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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

# Decision

**Matter of:** Specialty Marine, Inc.--Reconsideration

**File:** B-292053.2

**Date:** July 29, 2003

Robert Korroch, Esq., Williams Mullen, for the protester.
Jeanne W. Isrin, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

The Small Business Administration (SBA), in commenting on a protest alleging that an agency had improperly rejected the protester's quotation because the firm did not hold an Agreement for Boat Repair, advised that it did not consider the matter a responsibility one subject to the certificate of competency (COC) process; as a result, GAO, while observing that the requirement appeared to involve a definitive responsibility criterion, addressed the merits of the agency's action and denied the protest. The fact that the SBA, in a post-decision submission, attributes its prior position to its understanding of GAO precedent and states that it would have considered the protester for a COC if GAO had sustained the protest, does not warrant reconsideration of the decision, since the decision properly was based on the protest record.

**DECISION**

Specialty Marine, Inc. requests that we reconsider our decision in Specialty Marine, Inc., B-292053, May 19, 2003, 2003 CPD ¶ 106, denying Specialty's protest of the award of a contract to AEPCO under request for quotations (RFQ) No. N2105130275001, issued by the Military Sealift Command, Department of the Navy, for pre-deployment maintenance and repair of the USNS MOHAWK.

We deny the request.

The synopsis for the requirement, which was posted at the Government Point of Entry on the Internet, specified that the requirement was open only to holders of an

Agreement for Boat Repair (ABR).[1] Following the receipt of quotations, the agency awarded a contract to AEPCO, and notified Specialty that its quotation was not considered because Specialty did not hold and was not seeking an ABR. Specialty's principal argument, and the only one involved in this reconsideration request, was that the Navy's rejection of Specialty's quotation amounted to a finding of nonresponsibility, and that the Navy improperly failed to refer it to the Small Business Administration (SBA) for review under its certificate of competency (COC) procedures.[2]

The Navy and the SBA (whose views we sought) maintained that the ABR requirement was not a responsibility matter, but instead involved prequalification, such that vendors were required to hold or to have applied for an ABR in order to be eligible for award, pursuant to our decision in Stevens Tech. Servs., Inc., B-250515.2 et al., May 17, 1993, 93-1 CPD ¶ 385; there, we indicated that an offeror was not eligible to receive an award where it did not hold, and had not applied for, a required ABR. Id. at 3-4 n.4. In our decision of May 19, however, we noted that, Stevens and the agencies' views notwithstanding, the ABR requirement had all the principal characteristics of a definitive responsibility criterion: a specific and objective standard set out as a precondition to award, designed to measure a prospective contractor's ability to perform the contract.[3] We stated:

> It is not clear--and neither agency explains--why a firm's failure to apply for an ABR should change the essential nature of a requirement from one concerning responsibility.

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[1] The Navy maintains a qualification program under which ship repair contractors enter into advance agreements that establish that the contractor has a specified level of ship repair capability, and contains certain clauses and conditions applicable to contracts issued under the agreements. An ABR is one such agreement.

[2] Specialty also argued that (1) the ABR requirement was not stated in the solicitation, and Specialty's quote therefore was erroneously rejected for failing to meet an unstated requirement, and (2) the ABR requirement was unnecessary, and therefore unduly restrictive of competition. We dismissed the former, concluding that stating the ABR requirement in the synopsis was sufficient to constitute a requirement that offerors had to meet, and to give Specialty notice of it. The latter was dismissed as untimely since it involved a solicitation impropriety, but was not protested until after the closing date for the receipt of quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2003).

[3] NAVSEA Instruction 4280.2C details the requirements for ABR holders, which focus on management, production organization, and facilities--typical responsibility concerns. See Federal Acquisition Regulation § 9.104.

We stopped short of deciding whether the ABR requirement was a definitive responsibility criterion, however, in light of the SBA's view that it was not a responsibility matter subject to the COC process. Since referral to the SBA under that process would be pointless in view of the SBA's position, we elected to follow our long-held practice of reviewing agency determinations that the SBA declines to review. See Wallace & Wallace, Inc.; Wallace & Wallace Fuel Oil, Inc.--Recon., B-209859.2, B-209860.2, July 29, 1983, 83-2 CPD ¶ 142 at 2. Looking at the merits, we found that because the ABR was required and Specialty did not hold and had not applied for an ABR, the firm's quotation was rightfully rejected whether or not the requirement was a definitive responsibility criterion.

Specialty's reconsideration request is based on the view expressed in a letter that the SBA sent to our Office after we issued our decision (and in response to the decision). In that letter, the SBA stated that it had not intended for its submission to our Office during the pendency of the protest to be read as a declination to review the rejection of Specialty's quotation under the COC process if we had declared the ABR requirement a definitive responsibility criterion for referral. Instead, the SBA's post-decision letter stated that the SBA's view expressed during the protest proceedings merely reflected the SBA's understanding of our Office's precedent, and that, if our Office had found that a negative responsibility determination occurred here, the SBA would have considered Specialty for a possible COC. Specialty argues that in light of our analysis of the issue, and since the SBA has now stated that it will consider the matter if referred, we should sustain the protest and "issue an affirmative recommendation to the [Navy] that they refer the matter to the SBA to consider [Specialty] for a possible COC."

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a); Eastman Kodak Co.--Recon., B-271009.2, Oct. 7, 1996, 96-2 CPD ¶ 136 at 3.

We will not reconsider our decision. The SBA, in commenting on the protest, was clear in its view: "We agree with the Navy that its rejection of [Specialty's] offer did not constitute a responsibility determination which necessitated referral to SBA for a possible COC." On that basis, we reached the only logical conclusion possible: the SBA would decline jurisdiction if the issue were referred to it under the COC process. To the extent that the SBA now proffers a different opinion, we point out that the goal of our bid protest forum is to produce fair and equitable decisions based on consideration of the arguments presented in a fully developed record.[4]

[4] For that reason, we consistently have held that we will not reconsider a decision where a party to a protest fails to assert all possible arguments or provide all

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Ford Contracting Co.--Recon., B-248007.3, B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90 at 2-3. There was nothing improper in the factual and legal conclusions we reached on the protest record as developed in the matter.[5]

Moreover, our ultimate holding in the protest was that since an ABR was required, and since Specialty did not hold or apply for one, the Navy properly rejected the firm's quotation. Neither Specialty nor the SBA has shown that we were wrong in that determination.

The request for reconsideration is denied.

Anthony H. Gamboa
General Counsel

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information available, and then subsequently attempts to do so on reconsideration. See, e.g., The Dep't of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546.

[5] Even in its post-decision letter, the SBA stated (quite apart from its reliance on its understanding of our Office's precedent) that the SBA "fail[s] to see how the ABR requirement could constitute definitive responsibility criteria" and that allowing referral to the SBA whenever a small business lacks an ABR would render the ABR program "meaningless." As we did in our initial decision in this matter, we continue to leave open the question of whether an ABR requirement is, in fact, a definitive responsibility criterion. If that question is presented in a future protest, we will solicit and give appropriate weight to the view of the SBA, as we did in this case, recognizing that the SBA's view at that time may be different from the one expressed during the pendency of Specialty's protest.