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DECISION

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

FILE: B-201687

DATE: June 17, 1981

MATTER OF: American Dredging Company--Reconsideration

DIGEST:

1. Prior decision upholding agency decision is affirmed where request for reconsideration fails to advance factual or legal grounds upon which reversal would be warranted.
2. Claim for bid preparation costs is denied since record fails to establish agency's actions were arbitrary or capricious.

American Dredging Company (American) requests reconsideration of our decision in American Dredging Company, B-201687, May 5, 1981, 81-1 CPD _____. In that decision, we upheld the Coast Guard's determination to set aside a procurement exclusively for small businesses on bid opening day based on the Coast Guard's finding there was a reasonable expectation of sufficient small business competition. Our decision relied on prior decisions of this Office which allowed the setting aside of procurements for small businesses by amendment well after the solicitation issuance date and close to or even after proposal receipt date. See 53 Comp. Gen. 307 (1973); Gill Marketing, Inc., B-194414.3, March 24, 1980, 80-1 CPD 213; Ampex Corporation, et al., B-183739, November 14, 1975, 75-2 CPD 304.

In the decision, we stated that although the protester had challenged the contracting officer's determination, based on alleged coercion, lack of independent judgment and mistaken view that a set-aside was mandatory, the protester had not rebutted the reasonableness of the contracting officer's determination that sufficient small business competition could be expected. Also, while the contracting officer did not initiate the set-aside until bid opening day, the action was taken in good faith and only after

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the contracting officer was convinced that adequate small business competition existed.

In its request for reconsideration, American asks that we more fully address several issues raised in the protest which it believes were not adequately considered in our decision. The protester contends that the facts overwhelmingly indicate the decision to set aside the procurement was coerced by officials in Washington, D.C., and that it was entitled to the contracting officer's independent judgment as to whether the procurement should have been awarded on the basis of open competition. American also asks that we fully address the issue of what regulations apply to the set-aside decision and how the applicable regulations should be interpreted and implemented.

These contentions raised by American in the request for reconsideration were part of the record upon which our decision was based and were not addressed because they were not necessary to the disposition of the case. Since American has not advanced any additional facts or legal arguments which show that our earlier decision was erroneous, we must decline to reconsider the decision. Zinger Construction Company, Inc.--Reconsideration, B-198230, December 15, 1980, 80-2 CPD 427; Seacoast Trucking & Moving--Reconsideration, B-200315.2, November 18, 1980, 80-2 CPD 369; Jerry's U-Drive, Inc., George Corporation--Reconsideration, B-197236.4, B-197236.5, September 22, 1980, 80-2 CPD 216.

American is concerned that we did not request from the Coast Guard a document that the firm believes shows the contracting officer did not expect reasonable competition. However, the Coast Guard advised us that the document is exhibit "P" of the agency report which we considered previously. Furthermore, American received and specifically referred to the exhibit in commenting on the agency report. In any event, the document is merely a typed contemporaneous confirmation that another Government agency did not set aside this type of procurement for small businesses which contributed to the contracting officer's original position that the procurement not be set aside.

American has also asked that we authorize reimbursement of bid preparation costs. American refers to an affidavit by its attorney that the Coast Guard was willing to recompense American for the costs of preparing its rejected bid because, contrary to the implication of

our decision, "not even the Government took the position * * * that the last-minute change was fair to American * * *, or consistent with sound procurement practices." According to American, "the Government may no longer be interested in holding this offer open."

The recovery of bid preparation costs requires a showing that the agency's actions were arbitrary or capricious. See Decision Sciences Corporation--Claim for Proposal Preparation Costs, B-196100.2, October 20, 1980, 80-2 CPD 298. Here, we found that the set-aside decision was reasonable and in good faith. Therefore, award of bid preparation costs would not be appropriate. Colorado Research and Prediction Laboratory, Inc., B-199755, March 5, 1981, 81-1 CPD 170; Decision Sciences Corporation, supra. See also Ampex Corporation, supra, where we denied a claim under similar facts even though, in finding the set-aside decision proper, the timing constituted less than sound procurement policy.

Milton J. Arosler

Acting Comptroller General
of the United States