



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Windward Moving & Storage Co., Inc.--  
Reconsideration

**File:** B-247558.3

**Date:** March 31, 1992

Ronald R. Sakamoto, Esq., Char, Sakamoto, Ishii & Lum, for the protester.  
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for reconsideration of prior dismissal is denied where protester does not show that prior decision contains errors of fact or law or information not previously considered that warrants reversal of our decision.

### DECISION

Windward Moving & Storage Co., Inc. requests that we reconsider our dismissal of its protest of an award to Ace Van & Storage Co. under request for proposals No. N00604-92-R-0017, issued by the Department of the Navy for transportation services. We dismissed the protest on February 12, 1992, because it failed to state a valid basis of protest of the agency's affirmative determination of the awardee's responsibility.

We deny the request for reconsideration because the request provides no basis for reconsidering our prior decision.

The solicitation performance work statement contained the permits, authorities, and franchises clause required to be placed in transportation solicitations by Federal Acquisition Regulation (FAR) § 52.247-2 (pursuant to FAR § 47.207-1). FAR § 52.247-2(a) requires offerors to certify whether they hold authorization from the Interstate Commerce Commission (ICC) or another cognizant regulatory body and, if so, to indicate the name of the regulatory body and the authorization number. FAR § 52.247-2(b) provides that:

"[t]he offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded.

In addition, the offeror shall, at the offeror's expense, obtain and maintain any permits, franchises, licenses, and other authorities issued by State and local governments."

The solicitation provided that "a certificate issued by the appropriate state regulatory body" will be required for a "prospective contractor engaged . . . in intrastate transportation."

The protester argues that the award to Ace was improper because Ace does not have the State of Hawaii Public Utilities Commission authorization to provide the required services. Windward challenges the agency's affirmative determination of Ace's responsibility and argues that the requirement for state authorization to perform the services is a contractor qualification requirement that must be met prior to award. As such, Windward contends that since the awardee allegedly does not have the proper state authorization, the award is improper because a definitive responsibility criterion in the solicitation has been misapplied.

As we stated in our dismissal decision, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3 (m)(5) (1991). We dismissed Windward's protest because it neither alleged fraud or bad faith on the part of the agency nor showed that definitive responsibility criteria may have been misapplied. In our dismissal decision, we stated that FAR § 52-247-2 does not constitute a definitive responsibility criterion.

The protester, in essence, repeats arguments it made previously and expresses disagreement with our 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). The repetition of arguments made during our consideration of the original protest and 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.

The protester has not presented any evidence to provide a basis for us to reconsider our dismissal of its protest. FAR § 52.247-2, as it applies here, calls for the bidder, upon request, to furnish copies of its authorization "before moving materials under any contract." No language in FAR § 52.247-2 or the solicitation requires the authorization to

be furnished before award. This language is more indicative of a performance requirement to be met by the contractor, than a pre-condition to an affirmative determination of responsibility and the receipt of an award. Relocation Advisors, Inc., B-246157, Jan. 24, 1992, 92-1 CPD ¶ 109; Quality Transport Servs., Inc., B-225611, Mar. 26, 1987, 87-1 CPD ¶ 346; but see Sillico, Inc., B-188026, Apr. 29, 1977, 77-1 CPD ¶ 296, in which we viewed a solicitation's requirement for ICC authority a proper definitive responsibility criterion because the solicitation specified that the bidder submit its applicable ICC authority number or broker license number, indicating a more specific requirement for ICC authority. Here, however, the IFB's performance work statement requirement for a certificate of state authority, if the bidder is engaged in intrastate transportation, does not specify a requirement for any operating authority in particular, and based on our discussion above, is more appropriately interpreted as a performance requirement which need not be met prior to award. Accordingly, compliance with FAR § 52.247-2 here does not constitute a definitive responsibility criterion. See Brazil Van and Storage Corp., B-234394, Mar. 24, 1989, 89-1 CPD ¶ 301.

The request for reconsideration is denied.



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