



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Eastern Metal Products & Fabricators, Inc.--
Reconsideration

File: B-246825.2

Date: April 3, 1992

Sam Zalman Gdanski, Esq., for the protester.
Tania L. Calhoun and Andrew T. Pogany, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Bid Protest Regulations require party requesting reconsideration of prior decision to show prior decision was based on either errors of fact or law or to present information not previously considered which warrants reversal or modification of decision; repetition of untimely arguments made during consideration of the original protest does not meet this standard.

DECISION

Eastern Metal Products & Fabricators, Inc. requests reconsideration of our February 7, 1992, dismissal of its protest of the award of a contract to Cobra Technologies, Inc., under solicitation No. N62470-89-B-3615, issued by the Naval Facilities Engineering Command, Department of the Navy, for maintenance and repair of a building. We dismissed the protest because the Small Business Administration (SBA) refused to issue a certificate of competency (COC) to the firm and Eastern failed to timely present any evidence of bad faith or failure of SBA to consider vital information.

We deny the request for reconsideration.

Eastern was the apparent low bidder for this solicitation, which was set aside for small businesses. The contracting officer determined that Eastern was nonresponsible based on the firm's unsatisfactory performance as the incumbent contractor for this requirement. The contracting officer referred the determination to SBA for consideration under SBA's COC procedures. On October 3, 1991, SBA declined to issue a COC to Eastern because, among other things, its past performance record was unsatisfactory.

In our dismissal of its protest, we stated that our Office generally does not review SBA decisions to issue or refuse to issue a COC because SBA's determination is conclusive. See 15 U.S.C. § 637(b) (1988). We further stated that we will consider a challenge to SBA's COC determination only where a protester alleges that bad faith or fraudulent actions on the part of government officials resulted in the denial of a meaningful opportunity to seek SBA review, or that SBA failed to consider vital information bearing on the firm's responsibility. Eagle Sec., Inc., B-242397, Apr. 29, 1991, 91-1 CPD ¶ 415.

We dismissed Eastern's protest because it did not contend that the contracting agency acted in bad faith or that SBA failed to consider vital information concerning the firm's responsibility until it filed its comments on the agency report on January 24, 1992. We found that these new issues, raised more than 3 months after the COC denial and based on information previously available, were untimely raised more than 10 working days after the protester knew or should have known of the grounds for protest. See 4 C.F.R. § 21.2(a)(2) (1991). We therefore did not consider them.

In its request for reconsideration, Eastern again raises these untimely issues, stating that we failed to consider facts that were part of the record indicating the presence of improper government action. Eastern does not, however, contest our determination that the issues were untimely raised.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Eastern has not done that here.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel