

DOCUMENT ISSUE

02072 - [A1172158]

[Claim for Loss of Government Contract]. B-188764. April 22, 1977. 2 pp.

Decision re: Robert Swartzel; by Robert F. Keller, Deputy Comptroller General.

**Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).**

Organization Concerned: Department of Agriculture.

**Authority: 54 Comp. Gen. 66. 54 Comp. Gen. 509. B-186954 (1976).
Kecc Industries Inc. v. United States, 428 F.2d 1233 (1970).**

Claimant protested the award of a contract for debris removal in connection with the Elk Creek Flood Control Project. Claim for loss of a Government contract or lost profits is not recoverable against the Government. The claim for bid preparation costs must be denied where the claimant's bid was rejected because it was patently nonresponsive to the specifications. GAO does not review affirmative responsibility determinations or the adequacy of an agency's inspection of a competitor's performance, except in special instances not present here. (Author/SC)

02072

DECISION



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

FILE: B-188764

DATE: April 22, 1971

MATTER OF: Robert Swortzel

DIGEST:

1. Claim for loss of Government contract, or lost profits, is not recoverable against Government. Moreover, claim for bid preparation costs must be denied where claimant's bid was rejected because it was patently nonresponsive to specifications.
2. GAO does not review affirmative responsibility determinations unless fraud is shown on the part of procuring officials or in other circumstances not relevant here.
3. Adequacy of agency's inspection of competitor's performance is matter of contract administration and not for consideration under GAO bid protest procedure.

Robert Swortzel protests award of a contract to Clyde J. Lahti under solicitation SCS-150-MT-76, issued by the Department of Agriculture for debris removal in connection with the Elk Creek Flood Control Project.

Mr. Swortzel complains that award was made to another bidder, notwithstanding that appropriate inquiries prior to award should have revealed to the contracting officer that the contractor did not intend to perform in accordance with the specifications. Although Mr. Swortzel concedes that he qualified his low bid, he moreover seeks, "satisfactory compensation for the loss of the contract * * *." He states that "to ignore this contract violation is to make a mockery of any bid requests * * * [,] encourages falsifications on bid schedules, denies the opportunity of fair and appropriate bidding, and insures difficulty with the completion of projects so contracted."


B-188764

The short answer to this claim is that compensation for loss of contract, that is lost profits, is not recoverable against the Government even if a claimant is wrongfully denied a contract. Keco Industries, Inc. v. United States, 428 F.2d 1233 (1970). Moreover, although it is unclear whether claimant is requesting bid preparation costs, any such claim would be denied in this case on the basis that claimant's patently nonresponsive bid was required to be rejected under fundamental principles of competitive bidding. The fact that contract performance by another bidder may not have conformed to specifications does not provide this claimant with a legal basis for securing compensation for loss of contract.

To the extent that the actions complained of constitute a bid protest concerning the Government's affirmative determination of the contractor's responsibility, this Office does not review affirmative responsibility determinations unless fraud is shown on the part of procuring officials or in other circumstances not relevant to this case. Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64 and Yardney Electric Co., 54 Comp. Gen. 507 (1974), 74-2 CPD 376.

Moreover, to the extent the adequacy of the agency's inspection of a competitor's performance is being questioned, such allegation pertains to a matter of contract administration and is not for consideration under our bid protest procedures. General Fire Extinguisher Corporation, B-186954, November 15, 1976, 76-2 CPD 412. In this connection, we note that the Department has investigated Mr. Swortzel's allegations and it agrees that the contractor's equipment did not conform to the specifications. However, at the time this matter was brought to the agency's attention the contract work was completed.

Accordingly, relief is denied.


Deputy Comptroller General
of the United States