



Comptroller General  
of the United States

752103

Washington, D.C. 20548

## Decision

**Matter of:** Banks Firefighters Catering; Department of  
Agriculture; Western Catering, Inc.--  
Reconsideration

**File:** B-257547.5; B-257547.6; B-257547.7

**Date:** March 6, 1995

James F. Nagle, Esq., and John Lukjanowicz, Esq., Oles Morrison & Rinker, for OK's Cascade Company; Kenneth Joel Haber, Esq., and Mary C. Suffoletta, Esq., for Western Catering, Inc.; and R. Wade Curtis, Esq., Belnap & Associates, for Banks Firefighters Catering, the protesters. Allen W. Smith, Department of Agriculture, for the agency. Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Requests for reconsideration are denied where requesters raise untimely challenges to the conduct of the procurement; raise arguments that could have been raised during the course of the protest, but were not; and fail to show that the prior decision contained any errors of fact or law.

### DECISION

Three parties request that we reconsider our decision in OK's Cascade Co. et al., B-257547 et al., Oct. 18, 1994, 94-2 CPD ¶ 154, in which we addressed four protests of the award of contracts under request for proposals (RFP) No. 49-93-12, issued by the Forest Service, Department of Agriculture. The RFP was for the procurement of mobile food services at multiple locations in 12 western states; award was made to different offerors at the various locations. The Forest Service requests that we reconsider that part of the decision in which we sustained the protest of OK's Cascade Company regarding the award of two locations, while Western Catering, Inc. and Banks Firefighters Catering request that we reconsider our denial of their protests of the awards at other locations.

We deny the requests for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision may contain 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) (1994). Repetition of arguments made during consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. Our Office will also not consider an argument or information raised for the first time in a request for reconsideration where the argument or information was available during the course of the protest. The Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. Applying this standard, we conclude that none of the three requests has demonstrated that reconsideration of our decision is warranted.

We sustained the protest of OK's because we found that the agency had not conducted a reasonable cost/technical tradeoff. Although OK's offered a \$34.85 total daily per-person price for meals if the firm were awarded a contract for four (or fewer) locations, it offered a lower price, \$31.80, if it were awarded a contract for five locations. The agency found that OK's was in line for award at three locations; the dispute in the protest concerned two additional locations, Bend and Reno. If OK's were awarded a contract for both of those locations, its lower (\$31.80) price would apply to all five sites.

As explained in our decision, the record indicates that the Forest Service considered award of Bend and Reno separately and did not conduct a cost/technical tradeoff that took into account the fact that, if both locations were awarded to OK's, the government would obtain a lower price than the awardee offered at Reno and a higher rated technical proposal, albeit at a higher price, at Bend. In its request for reconsideration, the Forest Service states that in evaluating the proposals for the Bend location, it did consider the availability of the five-location discount

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<sup>1</sup>Our decision did not recommend that the Forest Service make award to OK's for the two additional locations. Instead, we recommended that the agency conduct a cost/technical tradeoff that took into account the possibility of awarding both locations to OK's. So long as the cost/technical tradeoff analysis is reasonable and consistent with the RFP evaluation criteria, the agency is free to confirm the awards made or to conclude that one or both of the contested awards should have been made to another offeror. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

offered by OK's, but that it decided not to award to OK's because the awardee offered a price that was lower than the discounted price offered by OK's. The agency takes the position that, once it had decided not to award the Bend location to OK's, there was no need to consider the protester's five-location rate for Reno, since there was no longer a possibility of OK's receiving award for five locations.

These facts and arguments were fully taken into account in our decision, which noted that the awardee for the Bend site offered a price lower than the discounted price offered by OK's. The decision also explained, however, that the awardee's technical proposal for Bend was rated inferior to that of OK's, while the awardee for Reno offered a price higher than the five-location rate offered by OK's. Accordingly, we found that the final trade-off decision needed to reflect a choice between the options actually available to the agency under the proposals as submitted, including the possibility of awarding both Bend and Reno to OK's. The request for reconsideration essentially restates the agency's site-by-site approach, without recognizing the need to consider whether awarding both contested locations to OK's would be advantageous overall to the government. Because the Forest Service has not identified any error of fact or law in our decision and instead simply reiterates arguments considered during the protest process, we deny the agency's request for reconsideration.

Western's request for reconsideration was presented in two parts. First, Western's November 9, 1994, request for reconsideration repeated the argument that the agency treated the offerors unequally by advising the awardee, but not Western, of concerns that proposed prices were high. This argument was fully considered during the protest and addressed in our decision; Western's repeating it here does not provide a valid basis for requesting reconsideration.

Second, in a December 2 "supplement" to the request for reconsideration, Western raised two new challenges to the source selection process. For the first time, it alleged that the agency should have evaluated only total daily meal prices (not the prices offered for individual meals) and that the evaluators did not treat the various technical proposals equally. These two issues essentially constitute

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<sup>2</sup>The agency also argues that OK's did not propose five technically acceptable kitchens and thus could not perform at five locations. Because the agency could have raised this argument during the protest but failed to do so, we will not consider it now. The Department of the Army-- Recon., supra.

new protest grounds and, to be timely, they were required to be raised not later than 10 days after Western knew, or should have known, the basis of protest. 4 C.F.R. § 21.2(a)(2) (protest grounds generally); 4 C.F.R. § 21.12(b) (grounds for reconsideration). Because these issues were raised for the first time in Western's December filing, they are untimely and will not be considered.

In its request for reconsideration, Banks alleges a factual error in one statement in our decision. In our discussion of the protester's contention that the awardee knew the government estimate prior to submitting its proposal, we stated that Banks had offered "no supporting evidence for its allegation." Banks understands the reference in our decision to "allegation" to mean "allegations" and concludes incorrectly that we had found that Banks offered no supporting evidence for any of its allegations. Our statement was limited to the contention that the agency had disclosed the government estimate to the awardee.

In its request for reconsideration, Banks has still not pointed to evidence supporting this contention. Instead, it repeats the argument presented in its protest that the agency improperly advised the awardee that certain meal prices were high. This argument does not suggest that the agency had disclosed the government estimate to the awardee; on the contrary, it would indicate that the awardee did not know the government estimate, since otherwise there would be no need to indicate that particular prices were considered high. The request for reconsideration thus does not contain any indication that our decision contained an error of fact or law.

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<sup>3</sup>The remainder of Banks's request for reconsideration similarly provides no basis for reconsidering our decision. It contains an argument that another offeror, Western, was prejudiced by the way in which the agency conducted discussions with that other company, with no allegation that this issue prejudiced Banks. As to Banks, this does not state a valid basis of protest, since prejudice is an essential element of a viable protest. Lithos Restoration Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Banks also continues to express disagreement with the agency's judgment about the merits of the technical proposals, particularly the conclusion that the proposals were essentially equal in technical merit. As we stated in our decision, the protester's disagreement with the agency's judgment does not itself establish that the evaluation was unreasonable.

The requests for reconsideration are denied. In addition, OK's is entitled to recover the costs incurred during this request for reconsideration. General Services Administration--Recon., B-237268.3 et al., Nov. 7, 1990, 90-2 CPD ¶ 369.

/s/ Paul Lieberman  
for Robert P. Murphy  
General Counsel