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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-212318.2

DATE: March 26, 1984

MATTER OF: Culp/Wesner/Culp--Reconsideration

DIGEST:

Prior decision is affirmed on reconsideration where the protester has not shown any error of fact or law which would warrant reversal of the decision.

Culp/Wesner/Culp (Culp) requests reconsideration of Culp/Wesner/Culp, B-212318, December 23, 1983, 84-1 CPD 17, in which we denied Culp's protest against the award of a contract by the Environmental Protection Agency (EPA) to Hazen and Sawyer, P.C. (Hazen), under request for proposals (RFP) No. WA 82-A129.

The decision is affirmed.

Culp argues that its inclusion in the competitive range demonstrates that it was technically qualified. Culp reiterates that the EPA should have ignored technical differences and awarded on the basis of price. We disagree. The RFP's evaluation criteria stated that technical quality would be considered more important than price. The EPA therefore was required to rank relative technical merit. The approach that Culp advocates would have only been appropriate if the evaluation criteria had required that award be made to the lowest priced, technically qualified offeror. If Culp disagrees with the RFP's evaluation criteria, it should have filed a protest against the solicitation prior to the July 28, 1982, closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1983).

We found that there was a rational basis for awarding nine out of 12 education points to Culp because Culp's consultants would work a low number of hours. Culp now contends the consultants would work any necessary additional hours. However, this was not reflected in Culp's proposal. Culp protests that the evaluation criteria did not identify hours per person as an evaluation criteria. We disagree. The evaluation criteria cited the importance of demonstrated

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education and availability of key staff. The EPA's evaluation of the availability of Culp's consultants, therefore, was reasonable. See United Food Services, Inc., B-211117, October 24, 1983, 83-2 CPD 476.

Culp protested that Hazen should not have been awarded the contract because it intended to subcontract to a former EPA employee. We disagreed. Culp now reiterates its inference of conflict of interest and argues that the EPA's regulations are designed to protect against both real and apparent conflicts of interest. Culp contends that it was insignificant that the designated ethics official and the Director, Office of Fiscal and Contracts Management, ratified the contracting officer's determination that there was not a conflict of interest. Culp contends that it is very naive to believe that their opinions were not influenced by the fact that the contract had already been awarded. Culp believes the ratification is part of an EPA coverup.

Culp's inferences do not provide a basis for reversing our decision. As we stated in our decision, the responsibility for determining whether a firm has a conflict of interest, and to what extent the firm should be excluded from competition, rests with the procuring agency and we will overturn such a determination only when it is shown to be unreasonable. Acumenics Research and Technology, Inc., B-211575, July 14, 1983, 83-2 CPD 94; see Western Engineering and Sales Co., B-205464, September 27, 1982, 82-2 CPD 277; National Service Corporation, B-205629, July 26, 1982, 82-2 CPD 76. Mere inferences of actual or potential conflict of interest do not afford a basis for disturbing a contract award; there must be "hard facts" showing an actual conflict of interest. See CACI, Inc.-Federal v. United States, 719 F.2d 1567 (Fed. Cir. 1983).

Culp essentially reargues the same points it presented and we considered in connection with the initial protest. While Culp challenges our factual and legal conclusions, it has provided no new evidence or legal arguments which show that our earlier decision is erroneous. Thus, nothing in the request for reconsideration warrants reversal of our initial decision. See 4 C.F.R. § 21.9(a) (1983).

for 
Comptroller General
of the United States