

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548***Ashen*
*26161***FILE:** B-209097.2**DATE:** September 2, 1983**MATTER OF:** King-Fisher Company--Request for
Reconsideration**DIGEST:**

When request for reconsideration contains no factual or legal grounds upon which prior decision should be reversed or modified, GAO will affirm decision in which it refused to consider protest that specifications were insufficiently restrictive to protect the Government's interest as a user and allowed bidders to offer, and the agency to accept, fire alarm system not conforming with Occupational Safety and Health Administration regulations.

King-Fisher Company requests reconsideration of our decision in King-Fisher Company, B-209097, July 29, 1983, 83-2 CPD _____. In that decision, we denied King-Fisher's protest alleging that the Army incorporated the incorrect one of two arguably applicable National Fire Protection Association Standards into invitation for bids No. DABT19-82-B-0062 for installation of an FM radio fire alarm system at Fort Leavenworth, Kansas, finding the Army's choice of standard reasonable. In addition, we refused to consider the merits of King-Fisher's protest that the Army's deletion of a requirement that equipment conform to Underwriter's Laboratory or Factory Mutual System standards rendered the amended specifications insufficiently restrictive to protect the Government's interest as a user and allowed bidders to offer, and the Army to accept, a fire alarm system not conforming to Occupational Safety and Health Administration (OSHA) regulations. We affirm our prior decision.

In its request for reconsideration, King-Fisher alleges that the effect of our decision is to advise procurement officers that OSHA regulations and "life-safety" standards adopted by OSHA need not be adhered to in Government procurement. However, at no time did we indicate that regulations and standards promulgated by OSHA need not be adhered to by Government agencies. Rather, our position is that absent a regulation which clearly requires

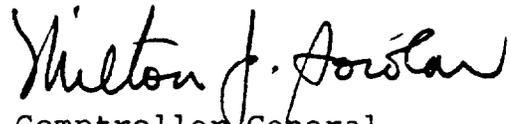
026574

an agency to tailor its specifications in a particular way, there is nothing for us to enforce. In this regard, the enforcement of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 to 678 (1976), is within the jurisdiction of the Secretary of Labor. While the Secretary has issued some regulations under the Act, their application to this procurement is disputed, and we indicated only that absent an authoritative decision interpreting the regulations as applicable, we were not prepared to view the existing regulations as providing a basis for this Office to consider taking exception to the specifications.

As for King-Fisher's contention that our decision allows the Army to procure a system not complying with minimum national fire-safety standards, thereby exposing the Army to tort liability in the event of injury to life or property, we held and continue to hold that, in the absence of possible fraud or willful misconduct on the part of contracting officials, we will not consider the merits of a protest that the Government's interest as a user is not protected because specifications were insufficiently restrictive. King-Fisher has neither alleged nor shown that the specifications resulted from either fraud or willful misconduct.

King-Fisher has not raised any new facts nor demonstrated any errors of law that cause us to alter our prior decision. See Art Anderson Associates--Reconsideration, B-211546.2, June 8, 1983, 83-1 CPD 628.

Accordingly, we affirm that decision.



Acting Comptroller General
of the United States