

Halperin

DECISION



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

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FILE: B-218484.2; **DATE:** May 17, 1985
B-218485.2
MATTER OF: Swan Industries--Request for
Reconsideration

DIGEST:

1. A small business contractor need not submit offers under unrestricted solicitations in order to be an interested party to protest that the procurements should have been set aside for small businesses since the contractor could gain a direct economic benefit from the remedies sought, cancellation and resolicitation as small business set-asides.
2. Arguments and analyses presented by an agency in its request for reconsideration of a decision will not be considered where the agency failed to present such arguments with its reports on the protest, and the information which forms the basis for the arguments was available at that time.

The Department of the Navy (Navy) requests reconsideration of our decision in Swan Industries, B-217199, et al., Mar. 25, 1985, 85-1 C.P.D. ¶ 346.

We affirm our prior decision.

Although we denied Swan Industries' (Swan) protest on the merits, we disagreed with the Navy's contention that Swan was not an interested party to protest that the Navy issued the two solicitations involved on an unrestricted basis rather than setting them aside for small businesses. We concluded that Swan was an interested party even though it did not submit offers on the unrestricted solicitations because the remedies that Swan sought were resolicitations, which would be set aside for small businesses. If Swan's protest was successful it would have been a potential competitor on the resolicitations and, therefore, Swan had the requisite direct economic interest to be an interested party. Deere & Co., B-212203, Oct. 12, 1983, 83-2 C.P.D. ¶ 456.

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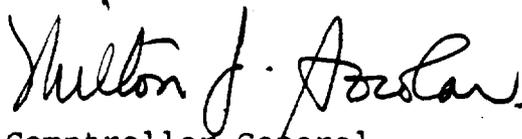
In its request for reconsideration, the Navy argues that Swan's situation is distinguishable from the facts in Deere and similar decisions. The Navy states that in Deere, the nonofferor was found to be an interested party because, allegedly, unduly restrictive specifications effectively precluded Deere from submitting an offer. The Navy contends that Swan's situation was different because nothing precluded Swan from submitting offers under the unrestricted solicitations.

We do not agree with the distinction which the Navy is trying to draw. In its protest, Swan argued that the Navy failed to comply with the Small Business Act and regulations designed to assist small businesses in receiving government contract awards. We do not believe that small businesses should have to submit an offer under an unrestricted solicitation in order to protest that an agency's determination to not set aside the procurement is improper. All that is necessary is that the small business be eligible to compete under a resolicitation set aside for small business.

In its request for reconsideration, the Navy raises for the first time the argument that under a resolicitation, the Standard Industrial Classification (SIC) Code would be 7392 and Swan could not compete because its annual receipts exceed the maximum amount for that SIC Code. The Navy contends, therefore, that even assuming that the failure to set aside the procurements resulted in an impropriety affecting Swan's economic interest, Swan still fails to qualify as an interested party.

We will not consider this newly presented argument at this time. Our regulations do not permit piecemeal presentation of information or arguments to our Office and we have held that parties that fail to submit all relevant information for our initial consideration do so at their own peril. Griffin-Space Services Co.--Reconsideration, 64 Comp. Gen. 64 (1984), 84-2 C.P.D. ¶ 528.

Our prior decision is affirmed.

for 
Comptroller General
of the United States