

DECISION

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

FILE: B-218730.3 **DATE:** October 4, 1985
MATTER OF: Air Inc.--Request for Reconsideration

DIGEST:

1. Prior decision is affirmed because protester has failed to demonstrate that the decision was based upon erroneous interpretation of fact or law or information not previously considered.
2. Protest that IFB improperly was advertised rather than negotiated is untimely when not filed prior to bid opening.

Air Inc. requests reconsideration of our decision in Air Inc., B-218730, Aug. 14, 1985, 85-2 C.P.D. ¶ ____, in which our Office denied its protest which challenged the award of a contract for a pneumatic grinder, a total labor surplus area (LSA) set-aside item, to Cooper Air Tools/DOTCO by the General Services Administration (GSA) under invitation for bids No. FEP-BA-F0283-A. In our initial decision we held that GSA properly found Air's bid nonresponsive because the bid as submitted did not contain an unequivocal commitment to perform the contract services in an LSA.

In its request for reconsideration, Air contends that our decision is erroneous and generally raises the same arguments asserted in the original protest, namely: 1) that its signature on the bid documents represents the company's intent to be bound to produce the item in an LSA; 2) that the requirement to designate a place of performance that is an LSA is not a material term of the solicitation "which must be established at bid opening," and, therefore, the failure to provide the necessary information was a minor deviation that could have been waived by the contracting officer.

Air cites two of our prior decisions (Steelcot Corp., B-174041, Dec. 22, 1971, and Universal Industries, Inc., B-170241, Feb. 16, 1971) as support for its argument that a bidder's failure to provide in its bid all of the required

information concerning the location of its LSA plant is a minor deviation which may be waived by the contracting officer. However, the cases cited by Air are distinguishable because the LSA bidders in those cases, unlike the protester, had specifically certified in their bids that they were eligible for an LSA preference. The remainder of Air's arguments were previously considered by our Office and Air has not established that our decision denying its original protest was based on errors of law or failed to take into account all relevant information.

Air now maintains that the solicitation improperly was advertised and the award of the subsequent contract was not in compliance with Federal Acquisition Regulation, 48 C.F.R. § 20.204 (1984). That provision requires contracting agencies to award total LSA set-asides through negotiation or restricted LSA advertising. Our Bid Protest Regulations require that protests concerning alleged improprieties in a solicitation which, as here, are apparent prior to bid opening must be filed with the contracting agency or GAO prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1985). Since these bases for protest are being raised 9 months after bid opening, they are untimely and will not be considered.

We affirm the prior decision.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel