



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interstate Diesel Service, Inc.--Reconsideration

File: B-229622.2

Date: April 29, 1988

DIGEST

Request for reconsideration is denied where it raises no factual or legal grounds other than those considered initially and indicates only disagreement with initial decision denying protest.

DECISION

Interstate Diesel Service, Inc., requests reconsideration of our decision in Interstate Diesel Service, Inc., B-229622, Mar. 9, 1988, 88-1 CPD ¶ , in which we denied Interstate's protest and claim for bid preparation and protest costs concerning the failure of the Defense Construction Supply Center (DCSC) to consider an offer submitted by Interstate in response to request for quotations (RFQ) No. DLA700-87-Q-NG24, issued for the acquisition of a quantity of fuel injectors.

We deny the request for reconsideration.

In its original protest, Interstate alleged that DCSC had lost its quotation after it had been delivered to the contracting activity. Because the RFQ was issued pursuant to the small purchase procedures contained in the Federal Acquisition Regulations (FAR) part 13, the agency was not required to notify unsuccessful offerors at the time award was made. Consequently, Interstate's original protest was not filed in our Office until performance of the contract had been completed and the firm therefore sought only an award of its bid preparation costs and its costs associated with filing and pursuing its protest including attorney's fees.

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The agency, while not denying that the parcel mailed to its installation (and allegedly containing Interstate's quote) was lost or misplaced, argued that the protest should be denied.

In our initial decision, we noted that where a bid has been lost after being received by the agency prior to bid opening, it is not reasonable or permissible to allow the bidder to resubmit the bid since award of a contract on the basis of self-serving statements as to the contents of the bid would not be consistent with the maintenance of the competitive bidding system. See Antenna Products Corp., B-223154, Aug. 11, 1986, 86-2 CPD ¶ 176. Moreover, the record contained no evidence that the loss of the quote had anything to do with a specific intent to exclude Interstate from competition, but was rather a result of apparent negligence.

In its request for reconsideration, Interstate agrees with the conclusion that it would not have been entitled to resubmit its quote had award been pending at the time of its original protest but disagrees with the conclusion that it is therefore not entitled to its costs. The firm argues that our Office should distinguish between the remedy of allowing it to resubmit its quote and the remedy of awarding it its costs; in essence, Interstate argues that, by virtue of the fact that it has proven that the agency lost its quote, it has succeeded upon the merits of its protest. Stated differently, Interstate argues that it has succeeded in showing that the agency conducted the procurement in a fashion which was not in accordance with statute and regulation by failing to consider its offer and, thus, it is entitled to its costs.

We disagree. As noted in our prior decision we view the agency's loss of Interstate's quote as a matter of negligence. Indeed, Interstate does not now argue or prove that DCSC's actions amounted to anything other than negligence. Accordingly, the actions of DCSC cannot form the basis of an award of costs since, as we pointed out in our first decision, mere negligence or lack of due diligence on the part of an agency, standing alone, does not rise to the level of arbitrary or capricious action sufficient to warrant the award of bid preparation and protest costs. Restoration Unlimited, Inc., et al., B-221862, May 28, 1986, 86-1 CPD ¶ 493.

In the final analysis, we view Interstate's request for reconsideration as merely an expression of that firm's disagreement with our original decision and not the allegation of an error of fact or law sufficient to warrant reversal of our original decision. Accordingly, we deny the

request for reconsideration. See American Service
Technology, Inc.--Reconsideration, B-228881.2, Nov. 24,
1987, 87-2 CPD ¶ 515.

for *James F. Hinchman*
James F. Hinchman
General Counsel