



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Continental Elevator Company, Inc.--
Reconsideration

File: B-241394.2

Date: November 19, 1990

Dennis J. Green, Esq., Green, Hauptman & Kivett, for the protester.

E.L. Harper, Department of Veteran Affairs, for the agency. Catherine M. Evans, and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest of agency's failure to furnish incumbent contractor with copy of solicitation and to set procurement aside for small business is denied where request does not allege any error of fact or law in prior decision or offer new information that would warrant reversal or modification of decision.

DECISION

Continental Elevator Company, Inc. requests reconsideration of our decision, Continental Elevator Co., B-241394, Oct. 16, 1990, 90-2 CPD ¶ ____, in which we dismissed its protest of the Department of Veterans Affairs' (VA) failure to provide it with a copy of an invitation for bids (IFB) for elevator maintenance and to set the procurement aside for small business.

We deny the request for reconsideration.

We dismissed Continental's protest of the agency's failure to furnish it with a copy of the solicitation because Continental did not allege that the agency's failure to furnish it with a copy of the IFB adversely affected competition or was the result of improper agency action. We noted that the protest documents included a letter from the agency explaining that Continental had been deleted from the bidders mailing list because it had failed to submit a bid for a previous requirement and that, in any event, Continental had a duty to make reasonable efforts to obtain a copy of the IFB because the IFB was synopsized in the Commerce Business Daily (CBD), placing Continental on constructive notice of its contents. We also dismissed Continental's protest of the

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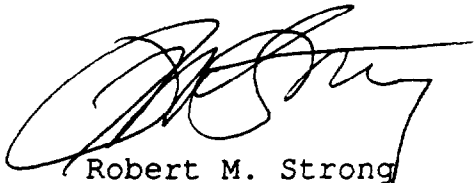
agency's failure to set the procurement aside for small business because it was not filed before bid opening as required by our Bid Protest Regulations. 4 C.F.R. part 21 (1990).

Under our Regulations, to obtain reconsideration the requesting party must show that our prior decision was based on errors of fact or law, or offer information not previously considered that warrants reversal or modification of the decision. 4 C.F.R. § 21.12(a). Continental has not met this standard.

In its request for reconsideration, Continental does not take issue with the conclusions in our decision, but merely asserts that further development of the record, including an "evidentiary hearing" and submission by the agency of requested documents, "may well prove the letting of the contract ill-considered and unfavorable to the government." However, Continental's request ignores the reasons its protest was dismissed in the first place.

In order for a protest to warrant initial consideration by our Office so that we will develop the record by seeking an administrative report from the agency, and in some cases, a conference on the merits, the protest must contain either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Cajar Defense Support Co., B-240477.2, Sept. 14, 1990, 90-2 CPD ¶ 215. If a protest does not meet this threshold standard, our Regulations provide for its dismissal. 4 C.F.R. § 21.3(m). While Continental alleged in its protest that it was improperly excluded from the competition by the agency's failure to furnish it with a copy of the IFB, its assertions were contradicted in the protest documents by the agency's explanation for its actions, and the fact that Continental had constructive notice of the solicitation. The protest thus did not establish the likelihood of improper agency action, and therefore properly was dismissed without further development of the record. As Continental does not allege any error of fact or law, or present new information that would warrant reversal or modification of our decision, we have no basis upon which to reopen the record.

The request for reconsideration is denied.



Robert M. Strong
Associate General Counsel