

13940 *Rogers*  
*From*

**DECISION**



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

*[Protest of Nonresponsibility Determination]*

FILE: B-196008

DATE: June 5, 1980

MATTER OF: Security Assistance Forces & Equipment  
International, Inc.--Reconsideration *DLG05*

**DIGEST:**

1. Prior decision upholding contracting officer's determination of low offeror's nonresponsibility is affirmed when request for reconsideration provides no legal or factual basis to alter conclusion.
2. Allegation that "search" of protester's premises in connection with responsibility determination without court order is unconstitutional is not valid since preaward survey was conducted in accordance with applicable statute and regulation which protester acquiesced in by entering competition for award of contract.

Security Assistance Forces & Equipment International, Inc., (SAFE), requests reconsideration of our decision in Security Assistance Forces & Equipment International, Inc., B-196008, March 14, 1980, 80-1 CPD 198. SAFE protested the award of a contract to Motorola, Inc., under request for proposals (RFP) DAJA37-79-R-0193, issued by the United States Army Contracting Agency, Europe, for the maintenance and repair of Motorola alarm reporting systems in Wiesbaden, Germany. *DLG04*

Our prior decision upheld the contracting officer's determination that SAFE was nonresponsible following a negative preaward survey, based in part on SAFE's refusal to permit an onsite visit, in the absence of any evidence of bad faith by the agency or that the determination was without a reasonable basis.

In its request for reconsideration, SAFE states that in connection with other procurements survey teams made false statements and allegations concerning

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its company and, therefore, SAFE considered it reasonable to request the contracting officer to justify what it considered to have been an unreasonable request to "search" its premises. Further, SAFE contends that the contracting officer's insisting on a "search" of its premises without a court order violated its rights under the Fourth Amendment to the United States Constitution.

Requests for reconsideration are governed by the provisions of our Bid Protest Procedures at 4 C.F.R. § 20.9 (1980), which provide, in part:

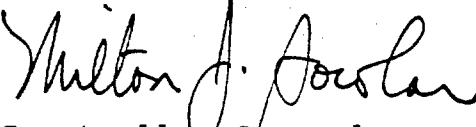
"(a) \* \* \* The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered."

SAFE neither presents new facts nor alleges any errors of law which lead us to alter our prior decision. Before award of a contract, the contracting officer must make an affirmative determination that the prospective contractor is responsible. 10 U.S.C. § 2305(c) (1976), as implemented by the Defense Acquisition Regulation (DAR) § 1-904.1 (1976 ed.). If the information available to the contracting officer "does not indicate clearly that the prospective contractor is responsible," a determination of non-responsibility is required. DAR § 1-902. In the present case, the contracting officer was unable to make an affirmative determination of SAFE's responsibility and, therefore, an award to SAFE was precluded.

SAFE's allegation that the contracting officer's insisting on a "search" of its premises without a court order violated its rights under the Fourth Amendment to the United States Constitution raises a question as to the constitutionality of the contracting officer's actions in carrying out the mandate of a statute, 10 U.S.C. § 2305(c), which precludes award of a Government contract to other than the low responsive bidder. It is our view that when SAFE

entered the competition for this contract it did so with the understanding that the contract would be awarded in accordance with applicable law and regulations. Since the effort to inspect SAFE's premises was made to comply with the statute and in accordance with DAR, we see no merit in SAFE's argument.

For the reasons stated, our prior decision is affirmed.

  
For The Comptroller General  
of the United States