S. Riback

143975

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Young-Robinson Associates, Inc.--Reconsideration

File: B-242229.2

Date: May 21, 1991

George R. Young, III, for the protester.
Scott H. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's request for reconsideration of a decision denying its protest is denied, where request is filed more than 10 days after the 1 calendar week by which time the protester is presumed to have received the General Accounting Office's decision.

2. The General Accounting Office denies request for reconsideration of a decision that denied a protest against agency's failure to set-aside the procurement under the section 8(a) program, where the reconsideration request is based solely on a letter from the Small Business Administration solicited by the protester after the initial decision, which does not establish that the original decision contained errors of law or failed to consider information that would warrant reversal of the initial decision.

DECISION

Young-Robinson Associates, Inc. (YRA) requests reconsideration of our decision in Young-Robinson Assocs., Inc., B-242229, Mar. 22, 1991, 91-1 CPD ¶ ___, in which we dismissed in part and denied in part YRA's protest against the terms of request for proposals (RFP) No. F01600-90-R-0032, issued by the Department of the Air Force for the acquisition of warehouse operations services in connection with the agency's Extension Course Institute.

We deny the request for reconsideration.

YRA protested that the Air Force improperly issued the RFP as a small business set-aside. Specifically, YRA argued that the agency was required to meet its acquisition needs through the Small Business Administration's (SBA) section 8(a) program or

by issuing the requirement as a small disadvantaged business (SDB) set-aside. YRA also argued that the agency had improperly failed to exercise an option with YRA for the services in question. In our prior decision, we dismissed YRA's allegation concerning the agency's failure to exercise the firm's option, since it was a matter of contract administration not for consideration under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1) (1991). That decision denied the balance of the protest, finding that the agency had properly issued the RFP as a small business set-aside. We based our determination--that the agency properly did not consider the acquisition for placement under the 8(a) program--in part, upon a letter to YRA from SBA's Assistant District Director for Minority Small Business and Capital Ownership Development. In that letter, SBA advised YRA that SBA concurred with the Air Force's judgment that the acquisition was not appropriate for consideration under the section 8(a) program because the requirement had been previously successfully acquired using a small business set-aside.1/

In its request for reconsideration, filed in our Office on April 16, 1991, YRA argues that our prior decision erroneously concluded that the subject requirement was inappropriate for either placement in the 8(a) program or for issuance as a SDB set-aside. In support of its argument regarding the suitability of the requirement for placement in the 8(a) program, YRA has proffered a letter dated April 15, 1991, in which the SBA's Birmingham, Alabama, District Director states that since the requirement was never offered to the SBA by the agency, the SBA never made any official determination concerning whether the acquisition could be placed in the 8(a) program. This letter was expressly solicited from SBA by YRA on April 12.

YRA's request for reconsideration primarily consists of allegations of various errors of law and fact in our prior decision that are not related to the SBA April 15 letter. We mailed our first decision on the date of its issuance, that

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1/ This same letter formed a basis for the granting of a motion for summary judgment filed by the government in connection with a civil action filed by YRA in the United States District Court for the District of Columbia (Young-Robinson Associates, Inc. v. United States, No. 91-0393-LFO, slip op. at 14 (D.D.C. March 22, 1991)). That action concerned identical issues, but involved a different solicitation, and was filed after we summarily dismissed YRA's bid protest regarding that solicitation because it failed to state a cognizable protest basis. Young-Robinson Assocs., Inc., B-242868, Feb. 12, 1991, 91-1 CPD ¶ 160.

is, March 22, 1991. YRA is presumed to have received that decision within 1 calender week of its having been mailed. Caelus Devices, Inc.--Recon., B-241336.3, Dec. 14, 1990, 90-2 CPD ¶ 491. Since YRA has tendered no evidence to the contrary, the firm was required to file its request for reconsideration no later than 10 working days after March 29, that is, April 12. 4 C.F.R. § 21.12(b). Since YRA did not file its reconsideration request in our Office until April 16, this request is untimely to the extent that YRA's request is not based on the SBA April 15 letter.

It is true that YRA's reconsideration request is timely filed insofar as it is based on the SBA April 15 letter. However, this letter provides no basis for reversal or modification of our original decision. We think that SBA's April 15 letter merely shows that the agency did not specifically offer the requirement to SBA for consideration under the 8(a) program. However, given that the agency and YRA were aware of SBA's position that this requirement was not appropriate for placement in the 8(a) program, we do not think that the agency was legally obliged to consider offering the acquisition to SBA for participation in the 8(a) program. Firms requesting reconsideration must show that our previous decision contained errors of law or fact, or present information which would warrant reversal of our original decision. AUTOFLEX, Inc.--Recon., B-240012.2, Nov. 7, 1990, 90-2 CPD ¶ 370. YRA has provided no such showing.

The request for reconsideration is denied.

James F. Hinchman
General Counsel