



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Kerr Contracting Corporation--Reconsideration

File: B-242213.2

Date: March 18, 1991

James A. Pemberton, Esq., King & King, for the protester.
John A. Dodds, Esq., Department of the Air Force, for the agency.
Christina Sklarew, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Summary dismissal of protest is affirmed where request for reconsideration is based on invalid procedural arguments--that dismissal is improper where agency does not request it or parties are not given advance notice--and on repetition of arguments considered when previous protest was dismissed.

DECISION

Kerr Contracting Corporation requests reconsideration of our decision in Kerr Contracting Corp., B-242213, Jan. 8, 1991, 91-1 CPD ¶ 20. Kerr contends that our decision was procedurally flawed and essentially expresses disagreement with our decision and repeats arguments it made previously.

Kerr, a small business, had protested the Air Force's determination that Kerr was nonresponsible and the Small Business Administration's (SBA) subsequent refusal to issue a certificate of competency (COC) for the firm. We dismissed the protest summarily, since our Office generally does not review a contracting officer's nonresponsibility determination where a small business is concerned because by law the SBA, and not this Office, has conclusive authority to determine the responsibility of a small business concern through the COC process. See Oakland Corp., B-230717.2, July 27, 1988, 88-2 CPD ¶ 91.

Kerr contends that the dismissal was "procedurally flawed" because the agency had not specifically requested that the

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protest be dismissed summarily and because neither the protester nor the agency was given advance notice of the summary dismissal. Kerr offers no legal support for these objections.

Our Bid Protest Regulations provide in Section 21.3(m) that when a protest on its face does not state a valid basis for protest or otherwise is not for consideration, we will summarily dismiss the protest without requiring the submission of an agency report, see 4 C.F.R. § 21.3(m) (1990); this includes protests that concern the SBA's refusal to issue a COC. 4 C.F.R. § 21.3(m)(3). There is no requirement that the agency request a summary dismissal, or that advance notice be given.

Kerr also repeats its objections to the agency's review of Kerr's responsibility and argues that we should have considered whether the Air Force's nonresponsibility determination had a rational basis or was made in bad faith. However, as we explained in our dismissal, our review of this matter is limited to determining whether bad faith or fraudulent actions on the part of government officials resulted in a denial of the protester's opportunity to seek SBA review. Fastrax, Inc., B-232251.3, Feb. 9, 1989, 89-1 CPD ¶ 132. Where the SBA has, in fact, reviewed the nonresponsibility determination, any protest against the agency's prior determination is academic and will not be reviewed by our Office. See Custom Research, Inc.--Recon., B-238976.2, June 14, 1990, 90-1 CPD ¶ 567.

Our Regulations provide that 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). Kerr's repetition of arguments made during our consideration of the original protest and mere disagreement with our decision to dismiss the protest does not meet this standard. Action Bldg. Sys., Inc.--Recon., B-237067.2, Jan. 30, 1990, 90-1 CPD ¶ 130.

Our prior dismissal is affirmed.


Ronald Berger
Associate General Counsel