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DECISION



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

FILE: B-221335.2

DATE: May 30, 1986

MATTER OF: California Stevedore and Ballast Company--
Reconsideration

DIGEST:

When agency and General Accounting Office records indicate that an incumbent contractor was notified of a protest, the incumbent's unsupported statement that it did not receive such notice is not sufficient to meet its burden of proving that it was deprived of its right to participate in the protest process. Since Bid Protest Regulations limit the right to request reconsideration to interested parties that participated in a protest, the General Accounting Office will dismiss a request for reconsideration filed by an incumbent that did not participate, along with a request for costs of recompeting and requesting reconsideration.

California Stevedore and Ballast Company requests that we reconsider our decision in Greenleaf Distribution Services, Inc., B-221335, Apr. 30, 1986, 86-1 CPD ¶ _____. In that decision, we sustained Greenleaf's protest against the failure of the Army to provide the firm with an opportunity equal to that of the other offerors to submit a revised best and final offer. We recommended that the Army reopen negotiations and, if the evaluation results warrant, terminate the contract awarded to California Stevedore under request for proposals (RFP) No. DAHC24-85-R-0003 for services at the Military Ocean Terminal, Oakland, California.

We dismiss the request for reconsideration.

In its reconsideration request, California Stevedore contends that it did not have notice of Greenleaf's protest until it received our decision and that it was therefore deprived of its right, as an interested party, to participate in the protest process. California Stevedore further protests the reopening of negotiations and the possible

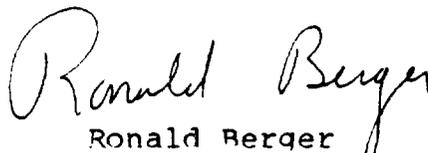
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decision to terminate its existing contract, citing the "modest seriousness" and technical nature of the procurement deficiency, the prejudice to its firm upon termination, the expected cost to the government, and the resulting disruption of Army operations.

First, although California Stevedore maintains that it did not have notice of Greenleaf's protest, the Army's records indicate that such notice was in fact sent to California Stevedore by Express Mail on January 6, 1986 and that this notice confirmed a telephone notification of December 23, 1985. Moreover, on January 27, 1986, our Office notified California Stevedore, at the correct address, of a conference on the Greenleaf protest scheduled for February 6, 1986, and of its right to file comments within 5 working days after the conference in accord with our Bid Protest Regulations, 4 C.F.R. § 21.5 (1985). California Stevedore neither attended the conference nor filed comments. Thus, while California Stevedore asserts that it failed to receive either the Army's notice of the protest or our notice of the conference, in light of the information reflected by the Army's records and ours, we must conclude that California Stevedore has not met its burden of proof in this regard.

Our Bid Protest Regulations permit an interested party who participated in the protest to request reconsideration of a decision on the protest. 4 C.F.R. § 21.12. Since California Stevedore did not participate, it is not eligible to seek reconsideration of our April 30 decision. We point out, however, in response to its concerns, that we did consider the seriousness of the procurement deficiency as well as possible prejudice to offerors and cost and disruption to the Army, before adopting our recommendation.

The request for reconsideration is dismissed, as is California Stevedore's request for the cost of recompeting and the cost of filing and pursuing its request for reconsideration.


Ronald Berger
Deputy Associate
General Counsel