

R. ARSENOFF



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Howard-Cooper Corporation--Reconsideration  
**File:** B-238276.2  
**Date:** May 30, 1990

Robert W. Tate, Esq., for the protester.  
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
this decision.

## DIGEST

Request for reconsideration is denied where protester merely reiterates prior arguments and does not present factual or legal grounds warranting reversal or modification of an earlier dismissal of protest of agency's affirmative responsibility determination.

## DECISION

The Howard-Cooper Corporation requests reconsideration of our January 10, 1990 notice dismissing its protest of the award of a contract to Diamond Auto Parts by the Navy under request for proposals (RFP) No. N00651-89-R-0086, for the operation of an automobile and heavy equipment parts outlet in the Philippines.

We deny the request for reconsideration.

The initial protest was dismissed because it concerned an affirmative determination of responsibility--a matter which we will not review absent a showing that contracting personnel may have acted fraudulently or in bad faith. 4 C.F.R. § 21.3(m)(5) (1989).

Since responsibility determinations are based in large measure on subjective judgments which are not susceptible to reasoned review, our Regulations require that a protest contain a prerequisite showing of possible bad faith before we will consider the matter; to meet this standard, we require that the protester allege facts that reasonably

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indicate that the government actions complained of were improperly motivated. The Forestry Ass'n, Inc., B-237087, Oct. 5, 1989, 89-2 CPD ¶ 322.

Howard-Cooper's protest of the Navy's determination of the awardee's financial responsibility<sup>1/</sup> was based on the protester's own conclusions that Diamond was incapable of performing as reflected in the protester's interpretation of a commercial financial statement concerning the awardee. In the protester's view, this financial statement indicated that Diamond was undercapitalized when compared to Howard-Cooper's own judgment of what resources were required for successful performance based on its reported experience as an incumbent contractor. The protest recognized that the agency did review financial data provided to it by the awardee in reaching its responsibility determination, and contained no allegations of fraud or bad faith on the government's part; rather, the protester merely concluded that the agency lacked an adequate appreciation of the financial resources necessary for successful performance.

In our view, these allegations at best demonstrated that Howard-Cooper disagreed with the Navy's exercise of business judgment; they did not, however, rise to the level of facts that reasonably indicate that the Navy's determination was improperly motivated. We therefore dismissed the protest.

The protester's request for reconsideration basically recites its earlier arguments. While Howard-Cooper now alleges that the "facts" it has adduced show that the agency's actions were tantamount to bad faith, its request for reconsideration does not present factual or legal grounds<sup>2/</sup> which warrant reversal or modification of our dismissal and it fails to specify any errors of law or

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<sup>1/</sup> The protester also questioned other aspects of the awardee's responsibility, including the sufficiency of the firm's staff, but has not reiterated these concerns in its request for reconsideration.

<sup>2/</sup> The protester contends that we should require an agency report in this matter because we did so in an allegedly similar case--Colt Indus., Inc., B-231213.2, Jan. 23, 1989, 89-1 CPD ¶ 49. We find this reasoning unpersuasive since, Colt also involved an allegation that the agency failed to make an award in accordance with the terms of the solicitation--a matter which required an agency response.

information not previously considered in our initial decision. 4 C.F.R. § 21.12(a); O'Gara-Hess & Eisenhardt Armoring Co.--Recon., B-232508.2, Sept. 29, 1988, 88-2 CPD ¶ 302.

Accordingly, the request for reconsideration is denied.

*Robert P. Murphy*

for  
James F. Hinchman  
General Counsel