

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

*[Request for Reconsideration]*

FILE: B-197842

DATE: November 7, 1980

MATTER OF: H. Frank Dominguez d.b.a. Vanir  
Research Company--Reconsideration**DIGEST:**

Prior decision is affirmed because protester has not presented any new evidence or shown error of law or fact in conclusions that (1) argument--that agency's nonresponsibility determination violated law--was untimely, and (2) postaward site change was matter of contract administration having no impact on award determination.

H. Frank Dominguez doing business as Vanir Research Company (Vanir) requests reconsideration of our decision in the matter of H. Frank Dominguez d.b.a. Vanir Research Company, 59 Comp. Gen. (B-197842, August 27, 1980), 80-2 CPD 154. That decision denied its protest against the award of a lease to Shane Realty and Construction Company (Shane) by the General Services Administration (GSA) under solicitation for offers (SFO) GS-09B-08296 for office space and parking for the Social Security Administration in San Bernardino, California. The decision concluded that GSA had a valid basis not to award to Vanir, and that Shane was eligible for award.

Vanir requests that we reconsider our conclusion that its argument--that GSA's nonresponsibility determination violated 15 U.S.C. § 637(b)(7) (Supp. I, 1977)--would not be considered since it was untimely raised and first presented after the record was closed. Vanir also requests that we address its contention that the award as made was not the award as solicited because after award GSA and Shane changed the location of the building site. After considering Vanir's requests, we affirm the prior decision.

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First, Vanir contends that its initial protest stated its objections to GSA's failure to comply with the mandates of 41 C.F.R. subpart 1-1.12 (1979), which prescribes policies concerning the responsibility of prospective contractors, and thus it was timely.

We agree that Vanir's initial protest did raise the issue of GSA's noncompliance with subpart 1-1.12. However, Vanir's initial protest addressed this issue in terms of the use of undisclosed responsibility factors in GSA's evaluation of proposals. GSA's use of a nonresponsibility determination as a basis not to award to Vanir became known when GSA filed its report. Vanir had the opportunity to introduce new bases of protest, which may have been revealed in GSA's report, by filing its protest here within 10 working days of receipt of the GSA report. Vanir's comments on the report dated July 7, 1980, presented Vanir's response to GSA's position. That response, however, only pointed out that GSA admitted it had improperly considered Vanir's past unsatisfactory performance as an award factor rather than making a determination of nonresponsibility. This was consistent with Vanir's initial objection to GSA's reference to Vanir's unsatisfactory past performance. In other words, neither the initial protest, nor the July 7 response to GSA's report raised the question of GSA's violation of 15 U.S.C. § 637(b)(7). It was not until the Vanir letter dated July 29, 1980, received here on August 5, 1980, that Vanir first introduced the argument that GSA's nonresponsibility determination violated 15 U.S.C. § 637(b)(7). As stated in the prior decision, that basis of protest was untimely raised since it was first made more than 10 working days after Vanir received GSA's report (4 C.F.R. § 20.2(b)(2) (1980)) and after the record in the matter was closed in accordance with 4 C.F.R. § 20.3(d) (1980).

Second, Vanir contends that the award as made to Shane was not the award as solicited. Again, Vanir is overlooking the facts: On December 29, 1980, award was made to Shane based on Shane's proposal responding to the requirements of the SFO; thus, the award made to Shane was for the precise requirement solicited. After award, the city of San Bernardino requested that GSA

locate the new office at another site. All parties concurred on April 9, 1980. We view this postaward site change as a matter of contract administration, which had no impact on the award determination made by GSA and protested by Vanir. Matters of contract administration are not considered under our Bid Protest Procedures, which are reserved to matters associated with the award of contracts. Federal Sales Service, Inc., B-198452, May 1, 1980, 80-1 CPD 316.

Accordingly, since Vanir has not presented any new evidence or shown an error of law or fact in the prior decision, the August 27, 1980, decision is affirmed.

*Harry R. Van Cleave*

For the Comptroller General  
of the United States