

3/2/89



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Valley Construction Co., Inc.--
Reconsideration

File: B-234292.2

Date: March 2, 1989

DIGEST

Prior decision dismissing protest of an award to another bidder is affirmed where record shows the Small Business Administration had informed the protester that its challenge to the size status of the awardee was resolved by a decision that the awardee was a small business issued pursuant to a size challenge made by another bidder.

DECISION

Valley Construction Co., Inc., requests reconsideration of our dismissal of its protest under invitation for bids (IFB) No. DACA21-89-B-0061, a small business set-aside issued by the Army Corps of Engineers. We affirm our dismissal.

Valley, the third low bidder, had protested that it was improper for the Army to have proceeded with an award to the low bidder, ACC Construction Co., while Valley's protest of ACC's size status was still pending before the Small Business Administration (SBA) Regional Administrator and while Valley also was appealing a decision issued by the SBA under a size challenge by Conner-Harben Construction Co., the second low bidder, that ACC was a small business concern for purposes of the solicitation. We dismissed the protest, concluding that Valley was not prejudiced by the SBA's failure to expressly respond to its protest and the Army's award to ACC because the SBA had determined that ACC was a small business pursuant to Conner-Harben's size protest. We also noted that a contracting officer is not required to withhold award while an appeal from an SBA decision is pending. Valley Construction Co., B-234292, Feb. 8, 1989, 89-1 CPD ¶ ____.

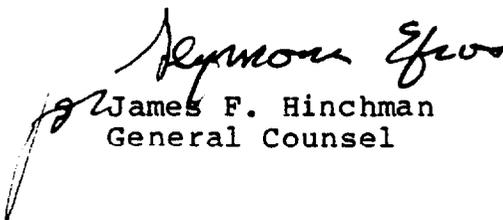
In its request for reconsideration, Valley contends that the Army should not have made the award to ACC based on the SBA ruling on Conner-Harben's size protest, because the SBA has not issued a decision on Valley's protest, and because the

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decision under the Conner-Harben protest was not dispositive of the issue raised in the size protest filed by Valley. Valley argues that the decision upholding ACC's small business status under the Conner-Harben protest was based on ACC's annual receipts for its past 3 fiscal years, while Valley's protest was based on the alleged existence of an affiliation between ACC and a large business concern. The record shows, however, that the SBA considers its ruling that ACC is a small business concern applicable to both of the bidders' size protests.

The SBA based its decision in the Conner-Harben protest on a recertification of ACC as a small business granted after a SBA ruling that ACC was not a small business. The SBA enclosed a copy of the recertification with that decision, which disclosed that the previous finding that ACC was other than a small business was based on the same affiliation between ACC and a large business that Valley protested, and that the SBA granted the recertification because ACC had severed its ties with the large business. Furthermore, according to Valley's appeal letter to the SBA, the SBA had informed Valley that the decision in the Conner-Harben protest also would serve as the decision for Valley's protest.

Since Valley was expressly informed by the SBA regional office that Valley's size protest was resolved under the Conner-Harben protest, and since as we pointed out in our prior decision, there is no requirement that a contracting officer withhold an award while an appeal of an SBA regional office's decision is being pursued, Valley's protest of the Army's award to ACC was properly dismissed.


James F. Hinchman
General Counsel