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DECISION

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

FILE: B-211128.2 **DATE:** October 16, 1984

MATTER OF: Leland and Melvin Hopp, Partners--Request of Thomas Buffington and Arnold V. Hedberg for Reconsideration

DIGEST:

1. Prior decision is affirmed on reconsideration where protester has not shown any error of law or fact which would warrant reversal of the decision.

2. GAO does not review affirmative determinations of responsibility unless there is a showing of possible fraud on the part of the contracting officials or an allegation that definitive responsibility criteria have been misapplied.

3. A contractor who acted in good faith and did not induce the procurement error for which recommended corrective action is intended can still be subject to the corrective action even when hardship will result.

4. Request for a hearing prior to termination for convenience of awarded leases relates to contract administration and is not for consideration under GAO Bid Protest Procedures.

Messrs. Thomas Buffington and Arnold V. Hedberg request reconsideration of our decision, Leland and Melvin Hopp, Partners, B-211128, Feb. 15, 1984, 84-1 CPD ¶ 204 and the corrective action which we recommended therein. In that decision, we sustained the Hopps' protest of the rejection of their bid as late for the leasing of property from the U.S. Army Corps of Engineers under invitation for bids (IFB) No. DACA41-83-B-0041. Messrs. Buffington and Hedberg essentially disagree with our recommendation to the Corps, which was to terminate for convenience the leases awarded to Messrs. Buffington and Hedberg, and to make award to the Hopps.

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We deny the request for reconsideration.

Our Bid Protest Procedures require that requests for reconsideration specify any errors of law or information not previously considered which would warrant reversal of our prior decision. 4 C.F.R. § 21.9(a) (1984). See also Roan Corporation--Reconsideration, B-211228.2, Feb. 22, 1984, 84-1 CPD ¶ 211. While the requesters disagree with the findings of fact and the recommended corrective action in the decision, they have not provided any new arguments or facts. Mere disagreement with our prior decision does not provide a basis to reverse that decision. Atlas Contractors, Inc.--Request for Reconsideration, B-209446.3, June 30, 1983, 83-2 CPD ¶ 46.

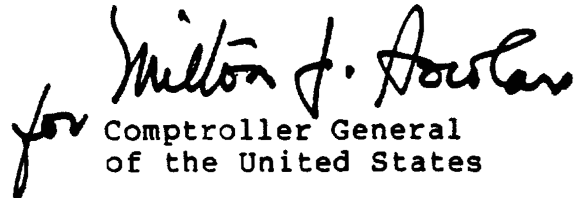
The requesters also contend that we should consider additional factors beyond correcting the procurement deficiency. They contend that award of the leases to the Hopps would not be proper because the Hopps failed to adequately perform in the past and that they (Buffington and Hedberg) will suffer hardship as a result of a termination, and that they should be afforded a hearing prior to any termination.

These are not matters for our consideration. Whether a bidder is capable of performing is a matter of responsibility. Before award a contracting officer must make an affirmative determination of the proposed awardee's responsibility. Our Office does not review protests concerning such determinations unless there is a showing of possible fraud on the part of the contracting officials or an allegation that definitive responsibility criteria have been misapplied. Medi Coach, Inc., B-214034, May 2, 1984, 84-1 CPD ¶ 501. If, however, the Hopps were determined to be nonresponsible and thus not eligible for the award, we would not object to the leases remaining with Buffington and Hedberg.

With regard to the hardship assertion, we have specifically rejected the contention that a contractor, who acted in good faith and did not itself induce the error for which the corrective action is intended, cannot be subject to the corrective action, regardless of the hardship that would result. See Charta, Inc.--Reconsideration, B-208670.2 et al., July 12, 1983, 83-2 CPD ¶ 79. Nevertheless, we would not object if the Corps decided that in the interest of equity, the leases should not be terminated until after calendar year 1984.

Finally, whether a hearing is granted in connection with the termination of Messrs. Buffington and Hedberg's leases is a matter of contract administration which we will not consider since our Procedures are reserved for determining whether an award or proposed award complies with procurement statutes and regulations. See Medi Coach, Inc., supra. However, we are unaware of any provision in the Defense Acquisition Regulation (DAR) or the Federal Acquisition Regulation (FAR) which requires an agency, prior to the actual termination itself, to provide notice and an opportunity to be heard to the contractor. The regulations merely require that the contractor be notified of the termination when it is made. DAR, § 1-8.203, reprinted in 32 C.F.R. pts 1-39 (1983); FAR, § 49.102, 48 Fed. Reg. 41,102, 42,448 (1983) (to be codified at 48 C.F.R. § 49.102). Further, any dispute concerning the propriety of the termination for convenience or the amount of the contractor's termination costs can be resolved with the contracting officer or, ultimately, the Armed Services Board of Contract Appeals. See Vibra-Tech Engineers, Inc., B-209541.2, May 23, 1983, 83-1 CPD ¶ 550.

Accordingly, we affirm our prior decision.



Comptroller General
of the United States