

5548

R. Feldman

PL 2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190873

DATE: March 6, 1978

MATTER OF: L&M Services, Inc.--Reconsideration

DIGEST:

1. GAO will not review protest or request for reconsideration where issues become academic because protester is no longer interested in the contract.
2. Prior decision denying protest, based solely on protester's submissions, is affirmed. Where it is possible to render summary denial on basis of protestor's submissions, agency report may not be obtained and protest may be decided on existing record.

L&M Services, Inc. (L&M) requests reconsideration of our decision, L&M Services, Inc., B-190973, January 17, 1978, 78-1 CPD ____, denying its protest and rejecting its claim for bid preparation costs because it failed to avail itself of the Small Business Administration's (SBA) Certificate of Competency (COC) procedure which would have conclusively resolved whether the firm was qualified to perform the contract. We also concluded that its objections to the agency's alleged misinterpretation of the specifications were moot and hypothetical in view of its failure to pursue with the SBA the question of the firm's competency.

In its request for reconsideration, L&M asserts that the firm did not apply for a COC to establish its responsibility to perform the contract because it was no longer interested in obtaining the contract. L&M states that our decision imposes an unfair burden on small business concerns by requiring such firms to pursue the COC procedure to preserve its rights to protest matters which go beyond the question of the firm's responsibility. L&M argues that a failure to pursue the COC procedure should not preclude the consideration by our Office of other protest issues.

B-190873

A small business which fails to file a COC application with SBA does not avail itself of the possible relief provided by statute and regulation to afford small business concerns a degree of protection against unreasonable determinations as to their capacity or credit by contracting officers. In such circumstances, our Office will not undertake a review of a contracting officer's determination of nonresponsibility for reasons pertaining to responsibility, since such action, in effect, would amount to a substitution of our Office for the agency specifically authorized by statute to review such decisions. West Electronics, Inc., B-182254, January 22, 1975, 75-1 CPD 42.

With respect to L&M's objections to the agency's alleged misinterpretation of the specifications, we agree that these allegations may go beyond the question of L&M's responsibility. However, the protester admits in its request for reconsideration, that it is no longer interested in the contract. While we believe that the COC procedure is not a quid pro quo for filing a protest, we assumed from the firm's failure to pursue its administrative remedy that it no longer was interested in obtaining the contract. Generally, we will not review a protest or a request for reconsideration where, as here, the protesting bidder is not interested in obtaining the contract. Cf. Hugo Neu Steel Products, Inc., B-184888, February 24, 1976, 76-1 CPD 127. In the cited decision, we held that we would not consider the protest where the issues become academic by the protester's withdrawal of its bid. The same rationale applies here.

L&M also objects to the fact that we rendered our decision without furnishing the protester an opportunity to comment on the agency report. However, because it was possible to render a summary decision on the basis of L&M's submissions and in view of the need to resolve bid protests as expeditiously as possible, we determined that no useful purpose would have been served by a formal documented report. See What-Mac Contractors, Inc.--Reconsideration, B-187782, January 14, 1977, 77-1 CPD 34.

B-190873

Accordingly, our decision is affirmed.

R. F. K. / m
Deputy Comptroller General
of the United States