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PL-1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-193773.3

DATE: September 11, 1979

MATTER OF: U.S. Eagle, Inc.--Reconsideration

CNG 9/14/61

DIGEST:

Prior decision denying protest against Army's acquiescence in Small Business Administration's (SBA) certificate of competency (COC) decision is affirmed since: (1) some of grounds for reconsideration were dealt with in prior decision or are irrelevant to decision; (2) there was no need for GAO to indicate extent of SBA documentation reviewed in light of protester's arguments which did not address GAO review standard of SBA's COC decision; and (3) prior dismissal of earlier protest is not inconsistent with decision denying protest which is subject of reconsideration request.

DLG 02405

U.S. Eagle, Inc. (Eagle), has requested reconsideration of our decision in U.S. Eagle, Inc.; Reliable Building Maintenance Company, B-193773, August 2, 1979, which denied Eagle's protest against the Department of the Army's acquiescence in a decision of the Small Business Administration (SBA) to issue a certificate of competency (COC) to Pacific Coast Utilities Service, Inc. (Pacific).

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The questioned COC was issued by SBA after the Army found that Pacific did not comply with an "offeror's experience" requirement listed in a solicitation for "hospital housekeeping services" at Letterman Army Medical Center, Presidio of San Francisco, California.

Eagle contends that our decision did not reply to one of the many subissues of its general protest, namely: the solicitation's experience requirement, when interpreted in the light of SBA's COC decision, was "unfair" or restrictive of competition, especially as

Recons. denial
Certificates of Competency
Solicitation specifications
Procurement protests

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[Protest INVOLVING COC]

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concerned Reliable Building Maintenance Company (Reliable) which stated it did not bid under the solicitation because of the experience requirement.

This subissue was based on the assumption that the experience requirement was improper only in light of the SBA decision which was viewed as effectively deleting the requirement. That the subissue was based on the assumption is indicated, in our view, by the fact that neither company protested the wording of the requirement as drafted by the Army.

In order to determine whether the SBA effectively deleted the experience requirement, it is obvious that GAO would have had to have expressed its views on the reasonableness of the SBA decision--for only if the SBA decision was unreasonable under existing legal precedent could it be said that the SBA decision resulted in the alleged waiver. For the reasons stated in our decision, our review standard of SBA decisions does not include a "reasonableness" test. Thus, the Eagle-Reliable arguments about effective deletion of the experience requirement and "unfairness" are simply irrelevant to our review role.

In any event, we effectively answered this subissue on pages 10 through 12 of our decision which: (1) noted Eagle's "unfairness" argument and Reliable's "no bid" argument; (2) stated these arguments were premised on the erroneous assumption that we would review the reasonableness of the SBA decision; and (3) concluded that these arguments were irrelevant to our SBA-COC review standard.

Next, Eagle states that it did object to Army's referral of Pacific's competency to the SBA contrary to the impression allegedly conveyed in our decision. We are unable to locate the supposed erroneous impression complained of; nevertheless, whether Eagle objected to the referral is a question irrelevant to the conclusions reached in our decision.

Eagle also contends that SBA's decision not to release the precise rationale of its COC decision to Eagle unfairly prejudices Eagle in its protest action before GAO; moreover, Eagle complains that our decision "[did] not review

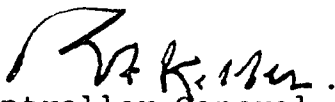
what evidence the SBA used in determining competency and [did] not even indicate whether or not the GAO had access to the evidence used by the SBA."

As to Eagle's argument that it was unfairly prejudiced in its protest before our Office by SBA's decision not to release its COC rationale, we fully replied to this argument at pages 8 through 10 of our decision and our reply will not, therefore, be repeated. As to Eagle's complaint about our decision's review of SBA evidence supporting the COC issuance, we note that Eagle made no argument that required analysis under our applicable review standard--fraud or failure to consider vital information bearing on the COC. To this extent, we saw no need to review the SBA evidence supporting the COC decision or to indicate the extent of SBA documentation made available for our review. We see no need to change our position based on Eagle's latest submission.

Finally, Eagle argues that our August 2 decision was inconsistent with the "disposition of U.S. Eagle's case under B-188330."

In U.S. Eagle, Inc., B-188330, July 18, 1977, 77-2 CPD 34, we dismissed Eagle's protest against the Army's alleged improper cancellation of an earlier procurement for similar services at Letterman Army Medical Center. We did so since Eagle had raised the identical issue in litigation before a court of competent jurisdiction and requested direct relief from the court instead of court relief pending our decision on the protest; moreover, the court did not otherwise express interest in having our decision. Given the facts of our prior decision--which did not purport to treat the merits of the Army's cancellation decision but only dismissed the protest--we reject Eagle's argument that these decisions are inconsistent.

Prior decision affirmed.


Deputy Comptroller General
of the United States