



The Comptroller General
of the United States

Washington, D.C. 20548

Goddard

Decision

Matter of: Allen Organ Company--Request for Reconsideration

File: B-231473.3

Date: October 11, 1988

DIGEST

Request for reconsideration of previous decision is denied where request contains no statement of factual or legal errors warranting reversal but merely restates arguments made by the protester and considered previously by the General Accounting Office.

DECISION

Allen Organ Company requests reconsideration of our decision in Allen Organ Company--Reconsideration, B-231473.2, Aug. 31, 1988, 88-2 CPD ¶ 196, in which we denied Allen's protest under request for proposals (RFP) No. 502-37-88, issued by the Veterans Administration (VA), for a pipe organ. Allen had protested that the RFP's requirement for a pipe organ was inappropriate and unduly restrictive of competition because electronic organs were excluded.

The request for reconsideration is denied.

In our initial decision we stated that when a protester challenges solicitation requirements as being unduly restrictive of competition, and submits some support for that proposition, the procuring agency must establish prima facie support for its position that the restrictions it imposes are reasonably related to its needs. Phillips Cartner and Co., Inc., B-224370.2, Oct. 2, 1986, 86-2 CPD ¶ 382. If the agency provides the necessary support for the specifications, the burden shifts back to the protester to show that the specifications are clearly unreasonable. Id.

Among the reasons the VA had for requiring a pipe organ was that the organ was to be placed in the newly completed chapel attached to the VA Medical Center (VAMC), Alexandria, Louisiana, which is listed in the National Register of Historical Places. In view of the VAMC's listing in the National Register, the chapel was specially designed and constructed to complement the existing architectural style

043525 / 137051

of the VAMC. In keeping with this purposeful design, the VA determined that a pipe organ would better blend with the historic setting than would an electronic organ.

In our initial decision we noted that the determination of the government's needs and the best method of accommodating those needs are primarily matters within the contracting agency's discretion. Bataco Industries, Inc., B-212847, Feb. 13, 1984, 84-1 CPD ¶ 179. We will not substitute our judgement for that of the contracting agency absent clear and convincing evidence that the agency's judgement is unreasonable and that the specifications unduly restrict competition. Ameriko Maintenance Co., B-221728, Apr. 1, 1986, 86-1 CPD ¶ 309. In view of the circumstances outlined above, we found that the VA's determination that it required a pipe organ was not unreasonable.

Allen requests reconsideration on the basis that the VA has not made a prima facie showing that the solicitation's specifications are necessary to meet the government's actual needs. Allen asserts that it is clear from the VA's specifications that any reference to the historic importance of the building only refers to the tonal results of the instruments. Allen contends that there was no mention in the specifications of a console style or color, which would have major importance to historic and aesthetic purposes. Thus, Allen contends that the VA was unconcerned with the aesthetic part of the installation. Allen reiterates that its electronic organ could fulfill the musical needs of the chapel at least as well as the pipe organ as it has installed electronic organs in the great majority of military chapel worldwide. Finally, Allen contends that if the historic setting of this chapel must be considered, no modern convenience should be allowed in the chapel.

The standard for reconsideration is that a requesting party must show that our prior decision contains either errors of fact or law or that information not previously considered warrants reversal or modification of the decision. 4 C.F.R. § 21.12(a) (1988); American Maintenance Co.--Reconsideration, B-228396.5, June 7, 1988, 88-1 CPD 534. Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Id.

Our review of the record shows that Allen merely restates arguments made in the original protest. In our decision we noted that the VA states that the design of the organ is inherently linked to the functional purpose of harmonizing the instrument with its historic environment. We found that the pipes themselves represent a legitimate requirement

that the organ be in concert with the specially designed chapel and the historic architecture of the VAMC. Allen has not provided us with any new information not previously considered to warrant altering our decision. Allen's assertion that the VA had made no prima facie showing that its specifications were necessary to meet the government's actual needs merely reflects disagreement with our decision. Allen's assertion that if the chapel's historic setting is considered no modern conveniences should be allowed merely reflects Allen's unsupported opinion of how a historic setting should be preserved. Finally, we note that the RFP specifically called for a pipe organ with wind blown pipes, requiring "pipes to be burnished for facade," and calling for "walnut finish to match existing decor" with an "adjustable bench with back rest, to match console." Thus, the VA specifications specifically described an organ which would be physically in concert with the historic environment of the chapel.

The request for reconsideration is denied.

James F. Hinchman
James F. Hinchman
General Counsel