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DECISION

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

FILE: B-222308.2; B-222309.2; B-222310.2; B-222796.2; B-222823.2; B-222846.2, B-222897.2 **DATE:** July 8, 1986

MATTER OF: S.A.F.E. Export Corporation--Request for Reconsideration

DIGEST:

The General Accounting Office affirms a decision holding that the proposed debarment of one firm extends to an affiliated firm when the affiliated firm, in a request for reconsideration, presents no evidence to support an allegation that it was denied due process. Although the affiliated firm was not specifically named in the debarment notice, as required by applicable regulations, the uncontradicted record shows that the ownership and officership of the two firms is such that notice to one constitutes actual notice to the other.

S.A.F.E. Export Corporation requests reconsideration of S.A.F.E. Export Corp., B-222308 et al., Apr. 28, 1986, 65 Comp. Gen. ____, 86-1 CPD ¶ 413, in which we found that the proposed debarment of S.A.F.E. OHG and its affiliates encompassed S.A.F.E. Export and that under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1986), S.A.F.E. Export was not an interested party entitled to maintain protests. The firm also requests reconsideration of S.A.F.E. Export Corp., B-222823 et al., Apr. 30, 1986, 86-1 CPD ¶ ____, in which we found that the debarment was effective throughout the executive branch. We affirm our decisions.

As stated in the first decision cited above, the U.S. Army Contracting Agency, Europe, advised S.A.F.E. OHG and affiliated companies by letter dated February 7 that they were being proposed for debarment for a 3-year period beginning on February 14. S.A.F.E. Export was not specifically named in this letter. In our initial decision, we noted that the applicable Federal Acquisition Regulation (FAR), 48 C.F.R. § 9-406(b) (1984), states that debarments can only be extended to affiliated companies where the affiliate is specifically named in the notice of proposed

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debarment and is given an opportunity to respond to the proposed action. We found, however, that the Army's failure to comply with the precise terms of the regulation in this case was a mere procedural defect, not affecting the validity of its decision to exclude S.A.F.E. Export from the subject competitions. This was because the record showed that S.A.F.E. Export had actual notice of the proposed action and, thus, an opportunity to respond. We concluded that the Army properly had viewed the February 7 notice of debarment as applying to S.A.F.E. Export. Furthermore, in the second decision cited above, we found that this action was effective throughout the executive branch under FAR, 48 C.F.R. § 9.406(c).

In its requests for reconsideration, S.A.F.E. Export does not deny that it had actual notice of the proposed debarment, which was imposed on March 28, retroactive to February 10. Rather, S.A.F.E. Export now contends that we improperly construed the regulatory requirement that each affiliate be specifically named in a notice of proposed debarment. The rights afforded all entities under this regulation, S.A.F.E. Export posits, stem from the due process rights afforded by the Fifth Amendment to the Constitution. The Army's actions effectively denied it these constitutional rights, S.A.F.E. Export maintains, because it was not given adequate notice that the intended debarment applied specifically to it or an opportunity to respond. S.A.F.E. Export also questions the authority of the debarring official to extend the proposed debarment throughout the executive branch.

Due process of law does not guarantee any particular form of procedure; it protects substantial rights. Mitchell v. W.T. Grant Co., 416 U.S. 600, 610 (1974). In this case, the uncontradicted record supports our conclusion that the ownership and officership of S.A.F.E. oHG and S.A.F.E. Export are such that notice to one constituted actual notice to the other. S.A.F.E. Export states that it has never conceded its affiliation with S.A.F.E. oHG, and it argues that the Army's debarment letter demonstrates ignorance of the firms' ownership and officership. S.A.F.E. Export, however, has not provided us with affidavits or any other documentary evidence that would indicate that the ownership and officership of the two firms are not the same as they were in 1982 when, as noted in our prior decision, S.A.F.E. Export served as a domestic maildrop for S.A.F.E. oHG and when E.J.P. Tierney, who

signed the current protests and requests for reconsideration, was the principal officer and employee of both firms. In the absence of such evidence, we can only conclude that S.A.F.E. Export's rights were protected by the Army's actions.

As for S.A.F.E. Export's allegations concerning the extension of its debarment throughout the executive branch, this action, as we stated in our decision of April 30, was mandated under applicable regulations. See FAR, 48 C.F.R. § 9.406-1(c).

We affirm our prior decision.

Harry R. Van Cleve
General Counsel