Van Schaik

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Maintenance Company--Request for Reconsideration

File: B-228396.5

Date: June 7, 1988

DIGEST

Request for reconsideration of previous decision is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and considered previously by the General Accounting Office.

DECISION

American Maintenance Company (AMC) requests reconsideration of our decision in Techplan Corporation; American Maintenance Co., B-228396.3, B-229608, Mar. 28, 1988, 67 Comp. Gen. ___, 88-1 CPD ¶ 312, in which we denied protests by AMC and Techplan against solicitations issued by the Air Force and the Navy, respectively. We deny the request for reconsideration.

The two protested solicitations were issued as total set-asides for small disadvantaged businesses (SDBs) pursuant to Defense Federal Acquisition Regulation Supplement (DFARS) §§ 219.501-70 and 219.502-72, 52 Fed. Reg. 16,263, 16,266 (1987). Those regulations provide that whenever a contracting officer determines that competition can be expected to result between two or more SDB concerns and that there is a reasonable expectation that the award price will not exceed the fair market price by more than 10 percent, the contracting officer is to reserve the acquisition for exclusive competition among SDB firms. This special category of set-aside was authorized by section 1207 of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, 100 Stat. 3816 (1986), which establishes a Department of Defense (DOD) goal of awards to SDBs of 5 percent of the dollar value of total contracts awarded by DOD for fiscal years 1987, 1988 and 1989. Section 1207(e) directs the Secretary of Defense to "exercise his utmost authority, resourcefulness and diligence" to attain the 5 percent goal and permits the use of less than full and

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open competitive procedures to do so, provided that contract prices do not exceed fair market value by more than 10 percent.

In its request for reconsideration, AMC argues that an exclusive set-aside for SDBs is contrary to section 806 of the National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. No. 100-180, §§ 806(a), (b)(7), 101 Stat. 1019 (1987); inconsistent with the revised SDB regulations issued on February 19, 1988; and contrary to provisions of an earlier version of the DFARS in effect when the solicitation was issued.

The standard for reconsideration is that a requesting party must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of the decision. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1988); I.T.S.--Request for Reconsideration, B-228919.2, Feb. 2, 1988, 88-1 CPD ¶ 101. Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Id.

After reviewing the record and the reconsideration request, we have concluded that AMC has simply repeated arguments made in the initial protest. First, as we pointed out in our original decision, contrary to the protesters' contention, section 806 of the 1988 and 1989 National Defense Authorization Act does not require that the acquisitions in question remain open for competition by nondisadvantaged small businesses. Although section 806 directs DOD to issue regulations which "to the maximum extent practicable," maintain current levels of contracts under the section 8(a) and 15(a) programs, there is nothing in the National Defense Authorization Act that requires DOD to maintain particular requirements as set-asides for nondisadvantaged small businesses.

Second, with respect to the revised rule issued on February 19, 1988, AMC appears to argue that the Air Force's award of a contract to an SDB on March 28, after the effective date of the new rule, was contrary to that rule. However, as we stated in our original decision, the February 19 Federal Register notice for the new rule did not specifically require application of the new rule to previously issued solicitations, and in our view, the reasonable interpretation of the new rule is that it applies only to solicitations issued on or after March 21. Since the Air Force solicitation was issued before March 21, it was governed by the earlier rule.

Finally, AMC appears to argue, as it did in its original protest, that under the SDB set-aside rule in effect when the Air Force solicitation was issued, nondisadvantaged small businesses that had previously filled a requirement under a small business set-aside could not be excluded from a subsequent set-aside competition for that requirement. We considered and rejected that contention in our original decision. We did not "gloss over" AMC's argument concerning DFARS § 19.501(g), as contended, we just do not agree that it required combined SDB and non-SDB set-asides. While the request for reconsideration reflects AMC's disagreement with our decision, it does not meet the requirement for a detailed statement of the factual or legal grounds warranting reversal, nor provide us with any other basis to reconsider the decision.

The request for reconsideration is denied.

James F. Hinchman
General Counsel