

summary  
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**DECISION**



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

**FILE:** B-218448.3 **DATE:** July 16, 1985  
**MATTER OF:** Beaver Linoleum and Tile Company, Inc.--  
Reconsideration

**DIGEST:**

Prior decision which denied successful protester's claim for bid preparation costs because, in effect, protester was found nonresponsive by agency and thus did not have a substantial chance of receiving award is affirmed on reconsideration. Protester's allegation that agency found it responsible is contradicted by the record.

Beaver Linoleum & Tile Co., Inc., requests that we reconsider our decision in Beaver Linoleum & Tile Co., Inc., B-218448.2, June 5, 1985, 85-1 C.P.D. ¶ \_\_\_\_, denying Beaver's claim for bid preparation costs, which followed the sustaining of its initial protest in Beaver Linoleum & Tile Co., Inc., B-215705, Dec. 3, 1984, 84-2 C.P.D. ¶ 604. Beaver alleges that our decision contains errors of fact which warrant its reversal.

We affirm our prior decision.

In the December 3, 1984, decision, we found that the General Services Administration (GSA) had erroneously rejected Beaver's bid as nonresponsive because it did not believe Beaver would comply with a specification requiring carpet tile to be of "fusion bonded construction"--a matter of bidder responsibility, not responsiveness. Because Beaver was a small business, it could not be precluded from award on the basis of a nonresponsibility determination without referral of the matter to the Small Business Administration (SBA) for final disposition under certificate of competency procedures. We held that GSA's rejection of Beaver's bid without referral to SBA was unreasonable.

In our June 5, 1985, decision denying Beaver's claim for bid preparation costs, we noted that award of bid preparation costs is only justified where the protester shows both that the government's conduct towards the protester was arbitrary and capricious and that, if the government had

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acted properly, the protester would have had a substantial chance of receiving the award. To have had a substantial chance of receiving the award, Beaver must have been a responsible contractor. We pointed out that GSA, in effect, found Beaver was not a responsible contractor because it believed Beaver would not comply with the specification requiring carpet tile to be of "fusion bonded construction." Since SBA had not reviewed Beaver's responsibility and because entitlement to bid preparation costs was at issue, we reviewed what, in effect, was GSA's negative responsibility determination. Because Beaver did not show that there was a lack of a reasonable basis for GSA's determination, or that there was bad faith on the part of GSA officials, we deferred to GSA's judgment. We denied Beaver's claim because it failed to demonstrate that if the government had acted properly, Beaver would have had a substantial chance of receiving the award.

In its request for reconsideration, Beaver asserts that the record shows that GSA determined the tile Beaver intended to use was fusion bonded and met the specification. We find no support in the record for this contention. To the contrary, the record shows that Beaver made a technical presentation to GSA on June 26, 1984, to demonstrate that the carpet tile it intended to use was fusion bonded; that the matter was reviewed by a GSA interior design specialist who concluded in a memo dated June 29, 1984, that the carpet tile Beaver intended to use was not of fusion bonded construction; and that based on the specialist's technical advice, the contracting officer decided to reject Beaver's bid as nonresponsive.

Since Beaver has not shown any error of fact or law in our prior decision, it is affirmed. See Richard Hoffman Corporation--Reconsideration, B-218134.2, Feb. 25, 1985, 85-1 C.P.D. ¶ 238.

for   
Comptroller General  
of the United States