



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Amkus, Inc.--Reconsideration

File: B-228048.2

Date: March 15, 1988

DIGEST

Request for reconsideration based on negative Small Business Administration (SBA) size determination of awardee is denied where size protest was not filed by protester until 2 months after award; SBA determination was not issued until 4 months after award; and protester presents no evidence that contracting officer should have been aware that awardee was not small business at time of award.

DECISION

Amkus, Inc. requests reconsideration of our decision in Amkus, Inc., B-228048, Dec. 2, 1987, 87-2 CPD ¶ 535. In that decision we denied a protest by Amkus against award of a contract to Sweed Machinery, Inc., under invitation for bids (IFB) No. DAAK01-86-B-C411, issued by the Department of the Army as a total small business set-aside.

We deny the request for reconsideration.

The particular facts of the case and our legal analysis are set forth in our December 2 decision and need not be repeated at length here. In summary, we found no merit to the protester's contention that submission and evaluation of a bid sample from Sweed (which certified itself a small business bidder in its bid), was mandatory when the clear language of the certification-of-commercial-item waiver provision in the solicitation provided only that the agency might require submission and evaluation of bid samples from small business bidders.

Amkus now requests reconsideration on the basis that our December 2 decision erroneously assumed that Sweed was a small business. Amkus alleges that despite the contracting officer's awareness prior to award that the small business

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size status of Sweed was questionable, the agency made award to Sweed. In support of its position, Amkus submits a negative size determination on Sweed, issued by the Small Business Administration (SBA) on November 17, 1987, 4 months after the July 24 award was made to Sweed under the solicitation here.

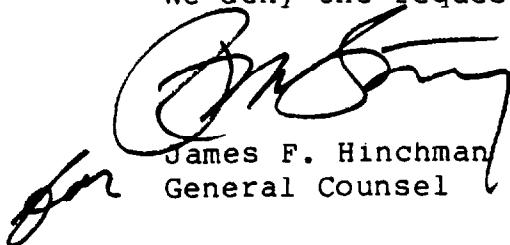
The fact that Sweed was eventually determined not to be a small business concern after award was made does not meet the established standard for reconsideration that the requesting party must present either evidence that our prior decision contains errors of fact or law, or information not previously considered that warrants reversal or modification of the decision. See Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1987); Roy F. Weston, Inc.--Request for Reconsideration, B-221863.3, Sept. 29, 1986, 86-2 CPD ¶ 364. As discussed below, since the SBA did not find that the protested firm, Sweed, was a large business until after the otherwise proper award to Sweed, the SBA decision does not apply to the acquisition here, and thus does not warrant reconsideration of our decision. See K-Son Construction Co., B-225207, Feb. 10, 1987, 87-1 CPD ¶ 145.

The Federal Acquisition Regulation (FAR) provides that when a timely size status protest has been filed with the contracting officer, award may not be made until the SBA Regional Administrator resolves the matter, or until 10 working days after the SBA's receipt of the protest (from the contracting officer), whichever occurs first. FAR § 19.302(h)(1) (FAC 84-12). To affect a specific solicitation, however, a size status protest must be timely filed with the contracting officer by the close of business on the 5th day after bid opening. FAR § 19.302(d) (FAC 84-12); 13 C.F.R. § 121.9(a) (1987). Here, Amkus' size status protest was untimely filed approximately 2 months after the July 24 award, and therefore could have no effect on the award to Sweed. Rather, since Sweed was determined to be other than a small business as a result of the late size status protest, the firm is precluded from self-certification as a small business in any future procurement with the same or a lower size standard. 13 C.F.R. § 121.9(a).

While the protester alleges that the contracting officer knew Sweed's size status was "questionable", and apparently believes that the contracting officer should have protested the firm's size status to the SBA (as permitted by FAR § 19.302(c)), no probative evidence has been presented that

the contracting officer was, or reasonably should have been,
on notice that Sweed was not a small business at the time of
award.

We deny the request for reconsideration.



A handwritten signature in black ink, appearing to read "JFH".

James F. Hinchman
General Counsel