



Comptroller General  
of the United States  
Washington, D.C. 20548

1215227

## Decision

**Matter of:** Maintenance and Repair

**File:** B-251223.2

**Date:** July 20, 1993

G. Michael Van Alstine for the protester.  
Frank Ledford, Jr., Department of the Navy, for the agency.  
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Even where a protester is wrongfully denied a contract,  
there is no legal basis to allow the recovery of lost  
profits.

### DECISION

Maintenance and Repair requests reconsideration of our  
recommendation in Maintenance and Repair, B-251223, Mar. 19,  
1993, 93-1 CPD ¶ 247, in which we denied in part and sus-  
tained in part Maintenance and Repair's protest against the  
rejection of its bid and the award of the contract to  
another bidder under invitation for bids (IFB) No. M00681-  
92-B-0042, issued by the United States Marine Corps, for a  
quantity of chemical sealant.

We deny the request for modification of our recommendation.

In our prior decision, we denied Maintenance and Repair's  
protest that the Marine Corps improperly rejected its low  
bid as nonresponsive, since the descriptive literature  
submitted with the protester's bid failed to show that the  
offered product complied with the IFB specifications. We  
also found that the agency improperly accepted the awardee's  
bid, since the descriptive literature submitted with that  
bid similarly failed to show that the awardee's product  
complied with the specifications.<sup>1</sup> We did not recommend

<sup>1</sup>In its reconsideration request, Maintenance and Repair  
complains that our decision did not address its contention  
(continued...)

corrective action in this case because performance under the contract was substantially complete, but found the protester entitled to recover its costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d) (1993). Maintenance and Repair was not entitled to recover its bid preparation costs since its bid was nonresponsive.

In its reconsideration request, Maintenance and Repair asks that we modify our recommendation that the agency pay only its protest expenses and declare it entitled to its lost income resulting from the rejection of its bid. Even where a bidder has been wrongfully denied the award of a contract, there is no legal basis for allowing recovery of lost profits. Firebird Constr. Corp.--Recon., B-246182.2, May 27, 1992, 92-1 CPD ¶ 473. In any case, here Maintenance and Repair was not wrongfully denied the award of the contract because it submitted a nonresponsive bid--a fact that Maintenance and Repair does not dispute. See NJCT Corp., B-224246, Feb. 13, 1987, 87-1 CPD ¶ 159.<sup>2</sup>

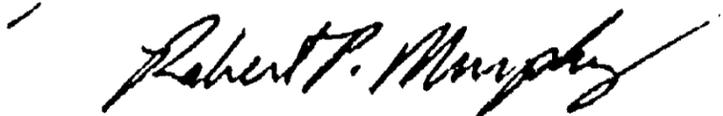
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<sup>1</sup>(...continued)

that the agency was "using an undisclosed material specification for writing their specifications (demonstrates preferential treatment)" and was "writing specifications around a particular product and vendor." We fail to understand the protester's point since the awardee's bid was nonresponsive to the IFB specifications. In any case, since the protest was otherwise sustained, this issue did not need to be addressed.

<sup>2</sup>Maintenance and Repair also questions why performance under the contract was not suspended as a result of the protests it filed with the agency and the General Accounting Office (GAO). The agency awarded the contract on September 18, 1992, and provided notice of award to Maintenance and Repair on the same date. Maintenance filed an agency-level protest on September 23, 1992, but, receiving no response from the agency, filed a protest with our Office on November 4. Under the Competition in Contracting Act (CICA) and our Bid Protest Regulations, a contracting agency must suspend contract performance if it receives notice of a GAO protest within 10 calendar days of the date of contract award. 31 U.S.C. § 3553(d) (1) (1988); 4 C.F.R. § 21.4(b). Agency-level protests do not trigger the automatic stay provisions of CICA, however. C&W Equip. Co., B-220459, Mar. 17, 1986, 86-1 CPD ¶ 258. Since Maintenance did not file a GAO protest within 10 calendar days of award and its agency-level protest was ineffective to invoke an automatic stay, the agency was not required to suspend contract performance during the pendency of Maintenance and Repair's GAO protest.

The request for modification of our recommendation is denied.

  
for James F. Hinchman  
General Counsel