



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** General Offshore Corporation--Reconsideration

**File:** B-246824.3

**Date:** December 11, 1992

Ron R. Hutchinson, Esq., and James D. Bachman, Esq., Doyle & Bachman, for the protester.

Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for reconsideration is untimely where not filed within 10 days after receipt of decision denying protest, and it is based, not on alleged errors in original decision, but on alleged inconsistency with decision in unrelated case issued 1 month later.

### DECISION

General Offshore Corporation (GOC) requests reconsideration of our decision, General Offshore Corp., B-246824, Apr. 1, 1992, 92-1 CPD ¶ 335, in which we denied its protest of the award of a contract to Seaward Services, Inc. under request for proposals (RFP) No. N60921-91-R-0101, issued by the Naval Surface Warfare Center (NAVSWC).

We deny the request.

The RFP was for engineering and technical support of a weapons testing range at NAVSWC's Fort Lauderdale, Florida facility; GOC was the incumbent contractor for this effort. GOC's protest alleged that the Navy failed to make a proper cost/technical tradeoff in selecting Seaward, a lower-priced, lower-technically-rated offeror, to receive the award. Specifically, GOC argued that the Navy had improperly concluded that its proposal was technically equal to Seaward's notwithstanding Seaward's lower score; consequently, the agency improperly used Seaward's lower price as the determinative selection factor. In denying the protest in our April 1 decision, we found that the record supported the Navy's conclusion that the two proposals were technically equal; as a result, the Navy properly based the award decision on Seaward's lower price.

On May 5, we issued a decision in an unrelated case, Dewberry & Davis, B-247116, May 5, 1992, 92-1 CPD ¶ 421, in which we sustained a protest that concerned the same legal issue as that in GOC's protest, i.e., the propriety of the cost/technical tradeoff where award was made to a lower-priced offeror. There, unlike in GOC's protest, we found that the record did not adequately support the agency's decision to make award to the low-priced offeror notwithstanding the protester's clear technical superiority. GOC obtained a copy of the Dewberry & Davis decision on July 28, and on August 7 filed this request, alleging that our denial of its protest was erroneous as a matter of law because it is inconsistent with the Dewberry & Davis decision.


Under our Bid Protest Regulations, 4 C.F.R. § 21.12(b) (1992), a request for reconsideration must be filed within 10 working days after the basis for the request is known or should have been known. GOC asserts that it meets this standard because it filed the request within 10 working days after receiving the Dewberry & Davis decision, the basis for its request, on July 28.

GOC's argument is untenable. First, it is fundamental that our decisions are based on existing procurement laws, regulations and case precedents. Our review in the context of a reconsideration request, therefore, is limited to determining whether the original decision was based on an erroneous application of those rules and precedents as they existed at the time the decision was rendered. It clearly follows that any valid basis for requesting reconsideration arises at the time our decision is received by the requesting party; at that point, the decision can be examined in light of the existing rules and precedents to determine whether they were applied properly to the facts of the case. This being the case, the 10-day period for filing a request for reconsideration begins to run upon receipt of our decision, and a request filed more than 10 working days after receipt is untimely. GOC's request, filed more than 4 months after issuance of our decision, thus is untimely.

In any case, even if the Dewberry & Davis decision were a proper basis for requesting reconsideration, it would not warrant disturbing our decision in GOC's protest. The different results in the two cases rested on a material difference in the two records. In General Offshore, we found that the record supported the agency's conclusions regarding the essential technical equality of the proposals notwithstanding the difference between their scores, leading us to conclude that award based on the lowest price was proper. Conversely, our decision in Dewberry & Davis turned on the absence from the record of an explanation as to why the protester's acknowledged technical superiority was not

worth a higher price, given the greater weight accorded technical factors in the solicitation. In other words, our decisions were based on the same rules and precedents, but different facts. Because the cases were materially different factually, the Dewberry & Davis decision is in no way inconsistent with General Offshore and would not support GOC's argument that the latter decision was erroneous.

The request for reconsideration is denied.

  
Ronald Berger  
Associate General Counsel