



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Technical Ordnance, Inc.--Request for  
Reconsideration

**File:** B-236873.2

**Date:** April 5, 1990

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Jeff H. Eckland, Esq., Faegre & Benson, for the protester.  
Edward J. Korte, Esq., Office of the General Counsel,  
Department of the Army, for the agency.  
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

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## DIGEST

Request for reconsideration of prior decision, based on  
General Accounting Office's failure to conduct a fact-  
finding conference before deciding the protest, is denied  
because the fact-finding procedure is used only when a  
material factual dispute cannot be resolved on the written  
record and the protest allegations were resolvable on the  
written record.

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## DECISION

Technical Ordnance, Inc., requests that we reconsider our  
decision in Technical Ordnance, Inc., B-236873, Jan. 19,  
1990, 90-1 CPD ¶ \_\_\_\_\_, in which we denied the firm's protest  
of the U.S. Army Armament, Munitions and Chemical Command  
(AMCCOM) finding that it was nonresponsible under request  
for proposals (RFP) No. DAAA09-88-R-1140. We deny the  
request.

AMCCOM had determined Technical Ordnance nonresponsible and  
referred the question to the Small Business Administration  
(SBA). The SBA declined to issue a certificate of  
competency (COC) because the protester had not submitted a  
complete application for a COC in a timely manner and that  
its application did not include a Form 355. We found that,  
contrary to the protester's arguments, the matter was  
properly before the SBA, the record supported the finding  
the application was incomplete, and the SBA decision not to  
issue a COC was conclusive with regard to this RFP.

Technical Ordnance complains that our decision did not reach the merits of its protest that it was not properly determined nonresponsible and that the SBA did not act in good faith in declining to issue a COC. Technical Ordnance contends that we would have resolved these issues if we had found its application had been timely submitted to the SBA. Technical Ordnance contends that we abused our discretion by making the decision that the application was not timely made without holding a fact-finding conference. Technical Ordnance explains that, contrary to our decision, it submitted a complete COC application to the SBA in a timely manner, as was sworn to in the affidavit of its president.

Our Bid Protest Regulations provide for a fact-finding conference when we deem it necessary to settle a critical factual dispute which cannot otherwise be resolved on the written record. 4 C.F.R. § 21.5(b) (1989); Generic Eng'g--Second Request for Recon., B-232151.3, Oct. 25, 1988, 88-2 CPD ¶ 389. However, as indicated in our prior decision, Technical Ordnance admitted it did not submit the required Form 355 any earlier than June 21, after the extended June 19 deadline for submitting an application established by the SBA, and only a week before the June 28 date, by which time the SBA was required to determine whether to issue a COC. The record showed that Technical Ordnance was expressly apprised by the SBA of this deadline, which was extended, at Technical Ordnance's request, from June 16 to June 19, as well as the Form 355 requirement. Therefore, we found, on the basis of the written record, that the SBA could reject Technical Ordnance's application as untimely submitted.

With its reconsideration request, in which Technical Ordnance asserts its complete application was timely submitted, the protester furnished a copy of its Form 355 as evidence of this allegation. This form is dated June 23. Thus, even now the evidence of record continues to support our conclusion that the COC application was not timely filed. Since we were able to resolve this protest allegation on the written record, a fact-finding conference was not appropriate.

The request for reconsideration is denied.



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James F. Hinchman  
General Counsel