina) under request for quotations (RFQ) No. 10-Q50-85, issued by the United States Forest Service for the manual clearing of vegetation from 26 acres of land. SB's quotation was lower than Medina's and SB argues that it should have been awarded the contract. Since the contract has now been performed, SB requests that it be awarded the costs it incurred in preparing its quotation and its lost profits.

We deny the protest and the claim.

Eight quotations were received by the agency by the May 22 due date. The Forest Service indicates that an abstract of quotations was not prepared but that in accordance with current procedures, the quotations were stacked in ascending order according to price. The firms submitting the two lowest quotations were permitted to perform small portions of the work to determine whether their prices were realistic. Both firms decided that their prices were too low, and both declined to accept the award. SB submitted the third lowest quote (\$6,925.10); however, the Forest Service states that SB's quotation, as well as the next two quotations in line for award, were

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inadvertently misplaced. Medina, which actually submitted the sixth lowest quote (\$7,624.50), was thought to be third lowest and on June 18 was awarded the contract.

By letter dated June 19, SB was advised of this action. On June 28, SB questioned the award in view of its lower priced quotation and, at this point, the contracting officer discovered the error. The contracting officer told SB that the agency was legally bound to proceed with Medina and that, consequently, no relief could be given SB. The Forest Service indicates that Medina began performance on July 3.

SB's protest was filed with our Office on July 8. By that time, the Forest Service states that 40 percent of the work had already been completed. Because notice of the protest was not received by the Forest Service within 10 calendar days of the award, the Forest Service did not suspend contract performance. See 4 C.F.R. § 21.4 (1985).

The Forest Service states that SB's quotation was misplaced and indicates that steps have been taken to prevent this from recurring. The Forest Service argues, however, that SB is not entitled to recover its quotation preparation expenses since the RFO clearly stated that the submission of a quotation does not commit the government to pay any of the costs incurred. The Forest Service contends that under the small purchase procedures which were utilized, award need not be made to the lowest quoter and that the award to Medina was considered advantageous. The Forest Service argues that SB may not have necessarily received the award even if its quotation had been considered since it would have been necessary to consider the firm's responsibility.

It is unfortunate that SB's quotation was misplaced and that this error was not discovered until after the contract to Medina had already been awarded. However, we have considered similar circumstances in the past and we have held that the need for the orderly and expeditious fulfillment of an agency's requirements precludes disturbing a small purchase contract based on a misplaced offer discovered after award, absent evidence of a conscious or deliberate effort by contracting personnel to prevent the selection of that offeror. Hewitt Tool & Die, B-213767, Mar. 26, 1984, 84-1 CPD ¶ 349, R.E. White & Assoc., Inc., 61 Comp. Gen. 320 (1982), 82-1 CPD ¶ 294. There is no evidence that the loss of SB's quotation resulted from a deliberate effort to exclude SB from competition and we therefore find no basis to object to the award to Medina.

The protest is denied.

Since we have found SB's protest to be without legal merit, we also deny its claim for quotation preparation expenses. See Monarch Engineering Co., B-218374, Jan. 21, 1985, 85-1 CPD ¶ 709. With respect to SB's claim for loss of profits, our Office has recognized the general rule that anticipated profits may not be recovered even in the presence of wrongful action. Effective Learning, Inc.-- Request for Review of Prior Claim Decision, B-215505, Feb. 19, 1985, 85-1 CPD ¶ 207.

for Seymour E. Evers
Harry R. Van Cleve
General Counsel