

DECISION



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

FILE: B-219428.2; B-219440.2 **DATE:** November 21, 1985

MATTER OF: Hoboken Shipyards, Inc.; Perth Amboy
Dry Dock Company--Requests for
Reconsideration

DIGEST:

Requests for reconsideration are denied where protesters raise no new facts or legal arguments which were not previously considered while the initial protests were pending.

Hoboken Shipyards, Inc. (Hoboken), and Perth Amboy Dry Dock Company (Perth Amboy), request reconsideration of our decision in Hoboken Shipyards, Inc; Perth Amboy Dry Dock Company, B-219428, B-219440, Oct. 17, 1985, 85-2 C.P.D. ¶ ____, denying their protests of the Naval Sea Systems Command's (NAVSEA) award of a contract for the Atlantic Fleet AE Class Vessels Phased Maintenance Program to Coastal Dry Dock and Repair Corporation under request for proposals (RFP) No. N00024-85-R-8511. In their initial protests, the protesters raised a number of arguments which we concluded had either been filed in an untimely manner, were not appropriate for our consideration, or were without merit. Accordingly, our Office denied the protests in part and dismissed them in part.

In requesting reconsideration, Hoboken is joined by Perth Amboy in again asserting that the current audited forward pricing rates obtained from the Navy's Supervisor of Shipbuilding, Conversion and Repair, Brooklyn (SUPSHIP Brooklyn), were not relevant and the Navy's use of such data in evaluating the offerors' cost proposals constituted prejudicial error. The protesters now suggest that their existing agreements with SUPSHIP Brooklyn could not have been used for any purpose because the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 15.809(e) and (f) (1984), precludes the use of forward pricing rate agreements when changed conditions have invalidated the agreements.

The protesters have provided no evidence that either of the protesters' existing forward pricing rate agreements had been "invalidated" within the meaning of the FAR, 48 C.F.R. § 15.809(f). Furthermore, the provisions now relied upon by

the protesters relate to the use of forward pricing rate agreements as the sole "bases for pricing" of a contract, a contract modification, or other contractual actions and not to the use of pricing data as an informational tool in evaluating cost realism as was the case here. In any event, the application and effect of these FAR provisions were fully considered and disposed of in the holding in our original decision wherein we held that it was reasonable for the Navy to use forward pricing data provided by SUPSHIP Brooklyn to formulate labor rates and overhead rates as elements in the "cost to the government" evaluation factor score.

Under our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1985), a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is warranted and must specify any errors of law made in the decision or information not previously considered. Information not previously considered refers to information which was overlooked by our Office or information to which the protester did not have access when the initial protest was pending. Tritan Corporation--Reconsideration, B-216994.2, Feb. 4, 1985, 85-1 C.P.D. ¶ 136. Here, the protesters' requests for reconsideration merely indicate dissatisfaction with our decision by reasserting the allegation that the Navy's use of forward pricing rate data was unreasonable. The protesters do not present any new facts which were not previously considered by our Office or which were not known by the protesters at the time of their initial protests nor have they shown any error of law in our decision.

Accordingly, both requests for reconsideration are denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel