



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Bush Painting, Inc.--Modification of Remedy

**File:** B-239904.2

**Date:** January 11, 1991

Lt. Col. William J. Holland, Department of the Air Force, for the agency.

Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Prior decision is modified to delete recommendation that awardee's contract be terminated for the convenience of the government and contract awarded to protester where contract is 90 percent complete and protester is unwilling to accept the portion of the contract that is not completed; instead, protester is entitled to recover its bid preparation and protest costs.

## DECISION

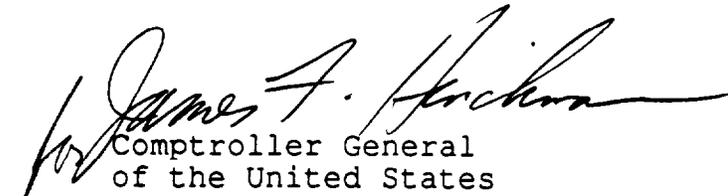
We modify the corrective action recommended in our decision in Bush Painting Inc., B-239904, Aug. 30, 1990, 90-2 CPD ¶ 188.

Bush Painting, Inc. protested the award of a contract to McKinley Maintenance/McKinley General Contractors under invitation for bids (IFB) No. F65503-90-B-0013, issued by the Department of the Air Force for painting petroleum tanks at Eielson Air Force Base (AFB), Alaska. Bush alleged that McKinley, the low bidder, submitted a nonresponsive bid and that the Air Force improperly permitted McKinley to correct a mistake in its bid to include the cost of sandblasting the tank exteriors. We sustained the protest because we found that McKinley did not provide clear and convincing evidence of its intended bid price and thus the Air Force improperly permitted McKinley to correct the bid.

After the protest was filed, the Air Force determined that it was in the best interest of the government to continue performance notwithstanding the protest. When we sustain a protest under these circumstances, we are required by the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(b)(2) (1988), to make our recommendation for corrective action without regard to any cost or disruption

from terminating, recompeting or reawarding the contract. Accordingly, we recommended that the Air Force terminate the contract awarded to McKinley and award a contract to Bush, if Bush was otherwise eligible for award. We also found that Bush was entitled to recover the costs it incurred in filing and pursuing the protest. See 4 C.F.R. § 21.6(d)(1) (1990).

Subsequent to the issuance of our decision, the protester informed us that it was not interested in performing the remaining portion of the contract, which, according to the Air Force, amounted to approximately 10 percent of the work. The Air Force permitted McKinley to complete the contract. In light of these circumstances, we revise our previous recommendation that McKinley's contract be terminated and the contract awarded to Bush, and conclude that Bush should recover its bid preparation costs as well as protest costs. See Paper Corp. of United States, B-229785, Apr. 20, 1988, 88-1 CPD ¶ 388.

  
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