

DECISION

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

31888

B-218097.2

FILE:**DATE:** August 6, 1985**MATTER OF:**

Northwest Forest Workers Association;
Second Growth Forest Management, Inc.--
Reconsideration

DIGEST:

1. Under GAO Bid Protest Regulations, a trade association which was not an interested party to protest because it was not an actual or prospective bidder is not entitled to request reconsideration of the decision denying the protest.
2. Although protester asserts that inclusion in solicitation of clause found at Federal Acquisition Regulation, 48 C.F.R. § 52.228-5, would be more effective in assuring that contractor provides workers' compensation insurance than is solicitation requirement that contractor possess a specific state license for which workers' compensation coverage is a prerequisite, both provisions have the effect of requiring such coverage and protester has not established that a bidder would have a competitive advantage from the inclusion of one provision as opposed to the other.
3. Arguments asserted as a basis for reconsideration that only reiterate those considered in the resolution of the initial protest do not provide a basis for reconsideration.

Northwest Forest Workers Association (NFWFA) and Second Growth Forest Management, Inc., have jointly requested reconsideration of our decision in Northwest Forest Workers Association; Second Growth Forest Management, Inc., B-218097, June 3, 1985, 85-1 C.P.D. ¶ 628, which dismissed in part and denied in part their protest of the terms of invitation for bids (IFB) No. R6-7-85-1, issued by the Forest Service, Department of Agriculture. The protesters contended that the solicitation was defective because of the omission of a Federal Acquisition Regulation (FAR) clause found at 48 C.F.R. § 52.228-5, which contractually requires the contractor to provide and maintain workers' compensation insurance during the performance of the contract.

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Because NFWFA, as a trade association representing worker cooperatives, was not an actual or prospective bidder, we dismissed its protest on the basis that it was not an "interested party" under provisions of our Bid Protest Regulations which implement section 2741(a) of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-3556. We also denied the protest of Second Growth Forest Management, Inc., because, although it was a prospective bidder claiming competitive prejudice due to the alleged solicitation defects, in view of other provisions in the solicitation and their compliance requirements, the extent of Second Growth's claimed competitive disadvantage was too speculative and remote to warrant a determination on the merits by our Office.

Under our Bid Protest Regulations, reconsideration of a decision of our Office may be requested by an interested party who participated in the initial protest. 4 C.F.R. § 21.12(a) (1985). Since, as we previously held, NFWFA was not an interested party to the initial protest, it also is not entitled to request a reconsideration of our prior decision. See Northwest Forest Workers Association--Reconsideration, B-218891.2, June 14, 1985, 85-1 C.P.D. ¶ 685. Accordingly, NFWFA's request for reconsideration is dismissed.

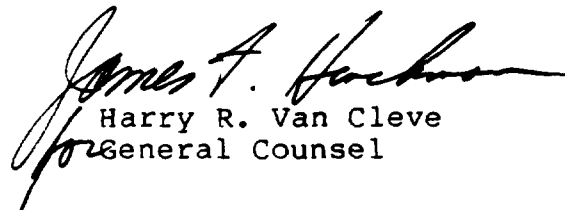
In its request for reconsideration, Second Growth complains that since a protest of the terms of the solicitation must be filed prior to bid opening "when it is not known whether a noncomplying employer will be a low bidder," our June 3, 1985, decision renders it impossible to file an effective protest of the omission from a solicitation of the FAR clause at 48 C.F.R. § 52.228-5. The protester's contention is based on an apparent misinterpretation of the June 3 decision in this matter. We did not hold that the "protest" was remote and speculative because of the protester's lack of knowledge of whether a noncomplying contractor will be a low bidder, as stated in the request for reconsideration. Rather, our denial of the protest was based on the fact that Second Growth did not show, nor was there evidence of record, that it was in fact prejudiced by the omission of the subject provisions, in view of the solicitation requirement of a state license, a prerequisite of which is proof to the state that workers' compensation insurance will be provided.

Second Growth also states upon reconsideration that a contractor's possession of the state license required in

the solicitation is not a "certification" that the contractor is in compliance with the workers' compensation insurance requirement. The protester is of the opinion that the certification requirement of FAR, 48 C.F.R. § 52.228-5, would be more effective than compliance with the state license provision in assuring bidders' compliance with the insurance requirement. However, since both provisions require the contractor to provide the insurance, it is not readily apparent that a bidder would have a competitive advantage from the inclusion of one provision as opposed to the other; certainly, the protester has not established the existence of any such advantage.

Second Growth's other comments essentially reiterate arguments which were initially raised in its protest and which we have previously considered; they do not provide any basis for our further review.

Our prior decision is affirmed. See Culp/Wesner/
Culp--Reconsideration, B-212318.2, Mar. 26, 1984, 84-1
C.P.D. ¶ 346.


Harry R. Van Cleve
General Counsel