



Comptroller General
of the United States

Washington, D.C. 20545

92-1 CPD 417

Decision

PR

Matter of: Great Atlantic Boiler Services, Inc.--
Reconsideration

File: B-244612.3

Date: May 5, 1992

John A. Tucker, Esq., Caven, Clark, Ray and Tucker, for the protester.

John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where, with one exception, request merely repeats arguments made by protester during consideration of the original protest and disagrees with original decision. In the single exception, protester argues that original decision incorrectly applied regulation which allows award without discussions to other than the lowest cost offeror, even though that regulation was not in effect. Nonetheless, regardless of the regulation in effect at the time, the agency was permitted to award the contract without discussions with the protester even though its price was lower than the awardee's since protester submitted a quotation that took exception to delivery deadline in solicitation and the firm subsequently confirmed that it could not meet that deadline.

DECISION

Great Atlantic Boiler Services, Inc. requests reconsideration of our decision Great Atlantic Boiler Servs., Inc., B-244612.2, Nov. 29, 1991, 91-2 CPD ¶ 509, in which we denied its protest against the award of a contract to Shriver (Red) Boiler Repair Service under request for quotations (RFQ) No. N00612-91-Q-0261. The solicitation was issued by the Navy for repair of a mobile boiler used by the Charleston Naval Shipyard to support docked Navy submarines.

We deny the reconsideration request.

As a result of an urgent need for the boiler repair, the contracting agency prepared a justification for using other than full and open competitive procedures due to an unusual

and compelling urgency as required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(c)(2)✓ (1988). Under the solicitation, the boiler was required to be repaired by August 1, 1991.

The Navy issued the solicitation to three firms. Two firms submitted quotations, Great Atlantic, at \$256,831, and Shriver, at \$548,318.85. After the Navy awarded the contract to Great Atlantic, that firm informed the agency that its quotation was qualified so that Great Atlantic was not obligated to complete the repairs until 81 days after the required August 1 completion date. As a result, the contracting officer rescinded the award to Great Atlantic and awarded a contract to Shriver based on its higher quotation subject to the following conditions:

"(1) In the event that the award price is found by DCAA [Defense Contract Audit Agency] to be deficient, the contractor agrees to a downward adjustment as may be negotiated.

"(2) A reduction of \$2,500 per day will be deducted from the contract award price for each day the delivery is not met."

In its protest, Great Atlantic argued that the award to Shriver was improper because the contract included terms different than those announced in the solicitation and Great Atlantic was not given an opportunity to compete under the new provisions. Great Atlantic also argued that the Navy improperly waived a requirement of the solicitation by assisting Shriver in obtaining an asbestos removal permit on an expedited basis, and that the Navy was required to hold discussions with Great Atlantic because the terms of the solicitation were changed and because the award to Shriver did not result in the lowest overall cost to the government.

In denying the protest, we concluded that the Navy properly rejected Great Atlantic's quotation and awarded a contract to Shriver that included the disputed provisions. Since Great Atlantic's quotation was unacceptable because it took exception to the August 1 deadline and since the firm subsequently orally represented that neither it nor any other offeror could meet the deadline, and given the urgency of the requirement, we concluded that the Navy reasonably rejected Great Atlantic's quotation. In addition, since Great Atlantic's quotation took exception to the August 1 deadline, we stated that the Navy was not required to hold discussions regarding that quotation or otherwise delay the urgent contract based on the possibility that Great Atlantic would later agree to meet the deadline. In this respect, we stated that an agency which can award a contract based on less than full and open competitive procedures under the

CICA urgency exception can also dispense with discussions under this exception by awarding a contract to the firm that submits the most advantageous initial proposal or, as in this case, the only acceptable quotation, whether or not award to that offeror represents the lowest overall cost to the government. Raytheon Co., 70 Comp. Gen. 74✓ (1990), 90-2 CPD ¶ 384, recon. denied, Raytheon Co.--Recon., B-240333.2, Mar. 28, 1991, ✓ 91-1 CPD ¶ 334.

