



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fantasy Lane, Inc.--Reconsideration

File: B-254901.2; B-255102.2

Date: July 1, 1994

Richard Suter for the protester.
Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Request for reconsideration is denied where request fails to demonstrate that prior decision contained an error of fact or law or to present information not previously considered which would warrant reversal or modification of the decision.

DECISION

Fantasy Lane, Inc. (FLI) requests reconsideration of our decision dated January 19, 1994, dismissing two protests--B-254901 and B-255102--against the terms of invitation for bids (IFB) Nos. MDA903-93-B-0053 and MDA903-93-B-0067, issued by the Defense Supply Service-Washington (DSSW) for toner cartridges to be used in office printers.

We deny the request for reconsideration.

In its protests, FLI alleged that each solicitation was restrictive of competition and otherwise improper since they each included a clause limiting the procurement to "recycled cartridges"--i.e., those "remanufactured in the United States by a small business concern which has been certified by an independent laboratory to meet generally accepted industry standards"--as then mandated by 42 U.S.C.A. § 6962(j) (West Supp. 1993). We dismissed the protests because FLI--which did not possess the required certification--did not submit the lowest bid on either solicitation, in each case there was at least one lower bid from a certified bidder, and FLI never alleged that the restrictive provision had any effect on its bid prices. As a result of these circumstances, we found that, even if we granted the relief sought by FLI and recommended elimination

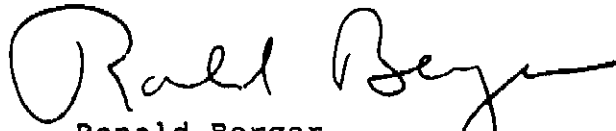
of the certification requirement, FLI would not be in line for award. We, therefore, dismissed the protests as academic because no immediate purpose would be served by considering their merits. American Combustion, Inc., B-235397.2, Oct. 13, 1989, 89-2 CPD ¶ 348.

In its request for reconsideration, FLI asserts that because of unspecified, but "significant," changes in the "cost structure of remanufacturing laser toner cartridges," allegedly occurring between the times that bids were opened and the date of our decision, all bidders can now substantially reduce their prices. FLI also suggests that, because all bids have long since expired, the agency may not make awards under the original IFBs. Finally, FLI notes that the statutory basis for limiting the procurements to cartridges from certified remanufacturers has been repealed.

We will reconsider a decision only where the requesting party shows that our prior decision contained an error of fact or law, or presents new information not previously considered, which would warrant reversal or modification of the decision. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1994); American Int'l Contractors (Special Projects), Inc.--Recon., B-252859.2; B-253352.2, Dec. 14, 1993, 93-2 CPD ¶ 317. FLI has not met this standard.

Assuming arguendo that the protester's unsupported speculation that all bidders can now reduce their prices in an unrestricted competition is accurate, this proposition simply does not bear on the propriety of our earlier decision. That decision was predicated on the fact that nothing in the record demonstrated that FLI would submit a low bid in either a restricted or an unrestricted procurement. Nothing in the request for reconsideration demonstrates otherwise. As for FLI's assertion that all bids likely expired long ago, thereby precluding awards, this position ignores the fact that, under appropriate circumstances, DSSW could have sought extensions of bid acceptance periods or permitted voluntary bid revivals. We find nothing in the request for reconsideration which warrants reversal or modification of our earlier decision.

The request for reconsideration is denied.


 Ronald Berger
 Associate General Counsel