



Comptroller General
of the United States

Washington, D.C: 20548

Decision

Matter of: Mediq Equipment & Maintenance Services, Inc.--
Reconsideration

File: B-242222.2

Date: July 24, 1991

Lively Williams for the protester.
William E. Thomas, Jr., Esq., Department of Veterans Affairs,
for the agency.
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester has not shown that prior decision contains either errors of fact or law, and protester merely disagrees with our prior decision.

DECISION

Mediq Equipment & Maintenance Services, Inc. requests reconsideration of our decision, Mediq Equip. & Maintenance Servs., Inc., B-242222, Mar. 26, 1991, 91-1 CPD ¶ 328. In that decision, we denied Mediq's protest challenging the award of a contract to General Electric Company (GE) under request for proposals (RFP) No. 614-14-90, issued by the Department of Veterans Affairs (VA) for maintenance services for a GE Model 8800 CT scanner located at the VA Medical Center, Memphis, Tennessee.

We deny the request for reconsideration.

The solicitation contemplated the award of a firm, fixed-price contract for scanner maintenance services for the base year and 2 option years. Because the scanner was approaching the end of its useful life and was in frequent need of repair, the contractor was required to perform scheduled preventive maintenance and remedial maintenance and repair, including requirements for the contractor to respond on-site at the Memphis VA Medical Center within 2 hours of notification of the need for scanner repair and for the contractor to maintain a sufficient stock of parts and qualified service personnel to

052011 / 44473

ensure that the scanner's downtime would not exceed 8 consecutive working hours for each individual equipment failure. The RFP stated that the government would award a contract to the responsible offeror whose offer was determined to be the most advantageous to the government, cost or price and other factors considered.

Although Mediq's proposal was priced significantly less than GE's proposal, the agency considered GE to be technically superior to Mediq. Therefore, the agency awarded a contract to GE, the offeror with the slightly higher combined score. Following the award, Mediq filed its protest challenging the agency's evaluation of its proposal and arguing that as the low-priced offeror, the agency should have awarded it the contract. Mediq maintained that the agency had no reasonable basis for awarding the contract to GE, the higher-priced offeror.

In our decision, we agreed with the agency's conclusion that Mediq's ability to respond on-site within 2 hours of notification of an equipment failure was less reliable than GE's ability to do so. Even though Mediq proposed to place one primary engineer in Memphis to service the scanner and to have available a secondary engineer from Grenada, Mississippi, Mediq left open the possibility that in some situations it would be unable to timely respond because geography or distance would make the "2 or 3 hour response impossible," thus requiring the agency's approval for a longer response time. On the other hand, GE had available six local service representatives and two service representatives who worked within 2 hours of Memphis.

We also agreed with the agency's conclusion that Mediq's ability to repair the scanner so that its downtime would not exceed the maximum 8-hour requirement was questionable. With respect to the requirement that a contractor maintain a sufficient stock of parts in order to minimize the scanner's downtime, Mediq proposed to send emergency, priority parts from its Texas parts depot to Memphis using airline counter-to-counter service and to send non-priority parts to Memphis by overnight air or some other form of transportation. In contrast, GE maintained in Memphis an inventory of 85 percent of commonly needed parts. If parts were not available from this inventory, GE stated it would obtain the parts overnight from another parts inventory location. We found the agency reasonably concluded that GE was more qualified than Mediq to minimize downtime. We also found that because GE maintained a significant local parts inventory and, for all but an occasional equipment failure, agreed to repair the scanner so that the downtime would not exceed 8 hours, the agency reasonably concluded that, in contrast to Mediq's failure to

make any assurances concerning the 8-hour downtime requirement,^{1/} GE offered greater assurance of satisfying this requirement. Thus, we concluded that the agency's evaluation of Mediq's and GE's proposals was reasonable and in accordance with the RFP's stated evaluation scheme.

In its request for reconsideration, Mediq expresses disagreement with our decision and essentially argues that we erred in not finding that: (1) it would respond on-site to an equipment failure more quickly than GE because its service representatives are responsible for fewer pieces of equipment than GE's service representatives; (2) GE's significant local parts inventory does not establish that GE is any more qualified than Mediq to reduce the scanner's downtime; and (3) it did offer assurances of satisfying the 8-hour downtime requirement.