We also stated that no useful purpose would have been served by holding discussions with Great Atlantic and giving it an opportunity to submit a quotation based on the payment provisions included in Shriver's contract. Those provisions--which allowed a downward adjustment in the contract price and provided for liquidated damages--did not waive the August 1 deadline and would not have made it easier for Great Atlantic or any other offeror to meet the deadline. Since those provisions increased the financial risk to Shriver and would have done the same to Great Atlantic, we stated that Great Atlantic was not prejudiced by not being permitted to compete for the contract including these provisions. Also, we rejected Great Atlantic's argument that Federal Acquisition Regulation (FAR) § 15.610✓ required the Navy to hold discussions since the award to Shriver did not result in the lowest overall cost to the government. We explained that FAR § 15.610 had been amended on August 22, and that the currently applicable version of that regulation provided that award could be made without discussions to other than the lowest cost offeror where, as in this case, the solicitation states that award could be made without discussions and the contracting officer determines that discussions are not necessary. Finally, we rejected Great Atlantic's argument that the Navy had waived a solicitation requirement by assisting Shriver in expediting an asbestos removal permit.

In its reconsideration request, Great Atlantic argues that our original decision incorrectly stated that it was proper for the Navy to hold discussions with Shriver while excluding Great Atlantic. According to Great Atlantic, although under the CICA urgency exception the Navy was permitted to forego discussions with all offerors due to the urgent circumstances, CICA provides no authority to hold discussions with Shriver and not hold discussions with Great Atlantic. In addition, Great Atlantic argues that our decision was based on a version of FAR § 15.610✓ that was not in effect at the time the solicitation was issued.

Great Atlantic also argues that we erroneously concluded that it was not prejudiced by the Navy's failure to hold discussions with it regarding the changed solicitation terms. In this respect, Great Atlantic argues that had it been given an opportunity to submit a quotation under the

~~changed~~ solicitation terms, it could have met the August 1 deadline. Finally, Great Atlantic argues that we wrongly permitted the Navy to amend the solicitation by assisting Shriver in obtaining an asbestos removal permit on an expedited basis.

Under our Bid Protest Regulations, 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. 4 C.F.R. § 21.12(a)(1992). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

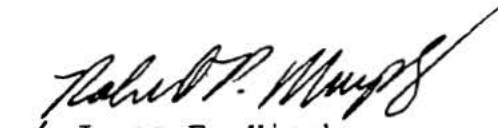
With a single exception, Great Atlantic simply repeats arguments it made in its protest submissions and disagrees with our decision. As we explained above, in our earlier decision we rejected Great Atlantic's arguments that the Navy improperly rejected the firm's quotation, that the agency was required to hold discussions with Great Atlantic and that the agency amended the solicitation by assisting Shriver in obtaining an asbestos removal permit. With respect to these contentions, since Great Atlantic has merely repeated or recasted arguments which it made during our consideration of the original protest and disagreed with our decision, it has not provided a basis to reconsider it. R.E. Scherrer, Inc.--Recon., supra.

In addition to repeating arguments which we addressed in the initial decision, Great Atlantic argues that our decision incorrectly relied on the currently applicable version of FAR § 15.610, which was not in effect at the time of the Navy's actions on this procurement. The current version of FAR § 15.610 allows award without discussions to other than the lowest cost offeror provided the solicitation permits award without discussions, and the contracting officer determines that discussions are not necessary. This version of the regulation became effective on August 22, and Great Atlantic points out that the events which it complains of in this case occurred in May and June 1991. According to Great Atlantic, under the applicable version of FAR § 15.610, which prohibits award without discussions to other than the lowest overall cost offeror, the award to Shriver at a higher price than quoted by Great Atlantic was improper because discussions were held with Shriver regarding the changed solicitation terms and not with Great Atlantic.

This argument provides no basis for modifying or reversing our decision. Regardless of which version of FAR § 15.610 was in effect at that time, the Navy was not required to hold discussions with Great Atlantic regarding the changed

solicitation provisions. As we explained in detail in our earlier decision, Great Atlantic's quotation had taken exception to the August 1 deadline and the firm orally confirmed that it could not complete the contract by that date. Under the circumstances, and given the Navy's urgent need for the boiler repair, we think the Navy reasonably rejected Great Atlantic's technically unacceptable quotation. Further, under the urgency exception, as we explained in our initial decision, since Great Atlantic's quotation stated, and the firm subsequently confirmed, that it could not meet the August 1 deadline, and was thus technically unacceptable, the agency was not required to hold discussions with Great Atlantic regarding the new solicitation provisions.

The reconsideration request is denied.


for James F. Hinchman
General Counsel