Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: New Breed Leasing Corporation--Reconsideration

File: B-274201.2; B-274202.2

Date: April 7, 1998

Matthew A. Simchak, Esq., Philip J. Davis, Esq., and Phillip H. Harrington, Esq., Wiley, Rein & Fielding, for the protester.
Dana N. Smith, Esq., and Gregory L. Fronimos, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office does not recommend that protester be reimbursed for proposal preparation costs for proposals submitted under canceled set-aside solicitations where recommendation in protest would have permitted protester to participate in recompetition; fact that protester may no longer be eligible to participate in competition, which is a small business set-aside, does not justify award of proposal preparation costs.

DECISION

New Breed Leasing Corporation requests reconsideration of our decision, New Breed Leasing Corp., B-274201, B-274202, Nov. 26, 1996, 96-2 CPD ¶ 202, in which we sustained New Breed's protests and recommended that New Breed be reimbursed for its costs of filing and pursuing its protests. New Breed contends that we should have recommended that it be reimbursed for its proposal preparation costs as well.

We deny the request for reconsideration.

New Breed protested the Department of the Navy's cancellation of solicitation Nos. N00189-94-R-0304 and N00189-94-R-0315 for material handling and logistics support services at various sites throughout the world, and the sole source extensions of contract Nos. N-00189-94-D-0003 and N-00189-94-D-0006, held by Management Consulting, Inc., (Mancon) for those services. The canceled solicitations were issued as small business set-asides.

New Breed maintained that the solicitation cancellations and the sole source contract extensions resulted from the Navy's lack of advance planning. We agreed, concluding that the noncompetitive procedures used by the Navy to extend

Mancon's contracts resulted from a lack of reasonable advance planning by agency officials and, therefore, violated 10 U.S.C. § 2304(f)(5) (1994). In view of the agency's undisputed need for the services at issue, we recommended that the agency make expeditious efforts to competitively acquire the services, and terminate Mancon's contracts upon successful completion of such efforts. We also recommended that New Breed recover its cost of filing and pursuing its protests, including reasonable attorneys' fees.

The agency subsequently issued revised solicitations, again as total small business set-asides. It appears, however, that by the time the revised solicitations were issued, New Breed no longer qualified as a small business for purposes of this procurement. New Breed's reconsideration request essentially asserts that, in light of the reprocurement, its earlier proposal efforts were wasted and we should therefore recommend that it also be reimbursed for its proposal preparation costs. We decline to make this recommendation.

Not every flaw or irregularity in the procurement process entitles an offeror to recover the expenses incurred in submitting a proposal. I. E. Levick and Assocs., B-218294.2, Apr. 12, 1985, 85-1 CPD ¶ 424 at 2. Instead, recovery of proposal preparation costs is limited to situations in which the protester had a substantial chance of receiving the award, but was unreasonably excluded from competing, and corrective action is not practicable. See, e.g., Infrared Techs. Corp.--Recon., B-255709.2, Sept. 14, 1995, 95-2 CPD ¶ 132 at 5; Universal Shipping Co., Inc.--Recon., B-223905.3, B-223905.4, Aug. 4, 1987, 87-2 CPD ¶ 125 at 8. Our earlier recommendation anticipated that New Breed would be able to compete for essentially the same contracts as those contemplated under the canceled solicitations; since that corrective action was available, we did not recommend reimbursement of proposal preparation costs. See Microlog Corp., B-237486, Feb. 26, 1990, 90-1 CPD ¶ 227 at 6. While New Breed may have been unable to participate in the recompetition (which, like the initial competition, is a small business set-aside), that is not because of any action by the agency, but rather because of the change in the firm's size status.

We note in this regard that New Breed does not assert, nor is there any indication in the record, that the agency's actions in canceling the initial solicitations were motivated by a desire to exclude New Breed from the competition. In responding to New Breed's reconsideration request, the Navy specifically states that its prior actions were not in any way the result of a malicious or specific intent to disadvantage New Breed. New Breed filed a response to the Navy submission in which it does not challenge the Navy's statement on this point.

On the facts presented here, we do not view the situation as one where corrective action was not practicable at the time of our initial decision or where New Breed was unreasonably excluded from either the initial procurement or the recompetition. Thus, recovery of proposal preparation costs is not warranted.

The reconsideration request is denied.

Comptroller General
of the United States