



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

1018197

## Decision

**Matter of:** Good Food Service, Inc.--Reconsideration

**File:** B-256526.3

**Date:** July 11, 1994

Phillip Mackin Bailey for the protester.  
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody,  
Esq., Office of the General Counsel, GAO, participated in  
the preparation of the decision.

### DIGEST

Request for reconsideration is denied where protester fails to demonstrate that prior decision contained error of law or fact.

### DECISION

Good Food Service, Inc. requests reconsideration of our decision, Good Food Serv., Inc., B-256526, Apr. 5, 1994, in which we dismissed its protest of the issuance by the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, of request for proposals No. 52-DKNA-4-00054, for operation of a cafeteria and cafe at NOAA's Silver Spring, Maryland site, as an unrestricted procurement. We dismissed the protest because the issue raised--i.e., whether an agency is required to set aside for exclusive small business participation a procurement which does not involve the expenditure of appropriated funds--was identical to one that we had recently decided in a protest involving the same party. Good Food Serv., Inc., B-253161, Aug. 19, 1993, 93-2 CPD ¶ 107.

We deny the request for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1994). Neither repetition of arguments made during our consideration of the original protest nor mere disagreement with our decision meets this standard.

Dictaphone Corp.--Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2. As discussed below, we see no basis to reconsider our prior decision here.

Good Food contends that we erred in holding that the Federal Acquisition Regulation (FAR) set-aside provisions do not apply to procurements not involving the expenditure of appropriated funds. According to the protester, our decision discriminates against small businesses. The protester argues that because the contract at issue is for the operation of a government-owned facility, the provisions of the FAR do apply.

As we explained in our prior decisions, the FAR, by its own terms, applies only to acquisitions by the government of supplies or services with appropriated funds. FAR §§ 1.103 and 2.101. Where an agency contracts for the operation of a government-owned facility, but does not pay the contractor for its services, the provisions of the FAR do not apply since no funds--and thus no appropriated funds--are being expended.

Good Food also argues that NOAA obtained the authority to contract for concession services through a delegation of authority from the General Services Administration and that NOAA is therefore required to exercise its authority in accordance with the terms of the delegation, which requires compliance with the FAR.

This is an argument that Good Food could have, but did not, raise during the course of the protest. Failure to make all arguments or submit all information available during the course of a protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of the parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. Dictaphone Corp.--Recon., supra. In any event, we have reviewed NOAA's delegation of authority from GSA and find no requirement for compliance with the provisions of the FAR in the sections governing concessions.

The protester next argues that if this procurement does not involve an expenditure of appropriated funds, then our Office does not have jurisdiction to decide it.

We do not agree. The fact that a procurement does not involve the expenditure of appropriated funds does not, as the protester argues, render the agency conducting the procurement a non-appropriated fund instrumentality beyond the scope of our bid protest jurisdiction. The nonuse of appropriated funds does not take a procurement outside the bid protest jurisdiction of our Office where the protest challenges a federal agency's proposed contract for services. Military Newspapers of Virginia, B-249381.2, Jan. 5, 1993, 93-1 CPD ¶ 5.

Finally, Good Food argues that since we did not distinguish between appropriated and non-appropriated funds in our decision Department of the Air Force--Recon., 72 Comp. Gen. 241 (1993), 93-1 CPD ¶ 431, aff'd, Triple P Servs., Inc.--Recon., B-250465,8; B-250783,4, Dec. 30, 1993, 93-2 CPD ¶ 347, which concerned the application of the Randolph-Sheppard Act to an Air Force procurement for food services, then we should not distinguish between appropriated and non-appropriated funds here. The protester contends that we should interpret the two acts in a similar manner since the goals of the Randolph-Sheppard Act are similar to those of the Small Business Act in that both acts seek to implement socioeconomic policy through the procurement process.

We did not distinguish between appropriated and non-appropriated funds in the above decision because the procurement was conducted with appropriated funds. Thus, we were not called upon to discuss application of the Randolph-Sheppard Act to a procurement not involving the expenditure of appropriated funds.

The request for reconsideration is denied.

/s/ Robert H. Hunter  
for Robert P. Murphy  
Acting General Counsel