



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Firebird Construction Corp.--Reconsideration

File: B-246182.2

Date: May 27, 1992

Justin M. Block, Esq., Jaeger & Block, for the protester. Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Recommendation that contracting agency pay protester its bid preparation costs and costs of filing and pursuing its protest is affirmed on reconsideration where the protester has not shown that our prior decision contains either errors of fact or law, and there is no legal basis for allowing the lost profits requested by the protester.

DECISION

Firebird Construction Corp. requests reconsideration of the recommended corrective action in our decision, Firebird Constr. Corp., B-246182, Feb. 21, 1992, 71 Comp. Gen. _____, 92-1 CPD ¶ 211. In that decision, we sustained Firebird's protest of the rejection of its bid as nonresponsive for failure to properly execute the Certificate of Procurement Integrity under invitation for bids (IFB) No. GATE-185A, issued by the National Park Service, Department of the Interior, and recommended that Firebird be awarded its bid preparation costs and the costs of filing and pursuing its protest. Firebird requests that our recommendation be modified to include payment of lost profits.

We affirm the initial decision.

Firebird's bid was signed by William Skolnik, in his capacity as the company president and Skolnik also signed as the certifier of the certificate. The agency rejected Firebird's bid as nonresponsive because Firebird neglected to fill in the "Name of Offeror" blank on the otherwise properly executed certificate. We found that Firebird's failure to insert its company name on its signed certificate did not render its bid nonresponsive, and should have been waived as a minor informality.

Suspension of contract performance was not required under the Competition in Contracting Act. (CICA), 31 U.S.C. § 3553(d) (1) (1988), because the protest had been filed in our Office more than 10 calendar days after award was made. Because the contract had been substantially performed, termination was not feasible; therefore, we recommended that Firebird be awarded its bid preparation costs and the costs of filing and pursuing its protest.

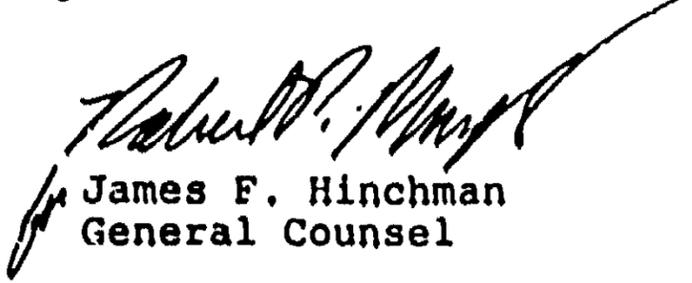
In its reconsideration request, Firebird asks that we modify our recommendation that the agency pay only bid preparation costs and the costs of filing and pursuing its protest to recommend payment of its lost anticipated profits. The simple answer is that even where a bidder has been wrongfully denied award of a contract, there is no legal basis for allowing recovery of lost profits. Ralph Turnbull--Claim for Costs and Lost Profits, B-238399, Feb. 12, 1990, 90-1 CPD ¶ 183; Intrrol Corp., 64 Comp. Gen. 672 (1985), 85-2 CPD ¶ 35.

Firebird also questions why performance under the contract was not suspended as a result of its protest. Contract award was made on September 27, 1991, and Firebird filed its protest with our Office on October 10, which Firebird points out was within 10 working days of that date. Therefore, Firebird contends that the agency improperly continued performance during the pendency of the protest.

The protester has confused the requirements regarding suspension of contract performance with the requirements concerning the timely filing of a protest with our Office. Under CICA and our Bid Protest Regulations, a contracting agency is required to suspend contract performance if it receives notice of a protest from our Office within 10 calendar days of the date of contract award (emphasis added). 31 U.S.C. § 3553(d) (1) (1988); 4 C.F.R. § 21.4(b) (1992). Since the award was made on September 27, Firebird needed to have filed its protest with our Office in sufficient time to have permitted the Department of the Interior to be notified of the protest by October 7. Firebird's October 10 protest was untimely insofar as obtaining cessation of contract performance. Infab Corp., B-238423, May 29, 1990, 90-1 CPD ¶ 506. However, the protest was filed less than 10 working days after the protester knew, or should have known, of the basis of its

protest; hence, it was timely filed for purposes of
obtaining consideration of the protest on the merits.
4 C.F.R. § 21.2(a)(2).

The prior decision is affirmed.



James F. Hinchman
General Counsel