DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

**FILE:** B-212665.3 **DATE:** May 2, 1984

**MATTER OF:** The Nedlog Company; Institutional Beverages--Reconsideration

**DIGEST:**

On reconsideration, prior GAO decision is affirmed where the protester fails to establish that the decision was based on errors of law or overlooked relevant evidence.

The Nedlog Company requests reconsideration of our decision, The Nedlog Company; Institutional Beverages, B-212665, B-212665.2, February 22, 1984, 84-1 CPD 215, in which we determined that the Department of the Army's cancellation of a solicitation for liquid fruit beverages after bid opening was not arbitrary or capricious. We affirm our decision.

In our decision, we concluded that cancellation was proper since the contracting officer reasonably determined that a dry mix beverage available through the rations supply system was more economical to use in meal service than the liquid fruit beverage.

Nedlog asserts that our decision was incorrect. For instance, the firm contends that, in finding that cancellation was reasonable, we erroneously agreed in essence with the Army that the dry mix beverage could meet its minimum needs. Nedlog believes that the dry mix beverage will not meet the Army's needs, arguing specifically that:

1. the liquid beverage replaced the dry mix beverage some years ago and there is no indication here that the Army's needs have changed;

2. the dry mix, which is 100 percent artificially flavored and uses manual dispensing equipment, is not substantially equivalent to the liquid beverage, which is 35 percent fruit juices and uses automatic dispensing equipment; and

3. the Army must now bear the expense of supplying and maintaining dispensing equipment.

We disagree. We have long recognized that the determination of the government's minimum needs and the best method of accommodating them are necessarily the prime responsibility of the contracting agencies and thus we will not question an agency's determination unless there is a clear demonstration that the determination has no reasonable basis. See 38 Comp. Gen. 190 (1958); Champion Road Machinery International Corporation; Border Machinery Co., B-211587, B-211587.2, December 13, 1983, 83-2 CPD 674. Here, we do not believe that the mere fact that the Army used the liquid beverage in the recent past amounts to a showing that the agency's determination to switch to another product was unreasonable. We also note that, while the two kinds of beverages differ in some respects, there is no evidence that the dry mix beverage is unsuitable for its intended use. Finally, Nedlog has not submitted any proof in its request for reconsideration that the dry mix beverage is more costly to use than the liquid beverage. We find this challenge to our decision therefore to be without merit.

Nedlog also contends that we failed to consider the fact that the contracting officer did not follow procedures in canceling the solicitation. In this regard, the firm asserts that the contracting officer neglected to issue a "change in requirements." It is not clear to us to what Nedlog refers by this statement. We note, however, that regulations establishing procedures for the cancellation of a solicitation after bid opening state that, in doing so, the contracting officer must make a written determination that the supplies or services being procured are no longer required. Defense Acquisition Regulation § 2-404.1(b)(iii). The record shows that the contracting officer made such a determination the day before the solicitation was canceled. We have no basis therefore to conclude that the contracting officer improperly failed to follow procedures.

Nedlog argues that our decision overlooked the fact that the requiring activity, that is, the Fort Bragg Menu Board, did not request cancellation until after cancellation took place. Nedlog is mistaken. We considered this matter and concluded that, since the Menu Board clearly agreed with the contracting officer, the fact that the

Menu Board request came after cancellation did not render the cancellation improper. Since Nedlog has merely incorporated its earlier argument on this point in its request for reconsideration, we will not review it again. See System Sciences Incorporated--Request for Reconsideration, B-205279.2, January 25, 1983, 83-1 CPD 90.

Nedlog complains that our decision ignored the fact that the solicitation was canceled only after Nedlog filed a protest with the contracting officer. In this regard, Nedlog restates its earlier arguments and also names other Army installations where solicitations allegedly were canceled after Nedlog protested. Nedlog suggests that we audit the Army installations concerned.

Our decision addressed this issue and we concluded that Nedlog's allegation was not supported by any evidence in the record. Nedlog submits no evidence in its request for reconsideration but merely names other Army installations where the same pattern of action allegedly has occurred. As we noted in our decision, a protester has the burden to prove its case. See The Trade Group, B-212544, October 24, 1983, 83-2 CPD 484. This Office does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions. Easco Tools, Inc., B-212716, September 16, 1983, 83-2 CPD 338. Since Nedlog has presented no new evidence here, we believe that our initial decision in this regard is sound.

Finally, Nedlog reiterates its argument that the solicitation was issued in bad faith, alleging that, since the dry mix beverage had been used in meal service some time in the past, the contracting officer must have been aware of its existence before issuing the solicitation. We disagree. In our decision, we concluded that there was no evidence in the record that the contracting officer was aware before bid opening of the availability of the dry mix beverage for a use beyond that for which it serves in the rations supply system. We find no basis now to impute knowledge to the contracting officer simply because the dry mix may have been used at some unspecified time in the past as a meal service beverage.

Nedlog has not established in its request for reconsideration that our initial decision denying its protest

was based on errors of law or overlooked relevant evidence. See 4 C.F.R. § 21.9(a) (1983). We therefore affirm that decision.

Milton J. Socolar

Acting Comptroller General
of the United States