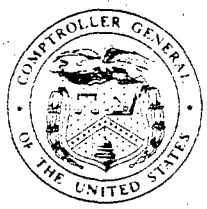
13892 Mr. Siegel

DECISION



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

FILE: B-197706.3 DATE: June 3, 1980

MATTER OF: Custodial Guidance Systems, Inc. DLG003

[Protest Against Contract Award]

DIGEST:

1. Protest filed with GAO more than 10 days after notification of initial adverse agency action (denial of protest to agency) is untimely and will not be considered.

2. Protest which essentially concerns propriety of wage determination acccompanying IFB for custodial services does not raise significant issue within meaning of GAO Bid Protest Procedures. Therefore, GAO will not consider untimely protest raising that issue.

3. Unsuccessful bidder may not recover lost profits against Government.

Custodial Guidance Systems, Inc. (Custodial) protests the award of a contract for custodial services under invitation for bids (IFB) No. GS-05B-42034 issued by the General Services Administration (GSA) Region 5. Custodial maintains that the IFB contained a Wage Determination which was outdated and meaningless because Custodial, the incumbent contractor, was in the midst of negotiating a new wage agreement with the local union. Custodial argues that GSA's failure to provide bidders with current wage data or include an escalation clause or some other mechanism to accommodate higher wages (of which Custodial was aware) were improprieties which denied Custodial its right to compete for the contract on the same bases as its competitors. AGC02

The IFB was issued on December 28, 1979; bid opening was February 12, 1980. On February 12, Custodial protested to GSA, contending that the wage determination contained in the solicitation was erroneous because of the incipient change in the applicable wage base which would provide for higher wages. GSA denied the protest on February 15.

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By letter to GSA dated February 26, Custodial responded to the denial of its protest, stating:

> "After careful consideration, we have decided not to pursue our protest further, and to accept your decision. We do feel, however, that the bidding was unfair, in that the only bidder who had complete knowledge of the costs involved for the new contract year, was CGS [Custodial]."

On May 6, 1980 Custodial, through its present counsel, filed a protest with our Office. The grounds of this protest are essentially the same as that originally filed with GSA on February 12 and withdrawn after denial by GSA.

Our Bid Protest Procedures (4 C.F.R. Part 20 (1980)) provide in Section 20.2(a) that if a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after notification of initial adverse agency action.

Here, Custodial not only was advised on February 15 of the denial of its protest but on February 26 notified the agency of its "acceptance" of GSA's decision. Although Custodial argues that it was not until April 25, 1980, that it "received definitive information" indicating that the new contractor was paying the outdated wage rates we fail to see the relevance of that fact to the protester concern with the alleged IFB deficiency. Thus, the protes to this Office of May 6 is clearly untimely and not for consideration on the merits. JRT & T Associates, B-197061 December 31, 1979, 80-1 CPD 4.

Counsel for Custodial requests that if we find the protest untimely, we consider it under Section 20.2(c) of our Bid Protest Procedures because it raises issues significant to procurement practices and procedures. Significant issues are those which involve a procurement principle of widespread interest, 52 Comp. Gen. 20 (1972), or which affect a broad class of procurements. Singer

Company, 56 Comp. Gen. 172 (1976), 76-2 CPD 481; Loud Enginering and Manufacturing, Inc., B-195189, December 27, 1979, 79-2 CPD 439. We do not consider Custodial's unhappiness with the IFB, which reflected the collective bargaining agreement then in effect, to be a significant issue within the meaning of Section 20.2(c) of our procedures.

Custodial also requests recovery of anticipated profits. There is no legal basis for allowing an unsuccessful bidder recovery of such profits. United Telecontrol Electronics, Inc., B-191981, February 14, 1979, 79-1 CPD 104.

The protest is dismissed.

Harry R. Van Cleve
for Milton J. Socolar
General Counsel