

Benejam



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alpine Camping Services--Reconsideration

File: B-238625.3

Date: August 28, 1990

Patricia Baker for the protester.
Aldo A. Benejam, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Request for reconsideration of initial decision is denied
where protester fails to specify any factual or legal basis
warranting reversal or modification of initial decision.

DECISION

Alpine Camping Services requests that we reconsider our
decision in Alpine Camping Servs., B-238625.2, June 22,
1990, 90-1 CPD ¶ 580, in which we denied Alpine's protest
challenging the decision by the Forest Service, U.S.
Department of Agriculture, to issue the "San Bernardino
National Forest, 1990 Prospectus" (1990 Prospectus),
inviting proposals for special use permits for campground
concessionaire operations of the Barton Flats and Heart Bar
campground complexes in California. The Forest Service
decided to issue the 1990 Prospectus following an agency
determination not to extend the existing permits, issued to
L&L Inc., under a 1989 Prospectus, beyond the 1989 operating
season.

We deny the request for reconsideration.

The Forest Service issued the 1989 Prospectus on March 9,
1989, inviting offerors to submit separate proposals for two
special use permits for concessionaire operations at the two
campground complexes. The 1989 Prospectus contemplated
issuing two special use permits for a 1-year initial period,
with an option to reissue the permits for an additional 1 or
2 years, not to exceed December 31, 1991. Six offerors,
including L&L and Alpine, responded by April 17, the amended
closing date. The Forest Service awarded the special use
permits to operate the complexes to L&L on May 5. On
May 12, Alpine filed a notice of appeal of the award of the

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permits with the Forest Service, alleging principally that L&L had received preferential treatment in the evaluation process and that the evaluation was flawed.^{1/} On January 19, 1990, following an extensive administrative appeals process, the Forest Service reversed its initial October 17, 1989, denial of Alpine's agency-level appeal, stating that in rating the proposals, the evaluation committee miscalculated the fees to be paid to the Forest Service, which could have affected the relative standing of the top two offerors, L&L and Alpine. The Forest Service also determined that L&L's proposals were "nonresponsive," and decided not to extend L&L's permits for the 1990 operating season. Rather than award the permits under the 1989 Prospectus, the Forest Service decided to issue the 1990 Prospectus.

In our decision in Alpine Camping Servs., B-238625.2, supra, we rejected Alpine's argument that the Forest Service improperly failed to award the permits to Alpine, as the firm next in line for award under the 1989 Prospectus, following the agency's determination that L&L's proposals were "nonresponsive." In denying its protest, we found that the 1989 Prospectus called for issuance of permits for an initial period during the 1989 operating season, with an option to reissue the permits "by mutual consent of both parties" for the 1990 and 1991 seasons. We therefore concluded that even if Alpine and not L&L were in line for award under the 1989 Prospectus, at most Alpine would have been entitled to receive only the permits for the expired 1989 season, since in effect the extension of permits for the 1990 and 1991 operating seasons merely were options to be exercised at the discretion of the Forest Service. See Federal Acquisition Regulation § 17.207 (FAC 84-42); Shorthand Reporting, B-236680, Dec. 22, 1989, 89-2 CPD ¶ 584 (agencies are not required to exercise options under any circumstances). Accordingly, we had no objection to the Forest Service's decision to issue the 1990 Prospectus rather than award permits for the 1990 season pursuant to the 1989 Prospectus.

On reconsideration Alpine reiterates arguments it made in its earlier protest, maintaining that since the Forest Service improperly awarded the permits for the 1989 operating season to L&L, the Forest Service is now required to issue the permits to Alpine through December 31, 1991

^{1/} On May 24, pointing to the urgency of opening the campgrounds to the camping public for the Memorial Day weekend, the Forest Service determined not to suspend L&L's performance.

(the end of the 1991 operating season), pursuant to the 1989 Prospectus. Alpine also argues that the Forest Service's administrative appeal procedures, 36 C.F.R. Chapter II, Subpart C (1989), and our Bid Protest Regulations, 4 C.F.R. Part 21 (1990), eliminate any possibility of Alpine receiving an effective remedy because, even if Alpine files a timely protest with the agency^{2/} or with our Office, and a decision is rendered in its favor, the camping season would have passed by the time a decision is issued, precluding Alpine from receiving its share of the camping fees. According to Alpine, under the established time frames for issuing our decisions, the Forest Service would never be required to issue permits to a successful protester.

Under our Bid Protest Regulations, a protester may request reconsideration of our prior decision, stating the factual and legal grounds upon which reversal or modification is deemed warranted and specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.12(a); King-Fisher Co.--Request for Recon., B-236687.3, June 20, 1990, 90-1 CPD ¶ 573.

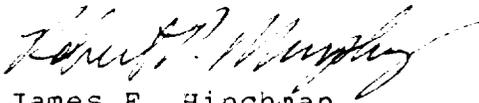
As stated above, issuance of permits for the 1990 and 1991 seasons under the 1989 Prospectus would require the agency to exercise its option under the 1989 Prospectus. Since agencies are not required to exercise options under any circumstances, Shorthand Reporting, B-236680, supra, even assuming that Alpine was in line to receive the permits for the 1989 season pursuant to the 1989 Prospectus, no concessionaire which received permits for the 1989 season had any right to an extension of the permits for subsequent seasons. We conclude that Alpine is basically reiterating its earlier argument and has not specified any factual or legal basis warranting reversal or modification of our initial decision.

To the extent that Alpine now argues that it is precluded from receiving an effective remedy by the time required to consider a protest, the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(1) (1988), generally requires

^{2/} 36 C.F.R. § 251.83(c) specifically provides that decisions under 36 C.F.R., Chapter II, Subpart C, are not subject to the administrative appeals procedures under that subpart where, as here, the jurisdiction of the Comptroller General supersedes that of the Department of Agriculture. Accordingly, protesters such as Alpine are not required to first file their protests with the Forest Service in order to avail themselves of possible remedies under our Bid Protest Regulations.

agencies to stay performance of the contract if our Office notifies them within 10 days of award of a protest filed here. Protesters may also request an expeditious decision whereby our Office will issue a decision within 45 calendar days of the protester's filing of its protest with our Office.^{3/} 4 C.F.R. § 21.8. Finally, we have broad discretion under our Bid Protest Regulations to recommend whatever remedy we determine necessary to insure awards will comply with statute and regulation. 4 C.F.R. § 21.6(a)(6). We think these provisions offer protesters such as Alpine adequate possibilities for an appropriate remedy.

The request for reconsideration is denied.



JFH
James F. Hinchman
General Counsel

^{3/} The protester recognizes that our Office can issue expeditious decisions in 45 calendar days or less, but asserts that agencies require an additional 84 days to implement our decisions. This is factually erroneous. Ordinarily, agencies quickly implement corrective action recommendations contained in our decisions.