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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Project Resources, Inc.

File: B-297968

Date: March 31, 2006

Jeremiah D. Jackson for the protester.

Annette B. Kuz, Esq., and William L. Henson, Esq., Department of the Army, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the record shows that the agency lost the protester's proposal, a protest of the agency's evaluation and award decision is nevertheless denied because the record does not demonstrate a systemic failure in the agency's proposal receipt process.

DECISION

Project Resources, Inc. (PRI) protests the failure of the U.S. Army Corps of Engineers to evaluate its proposal for environmental remediation services under request for proposals (RFP) No. W91238-05-R-0022. PRI contends that the agency lost its proposal and requests that the proposal be evaluated.

We deny the protest.

The RFP provided that the agency would award up to five indefinite-delivery/indefinite-quantity (ID/IQ) contracts for remediation services to section 8(a) contractors. The RFP required that proposals be submitted to the Department of the Army at the office of the Sacramento District Corps of Engineers, in Sacramento, California, no later than 2 p.m. on October 12, 2005. PRI shipped its proposal via FedEx, and the FedEx tracking slip shows that the package was received by the agency at 9:38 a.m. on October 12. The agency acknowledges timely receipt of the proposal (as evidenced by the FedEx receipt), but apparently the agency lost the proposal before it was evaluated. On January 31, the agency made award to five section 8(a) firms, not including PRI. After PRI informed the agency post-award that it had submitted a proposal, the agency searched for PRI's proposal and has been unable to locate it. The contracting officer asserts that, prior to the instance here,

she knows of “no comparable disappearance of a proposal within the [contracting] District.” Contracting Officer’s Affidavit at 1.

PRI protests the failure of the agency to evaluate its proposal. It has provided a copy of its proposal, which it asserts is an exact duplicate of the original proposal that was timely submitted and lost, and requests that we direct the agency to evaluate it.

Agencies have a fundamental obligation to have procedures in place to receive submissions for competitors under a solicitation, to reasonably safeguard submissions received, and to fairly consider all submissions received. As a practical matter, however, even with appropriate procedures in place, an agency may lose or misplace a submission, and such occasional loss—even if through agency negligence—generally does not entitle an aggrieved competitor to relief. Shubhada, Inc., B-292437, Sept. 18, 2003, 2003 CPD ¶ 161 at 3-4; American Material Handling, Inc., B-281556, Feb. 24, 1999, 99-1 CPD ¶ 46 at 3.

This arguably harsh result is justified by the unique circumstances arising in protests concerning lost information. The only means generally available to establish the content of lost information is for the protester to reconstruct that information. However, allowing an offeror to establish the content of its lost proposal after the closing date has passed would be inconsistent with maintaining a fair competitive system. Shubhada, Inc., supra, at 4. Here, the only evidence of the content of the information that the protester may have submitted prior to closing is a copy of that information produced by PRI during this protest process. The record does not contain any pre-closing evidence of the content of PRI’s proposal that the agency properly could evaluate. We therefore will not disturb the agency’s decision not to reopen the competition to evaluate PRI’s proposal.

Our Office has recognized a limited exception to the rule that negligent loss of proposal information does not entitle the offeror to relief. The exception generally applies where the loss was not an isolated act of negligence, but was the result of a systemic failure resulting in multiple or repetitive instances of lost information. East West Research Inc., B-239565, B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147 at 4. However, the exception does not apply here. There is no evidence that the agency, for example, lost the proposal information submitted by other offerors in this procurement or that the agency previously lost proposal information.

The protest is denied.

Anthony H. Gamboa
General Counsel