



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Atrium Building Partnership--Request for
Reconsideration

File: B-228958.2

Date: December 30, 1987

DIGEST

Request for reconsideration is denied where the protester essentially restates arguments previously considered in original decision because a request for reconsideration must detail the factual and legal grounds warranting reversal of decision, specifying errors of law made or information not previously considered.

DECISION

Atrium Building Partnership requests reconsideration of our decision in Atrium Building Partnership, B-228958, Nov. 17, 1987, 67 Comp. Gen. ___, in which we denied its protest against the rejection of its offer under solicitation for offers (SFO) No. 9PEL10-87-10, issued by the General Services Administration (GSA), for the lease of between 5,000 and 5,300 square feet of office space in the central business district area of Eugene, Oregon. We deny the request.

In the initial protest, Atrium alleged that GSA improperly applied the solicitation's fire safety criteria to its offer and made several errors in evaluating its offer. After an on-sight inspection, GSA determined that the atrium style interior of Atrium's building did not meet the fire safety standards for fire rated exits, and that the north and south exits which entered the atrium were required to be separated by 1 hour fire rated walls. GSA Fire Safety Regulations PBS 5900.2B, chapter 14, paragraph 9(d), which was a mandatory term of the SFO, states that offices or other rooms used for human occupancy must not open into an atrium, nor may exit routes pass through an atrium.

GSA informed Atrium of the fire safety deficiency found in its building and of the need to include a detailed description of how it intended to rectify the deficiency in its offer prior to the issuance of the SFO. Further, after

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Atrium suggested during discussions that a fire sprinkler system mitigated any fire safety deficiencies in its building, GSA again advised Atrium that its best and final offer (BAFO) must include information describing how it intended to correct its fire safety deficiency. However, despite these warnings, Atrium did not submit any information in its BAFO showing how it planned to comply with the fire safety requirements. GSA continued to evaluate the offer and rated it third highest with respect to quality and third lowest regarding price.

It was Atrium's contention that GSA was required to conduct a risk assessment of its building with a fire safety professional before determining that its building did not meet the fire safety requirements in the regulations. Moreover, Atrium contended that the evaluation process was improper because GSA did not examine relocation costs, made errors concerning the frame, access points and space planning of its building, permitted the awardee to substitute a new offer which did not meet the terms of the SFO and permitted all offers to expire before the award.

We held that Atrium had failed to establish that GSA acted unreasonably in evaluating its offer. Atrium did not dispute GSA's conclusion that the Atrium building did not meet the requirements of the regulations; instead it argued that GSA was required to perform a risk assessment with a fire safety professional. However, the fire safety regulations only permit deviation and a risk assessment where there are no other available spaces, which was not the case due to the other competing offers received by GSA. Further, section 12 of the SFO provided that offers which include alternate fire protection features must include a written analysis by a certified fire protection engineer fully describing any exceptions taken to the fire safety requirements. Therefore, we found that the SFO placed the burden on Atrium to demonstrate compliance with the fire safety requirements.

Further, in view of the fact GSA specifically called Atrium's attention to the fire safety deficiency found in its offer and Atrium elected not to include the information in its BAFO, we found that Atrium's offer was technically unacceptable and that GSA properly should have rejected it. Consequently, we found that whether GSA made errors in the evaluation of its offer was irrelevant and that Atrium was not an interested party to raise issues about the eventual award. As to the allegation that offers were permitted to expire, we held that where the acceptance period has expired

the contracting officer may allow the successful offeror to waive the expiration of its proposal without reopening negotiations to make an award on the basis of the offer, as submitted, since waiver under these circumstances is not prejudicial to the competitive system.

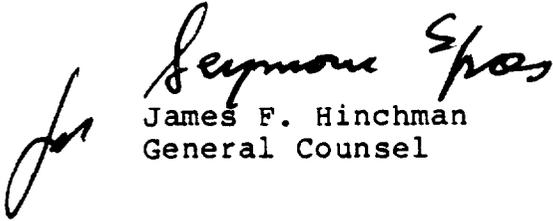
In its request for reconsideration, Atrium contends that our conclusion that it did not dispute that its building did not meet the fire safety requirements of the regulation was erroneous. It states that it has never accepted the fact that the Atrium building was deficient regarding fire safety because GSA never conducted a formal evaluation with a certified fire safety professional. In this connection, Atrium argues that the regulation at PBS P 5900.2B, chapter 1-5, p.3, required GSA to obtain a professional evaluation before determining that its building did not meet the fire safety criteria in the regulations. Further, Atrium argues that section 12 of the SFO does not preclude GSA from conducting a formal assessment.

We find that Atrium is essentially restating the argument that we fully considered in our original decision. Although Atrium contends that our finding that it did not dispute GSA's conclusion about the fire safety deficiencies was erroneous, we note that Atrium did not dispute the threshold finding of GSA that the atrium style interior of its building did not meet the fire safety standards for fire rated exits and that the north and south exits were required to be separated by 1 hour fire rated walls in its original protest and it has not done so here. Rather, Atrium argues that GSA could not make this determination without a formal evaluation with a certified fire safety professional. However, as noted in our original decision, the fire safety regulations only permit deviation and a risk assessment where there are no other available spaces, which would be inappropriate here. Further, in light of GSA's on-sight inspection of its building, we have no basis to question GSA's finding, since we are unpersuaded by Atrium's argument that GSA was required to use a certified professional before making this determination. In any event, Atrium was required to show in its BAFO how it intended to meet the fire safety requirements, which it did not do and therefore its BAFO was technically unacceptable.

Our Office will not consider a request for reconsideration that does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted specifying any errors of law made or

information not previously considered. 4 C.F.R. § 21.12 (a) (1987). Since Atrium has only restated an earlier argument, we find that its request for reconsideration does not satisfy this requirement.

The request for reconsideration is denied.

 James F. Hinchman
General Counsel