



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BPOA Industrial Painters--Request for
Reconsideration
File: B-231671.2
Date: December 2, 1988

DIGEST

Protest that contract for painting family housing is a service contract and not a construction contract subject to the bond requirements of the Miller Act is denied where the Federal Acquisition Regulation defines painting as construction.

DECISION

BPOA Industrial Painters requests that we reconsider our decision in BPOA Industrial Painters, B-231671, Sept. 23, 1988, 88-2 CPD ¶ 281, denying BPOA's protest challenging the requirement for a bid bond under invitation for bids (IFB) No. F04612-88-B-0013, issued by the Air Force for repairs and painting of the exterior of military family housing at Mather Air Force Base, California.

We deny the request for reconsideration.

Our prior decision found that the Miller Act, 40 U.S.C. §§ 270a-270f (1982 and Supp. IV 1986) required performance and payment bonds to be included in this construction contract, and that the use of a bid guarantee is mandatory where performance and payment bonds are required. Federal Acquisition Regulation (FAR) § 28.101-1 (FAC 84-12).

The protester alleges that this contract is primarily for painting of family housing and is therefore a service contract, not a construction contract.

FAR § 36.102 (FAC 84-23) defines construction as "construction, alteration or repair (including dredging, excavating, and painting) of buildings, structures or other real

044071/137482

property." (Emphasis supplied.) Since painting is defined as construction, and the painting contract is expected to exceed \$25,000, the agency had no choice but to require the submission of bid bonds. FAR § 28.101-1.

The request for reconsideration is denied.

James F. Hinchman
James F. Hinchman
for General Counsel