

McArthur



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Action Building Systems, Inc.--Request for Reconsideration

File: B-237067.2

Date: January 30, 1990

DIGEST

Request for reconsideration of prior decision dismissing protest is denied when based on repetition of arguments and facts considered when previous protest was dismissed.

DECISION

Action Building Systems, Inc., requests reconsideration of our decision in Action Bldg. Sys., Inc., B-237067, Oct. 4, 1989, 89-2 CPD ¶ 311, in which we dismissed Action Building's protest of the rejection of its bid under invitation for bids (IFB) No. GS-09P-KSC-0117, issued by the General Services Administration (GSA). We dismissed that protest because the protester made no showing of possible fraud or bad faith on the part of the Small Business Administration (SBA) in refusing to issue a Certificate of Competency (COC) to the firm.

We deny the request for reconsideration.

The contracting officer determined Action Building nonresponsible based on the firm's unsatisfactory performance of past and current contracts. The contracting officer referred the determination to the SBA for consideration under SBA's COC procedures. The COC was denied because of the firm's unsatisfactory performance on past and current contracts and because Action Building's principal was convicted of polluting State waters during performance of a private contract.

In our previous decision, we dismissed Action Building's protest because its allegation that it had supplied evidence to the SBA to refute the agency's findings concerning its performance would not, by itself, establish fraud or bad

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faith on the part of the SBA. In this regard, our Office generally does not review SBA decisions to issue or refuse to issue a COC, absent a showing of fraud or bad faith on the part of government officials. See Vanguard Indus., Inc., B-233490.2, Dec. 21, 1988, 88-2 CPD ¶ 615.

The protester now argues that its original protest contained allegations of bad faith based on SBA's reliance upon the conviction of its principal (whose probationary period had ended) and its mischaracterization of the principal's illegal activities as being "under a private contract." The protester believes that SBA has "overwhelming" evidence that Action Building's past and current performance on government contracts is "outstanding."

We note first that even assuming that the facts are as Action Building represents, they would not constitute bad faith. We find it proper for the SBA to rely on the prior criminal conviction of the principal in denying the COC, whether or not the principal's probationary period had ended; nor does Action Building present any basis for our making a distinction whether Action Building's principal was convicted for acts in furtherance of a private contract or whether those acts were committed gratuitously.^{1/}

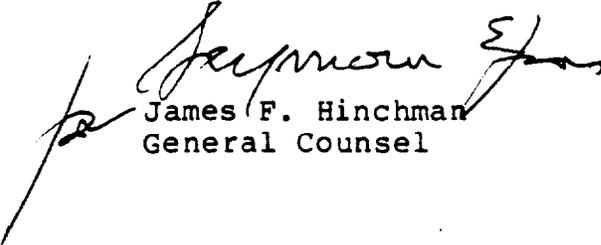
In its arguments that the record before us contained ample evidence to support its protest, the protester has still made no showing apart from bare allegations that the SBA's refusal to issue a COC stemmed from fraud or bad faith.^{2/} Rather, the protester is merely repeating its earlier arguments. To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either errors of fact or law or information not previously considered that warrant its

^{1/} The record indicates that Action Building's principal also owned a disposal company that cleaned septic tanks and grease traps for customers, including restaurants and shipping malls; the company apparently had a practice of dumping the waste into municipal storm drains and along roads.

^{2/} The protester also alleges that GSA officials, not involved with SBA's separate COC determination, also acted in bad faith. In view of the SBA's decision to refuse to issue a COC, we think this contention is immaterial.

reversal or modification. Repetition of arguments made during the resolution of the original protest or mere disagreement with our decision does not meet this standard. Allen Organ Co.--Request for Recon., B-237061.2. Nov. 3, 1989, 89-2 CPD ¶ 423.

The request for reconsideration is denied.



James F. Hinchman
General Counsel