

DECISION

Shantley

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

FILE: B-221510.2 **DATE:** June 25, 1986

MATTER OF: Randolph Engineering, Inc.--Request for
Reconsideration

DIGEST:

Prior decision is affirmed where request for reconsideration presents no new evidence in support of protester's contentions and fails to show factual or legal error in GAO's conclusion that discrepancies in place of performance and small business status certifications of low bid on unrestricted portion of partial labor surplus area set-aside solicitation do not render bid nonresponsive.

Randolph Engineering, Inc. (Randolph), requests reconsideration of our decision in Randolph Engineering, Inc., B-221510, May 2, 1986, 86-1 CPD ¶ , in which we denied in part and dismissed in part its protest of the proposed award to the Bonneau Company (Bonneau) under invitation for bids (IFB) No. DLA100-85-B-1321, issued by the Defense Logistics Agency. We affirm our prior decision.

The IFB, issued as a partial labor surplus area (LSA) set-aside, solicited bids on a total quantity of 85,511 sunglasses, with case; the procurement of one-half of the items was competed on an unrestricted basis, and the remaining half was set aside for preferential award to LSA concerns. Randolph's protest concerned the proposed award of the unrestricted portion to Bonneau, the low bidder by \$63,706.

In its request for reconsideration, Randolph reasserts and reiterates three of the bases of its initial protest. Randolph charges that our May 2, 1986, decision fails to consider the effect of "misrepresentations" in Bonneau's bid that it is a small business and that it will furnish supplies manufactured by a small business. The protester expresses the view that the errors in the small business certification in Bonneau's bid serve to place

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Bonneau in a more favorable priority status for the conduct of negotiations under the LSA set-aside portion of the procurement. Randolph further asserts that our decision "reaches unsupported conclusions" concerning alleged misrepresentations in the place of performance certification in Bonneau's bid. The protester contends that because of these discrepancies, Bonneau's bid is nonresponsive since "an offer which misrepresents factual information material to [the] determination of acceptability for award renders the bid nonresponsive."

In response to Randolph's allegation that Bonneau's bid was nonresponsive because Bonneau would not furnish goods manufactured by a small business (which the protester claimed was required by the solicitation), we stated that the proposed awardee's small business size status was not a valid basis for protest since the solicitation was not a small business set-aside. Further, since the procurement is not set aside for small business, it is irrelevant whether the goods furnished are manufactured by a small business. With reference to Randolph's allegation of discrepancies in Bonneau's place of performance certification, we stated that since the solicitation is a partial LSA set-aside, and the protest related only to the unrestricted portion, compliance with the place of performance certification restriction, which is required to determine a bidder's eligibility for award preference under the LSA set-aside portion of the procurement, was not necessary in order for Bonneau to bid on the solicitation.

It appears that central to Randolph's arguments that Bonneau's bid is nonresponsive because of "misrepresentations" in its place of performance and small business certifications is Randolph's conclusion that Bonneau conditioned its bid on award of both the non-LSA set-aside and the LSA set-aside portions of the procurement. In other words, the protester concludes, without legal support or analysis, that Bonneau cannot be awarded the non-LSA set-aside portion because it allegedly bid on both portions of the solicitation on an "all or none basis."

We addressed this matter of the protester's misinterpretation of the "Offeror's Minimum/Maximum Quantity Limitations" clause in the solicitation, explaining that the Bonneau bid was not conditioned upon award of both portions of the procurement but, rather, it indicated that acceptance was not limited to any minimum or maximum number of items to be awarded.

Since the requirements necessary to establish eligibility for preferential award under an LSA set-aside are not applicable to the unrestricted portion, Randolph's contentions concerning Bonneau's priority status for the conduct of negotiations under the set-aside portion of the procurement are academic. In any event, Bonneau's size status is a matter for the Small Business Administration. Pearce Trawick Contractors, B-214680, Apr. 3, 1984, 84-1 C.P.D. ¶ 380.

As we stated in our previous decision, certification of the place of performance, as well as small business status, is in this instance a matter of responsibility and eligibility for the LSA set-aside portion of the procurement, not responsiveness, and the low bidder's certifications do not render its bid on the unrestricted portion unacceptable. Altama Delta Corp., B-219369.2, Aug. 20, 1985, 85-2 C.P.D. ¶ 204; see also Surgical Instrument Co. of America, B-214918, May 22, 1984, 84-1 C.P.D. ¶ 551; South Jersey Clothing Co.; Catania Clothing Corp., B-204531.2, Feb. 4, 1982, 82-1 C.P.D. ¶ 88.

To prevail in a request for reconsideration, the requester must show error of either fact or law in our prior decision. Randolph has presented no new evidence in support of its contentions. Moreover, the arguments raised here essentially reiterate allegations previously addressed and, otherwise, fail to show that our prior decision was based on legal error and omissions of facts so as to warrant reversal or modification. See Wynn Construction Co.--Request for Reconsideration, B-222649.2, Apr. 14, 1986, 86-1 C.P.D. ¶ 360; see also H.L. Carpenter Co.--Reconsideration, B-220032.2, Jan. 2, 1986, 65 Comp. Gen. ___, 86-1 C.P.D. ¶ 3.

Our prior decision is affirmed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel