



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Sentel Corporation--Reconsideration

**File:** B-244991.2

**Date:** May 5, 1992

David R. Smith, Esq., Reed, Smith, Shaw & McClay, for the protester.

Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Bid Protest Regulations require party requesting reconsideration of prior decision to show that decision contains errors of fact or law or to present information not previously considered that warrants reversal or modification of decision; repetition of arguments made during consideration of the original protest and mere disagreement with decision do not meet this standard.

### DECISION

Sentel Corporation requests reconsideration of our decision in *Sentel Corp.*, B-244991, Dec. 6, 1991, 91-2 CPD ¶ 519. In that decision, we held that a sole-source award is not an appropriate remedy to erase a competitive advantage allegedly given other offerors by an agency's disclosure of one offeror's proprietary information where: (1) the agency only inadvertently disclosed the data and did not use it to define its requirements; and (2) a sole-source award would require the agency to procure services it had already found to be technically unacceptable.

We deny the request for reconsideration.

In its original protest, Sentel objected to the award of a contract to any offeror other than itself under request for proposals (RFP) No. N00600-91-R-2297, issued by the Department of the Navy for electromagnetic spectrum management technical services. Sentel contended that the RFP contained some of the firm's proprietary information that Sentel had submitted to the Navy as a part of a technical presentation conducted prior to the issuance of the solicitation in connection with a possible award of a contract for this requirement under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). Sentel generally argued that

since the Navy improperly attached the firm's proprietary information to the solicitation, the Navy should award the contract on a sole-source basis to Sentel.

In its request for reconsideration, Sentel argues that our Office erred in finding that the Navy's disclosure of its proprietary information was an inadvertent clerical error on the part of the procuring agency. As it did in its original protest, Sentel contends that since the firm's proprietary information comprised one-third of the entire solicitation, it is difficult to understand how the disclosure... was inadvertent due to some alleged "clerical error." Sentel also argues that we erred by failing to address in our decision whether or not the Navy properly evaluated Sentel's proposal that was submitted as a part of a technical presentation conducted prior to the issuance of the solicitation in connection with a possible non-competitive 8(a) award. Finally, Sentel suggests that at a minimum, the Navy's disclosure has placed the firm in a "competitive disadvantaged position"; therefore, our decision should be modified because it was limited to a discussion concerning whether Sentel should receive a sole-source award and, thus, did not address other remedies such as recommending that the Navy "withdraw the [s]olicitation in its entirety and resolicit the procurement."

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1992). Repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., IB-231101.3, Sept. 21, 1988, 88-2 CRD ¶ 274.

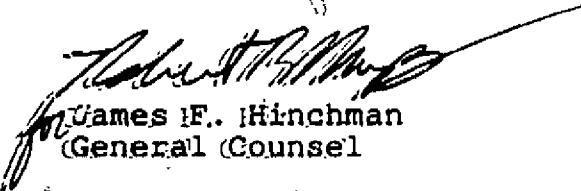
Sentel essentially reiterates its dissatisfaction with the Navy's characterization and our conclusion that the agency's disclosure of its information was inadvertent; however, Sentel's reconsideration request--like its original protest--lacks any evidence that the disclosure was intentional. Sentel's mere disagreement with our assessment does not provide a basis for us to reconsider whether the disclosure was an inadvertent clerical error. Id.

Similarly, Sentel's repetition of its argument that the agency improperly evaluated its technical proposal--which it submitted prior to issuance of the solicitation in connection with a possible award under the 8(a) program--does not provide a basis for us to modify or reverse our decision. Section 8(a) of the Small Business Act authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for the performance

of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. Although we traditionally review protesters' assertions that their proposals have not been evaluated properly, we apply only the fraud or bad faith standard when the evaluation is conducted non-competitively under the section 8(a) program because the agency has broad discretion to determine if it will contract through the program or with a particular 8(a) vendor and because the procedure leading to an 8(a) award is not encompassed by the competitive procurement statutes.<sup>1</sup> See Lee Assocs., IB-232411, Dec. 22, 1988, 88-2 CPD ¶ 618. Since Sentel's original protest failed to show that the Navy conducted the evaluation either fraudulently or in bad faith, we properly decided not to review the agency's evaluation.

To the extent that Sentel argues that we failed to consider remedies other than recommending that the agency make a sole source award to Sentel, we note that the crux of Sentel's requested relief was its request for a sole source award. As a result, our decision focused on this type of relief. While we did not address other types of remedies in our decision, we did consider them in connection with the protester's argument that the agency's disclosure caused the firm irreparable harm. We decided that it was inappropriate to grant the protester any type of remedy because our review of the allegedly proprietary information that was disclosed indicated that the vast majority of the information was extremely general in nature and would not provide a competitor any advantage. Since the protester has not alleged or attempted to show that this conclusion is erroneous, the protester has not met the standard warranting modification of our decision.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel

<sup>1</sup>On the other hand, since Federal Acquisition Regulation (FAR) S 19.805 and 13 C.F.R. S 124.311 (1991) provide for and govern competitively awarded contracts set aside for section 8(a) qualified concerns, we review competitive 8(a) procurements--just as we review other competitive award selections--to ensure that they conform to applicable federal procurement regulations. See Morrison Constr. Servs. Inc., 70 Comp. Gen. 1135 (1990), 90-2 CPD ¶ 499; Southwest Resource Dev., IB-244147, Sept. 26, 1991, 91-2 CPD ¶ 295.