Under our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1991), 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. The repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. Interior Elements, Inc.--Recon., B-238117.2, Aug. 17, 1990, 90-2 CPD ¶ 139; R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

With respect to the 2-hour on-site response time requirement, Mediq states that while it has fewer service representatives than GE, it would respond on-site to an equipment failure more quickly than GE because its service representatives are responsible for fewer pieces of equipment than GE's service representatives. In this regard, Mediq states that its primary service representative in Memphis is only responsible for the scanner at the Memphis VA Medical Center and its secondary service representative in Grenada, Mississippi is responsible for three scanners. In contrast, Mediq states that GE's six service representatives in the Memphis area are each responsible for between four and eight scanners plus some additional equipment.

As stated in our prior decision, given GE's larger pool of local service personnel, we believe the agency reasonably concluded that GE was more likely than Mediq to satisfy the 2-hour on-site response time requirement. Although GE's service representatives are responsible for more equipment

^{1/} In its proposal, Mediq stated that since it did not know the agency's current downtime, "a more exact plan . . . would not be possible."

than Mediq's service representatives, we believe there is less of a likelihood that all six of GE's service representatives simultaneously would be unavailable to respond on-site to an equipment failure compared to Mediq's two service representatives. Thus, in our view, GE is more likely than Mediq to be able to respond in a timely manner to an equipment failure.^{2/}

With respect to the requirement that a contractor maintain a sufficient stock of parts in order to keep the scanner's downtime to a minimum, Mediq believes that GE's local inventory consisting of 85 percent of commonly needed parts does not establish that GE is any more qualified than Mediq to reduce the scanner's downtime. Mediq states that although GE maintains an 85 percent local parts inventory, 15 percent of the necessary parts will not be available locally and GE will have to obtain these parts overnight from another parts inventory location. Mediq believes that in these cases, the scanner may be out of service for up to 48 hours from the time of the equipment failure until the time GE obtains the parts necessary to be able to repair the scanner. Mediq states that it will always send emergency, priority parts from its parts inventory location in Texas to Memphis using airline counter-to-counter service, with the possibility of only a couple of hours delay between the time of the equipment failure until Mediq has the parts necessary to repair the scanner.

Mediq fails to substantiate its position concerning GE's turnaround for parts not locally available by reference to any of GE's own operating policies and procedures, and instead, appears to rely on some of its own operating policies and procedures in describing GE's operation. As stated in our prior decision, we believe the agency reasonably concluded that to the extent downtime could be minimized because of a contractor's access to parts, GE was more qualified than Mediq because GE had a larger local inventory of parts while Mediq's inventory of parts was located in another state and would have to be transported to Memphis.

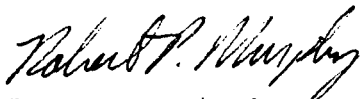
Finally, with respect to the maximum 8-hour downtime repair requirement, Mediq states that in its proposal it guaranteed a 95 percent uptime and no more than a 5 percent downtime average in any month regardless of the number of service repairs. However, Mediq ignores that part of its proposal where, as stated previously, Mediq proposed that "since [it]

^{2/} Although Mediq states it is an industry standard for a contractor to guarantee a 2-hour response time, Mediq does state in paragraph 5.1.2 of its Operating Policies and Procedures, control No. 6-604, that it contemplates situations where geography or distance would make the "2 or 3 hour response impossible."

did not know [the agency's current] downtime, a more exact plan [for meeting the 8-hour downtime requirement] would not be possible." Given the totality of Mediq's statement concerning its ability to meet the 8-hour downtime requirement, as stated in our prior decision, we believe the agency reasonably concluded that GE offered greater assurance of satisfying the downtime requirement because it had a larger pool of local service representatives and a significant local inventory of parts.

In our view, reasonable arguments can be made for both the agency's and the protester's positions. The agency's determination that GE's higher-priced proposal was technically superior to Mediq's proposal was reasonable because Mediq's proposal did not make clear its unequivocal commitment to meet the response time and downtime requirements. Mediq may very well have the actual capability to perform these requirements; however, contrary to the arguments in its protest and reconsideration request, it did not establish this capability in its proposal.

Mediq has not shown that our prior decision contains either errors of fact or law, and it merely disagrees with our prior decision. Accordingly, its request for reconsideration is denied.


for James F. Hinchman
General Counsel