

Matter of: Triple P Services, Inc.--Reconsideration

File: B-250465.8; B-250783.4

Date: December 30, 1993

F.D. Bowden for the protester,
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Decision that Randolph-Sheppard Act had priority over Small Business Act, and that withdrawal of section 8(a) set-aside in favor of proceeding under Randolph-Sheppard Act therefore was proper, is affirmed on reconsideration where there is no showing either that prior decision was factually or legally erroneous, or that new information warrants changing prior decision.

DECISION

Triple P Services, Inc. requests reconsideration of our decision, Department of the Air Force--Recon., B-250465.6 et al., June 4, 1993, 93-1 CPD ¶ 431. In that decision, we denied protests by Triple P Services, Inc. and other parties challenging the Air Force's decision to withdraw a section 8(a) set-aside under request for proposals (RFP) No. F22600-92-R-0049, and instead to proceed under the Randolph-Sheppard Act, 20 U.S.C. § 107 (1988), which affords a priority to blind licensees for contracts to operate cafeterias.

We affirm our decision.

As part of its original protest, Triple P argued that withdrawal of the procurement from the 8(a) set-aside program was improper because section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. IV 1992), takes priority over the Randolph-Sheppard Act. We rejected this argument on the basis that, whereas the Small Business Act does not require that any particular procurement be set aside under the 8(a) program, compliance with the Randolph-Sheppard Act is mandatory for procurements--such as the procurement in issue--that fall within its scope. We concluded that the

Randolph-Sheppard Act has priority over the Small Business Act for any particular procurement, and that withdrawal of the set-aside for the procurement in question therefore was proper.

In its request for reconsideration, Triple P cites our decision, Good Food Serv., Inc., B-253161, Aug. 19, 1993, 93-2 CPD ¶ 107, as reaching a conclusion inconsistent with our June 4 holding on the statute priority issue, and concludes that our prior decision should be changed. In Good Food, the agency initially attempted, but failed, to attract offers from blind licensees under the Randolph-Sheppard Act. It then conducted the procurement on an unrestricted basis rather than as a small business set-aside because the concession contract to be awarded would not involve the expenditure of appropriated funds. We held that the agency properly proceeded on an unrestricted basis because the small business set-aside provisions of the Federal Acquisition Regulation do not apply where appropriated funds are not being expended. According to Triple P, since Good Food held that the set-aside provisions do not apply where appropriated funds are not involved, "it is only logical that those provisions must certainly be activated where expenditure of appropriated funds are involved, as [in the procurement in issue in our prior decision]."

Triple P's argument is without merit. The Good Food decision had nothing to do with the issue in our prior decision, i.e., whether the Small Business Act 8(a) provisions have priority over the Randolph-Sheppard Act. Rather--even assuming that the FAR's small business set-aside provisions would be comparable to the Small Business Act's 8(a) provisions in an analysis such as this--since Good Food only concerned the agency's actions after it received no Randolph-Sheppard Act offers, that Act did not come into play at all in our June 4 decision. The fact that our conclusion may imply that the small business set-aside provisions apply where appropriated funds are involved in no way suggests that those provisions would apply to an appropriated fund procurement covered by the Randolph-Sheppard Act.

It thus remains our conclusion that where a procurement falls within the scope of the Randolph-Sheppard Act, the requirements of that act take priority over the section 8(a) provisions of the Small Business Act.

The decision is affirmed.

James F. Hinchman
General Counsel