



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ward Corporation--Reconsideration

File: B-253591.3

Date: April 20, 1994

DECISION

Ward Corporation requests reconsideration of our decision in Ward Corp., B-253591.2, Nov. 23, 1993, 93-2 CPD ¶ 297, in which we denied its protest against the award of a lease by the General Services Administration under solicitation for offers No. 92-087. In that decision, we concluded that in light of the exigent circumstances of the particular procurement, specifically an urgent need for space for the National Institutes of Health, the contracting officer did not abuse her discretion in not referring a size status question to the Small Business Administration (SBA) where a large business--the protester--after being found nonresponsible for performance capability and financial reasons, asserted that it was actually a small business.

We deny the request for reconsideration.

On reconsideration, the protester disagrees with our original decision, primarily arguing that our decision affords the contracting officer unbridled discretion to determine that exigent circumstances exist which will justify a decision by the contracting officer not to refer a size status question to the SBA for review. We disagree.

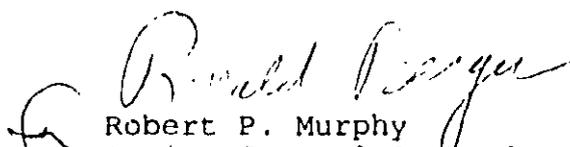
The protester fails to recognize that our decision is limited to factual circumstances where an offeror, throughout the procurement for an urgently needed requirement, has represented itself as a large business, and only when it discovers that the contracting officer has found it nonresponsible, does it then assert that it really is not a large business, but rather, is a small business.

As stated in the decision, there is no absolute requirement that a contracting officer refer size status questions to the SBA, and the Federal Acquisition Regulation (FAR) and the SBA's own regulations recognize that an SBA size status determination need not precede contract award in every case in which an offeror's size status is questioned. We think that under these circumstances, it is not an abuse of discretion for a contracting officer to consider the timing of a firm's changed size status representation and the

exigent nature of the procurement and, as a result, reasonably decide not to refer the question of a firm's size status to the SBA prior to making an award. We reiterate that the protester never challenged the facts supporting the contracting officer's determination that the required space was urgently needed.

In essence, the protester has not presented any new arguments and merely expresses disagreement with our original decision. Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain 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) (1993). The repetition of arguments made during our consideration of the original protest and the mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. Here, the protester has failed to make the required showing.

The request for reconsideration is denied.:


Robert P. Murphy
Acting General Counsel

'The protester also complains that the agency's decision to proceed with the award without issuing a decision on its agency-level protest was inconsistent with FAR § 33.103(a) (2) which states in relevant part that "[w]hen a protest is filed only with the agency, an award shall not be made until a decision on the agency's protest is issued." The record shows that the protester filed its protest with our Office on the day the award was made. The protest to our Office raised the same issues which were raised in the agency-level protest. We think that even if a regulatory violation occurred, the protester was not prejudiced since our Office ultimately denied its protest.