



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: HLJ Management Group, Inc.--Request
for Reconsideration
File: B-225843.5
Date: March 6, 1989

DIGEST

Request for reconsideration which essentially restates arguments previously considered and does not establish any error of law or provide information not previously considered is denied.

DECISION

HLJ Management Group, Inc., requests reconsideration of our decision, HLJ Management Group, Inc., B-225843.3, Oct. 20, 1988, 88-2 CPD ¶ 375, denying its protest against the award of a contract to Dragon Services, Inc., to provide civilian mess attendant service at Fort Bragg, North Carolina under request for proposals (RFP) No. DAKF40-87-R0016 issued by the Department of the Army.

We deny the request for reconsideration.

The solicitation was issued as a total small business set-aside and basically provided that award would be based on the best overall proposal with consideration given to the stated evaluation factors. The three significant evaluation factors besides price were technical, management, and quality control. Technical was approximately twice as important as management and management was three times as important as quality control. The RFP further provided that price would not be scored or weighed but would be evaluated on its relationship to significant evaluation factors.

The Army received 12 proposals, eight of which were determined to be in the competitive range. The proposals were evaluated by the Source Selection Evaluation Board (SSEB). Each offeror was assigned an identification letter and these were the only designations used in all briefings

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to the Source Selection Authority (SSA).^{1/} The SSA was unaware of the identities of any of the offerors, and was aware only of evaluation scores and proposed prices associated with identification letters.

After several rounds of discussions and three request for best and final offers (BAFOs), final BAFOs were received on April 4, 1988, and the results of the final evaluation were presented to the SSA on May 19. The final summary of technical and price showed that Dragon was rated higher technically than was HLJ. HLJ's price was \$27.3 million and Dragon offered a price of \$27.5 million. Thus, HLJ's price was \$200,000 lower than Dragon's offer for the 5-year contract. On June 2, the SSA determined that award to Dragon was in the best interest of the government. Award was made to Dragon on December 1, 1988.

In its original protest, HLJ first alleged that award to Dragon was improper because a former Army employee, who sought employment with Dragon, provided information relating to HLJ's proposal to Dragon, creating the appearance of impropriety, and giving Dragon an unfair competitive advantage. HLJ argued that the evaluation and source selection decision was tainted by the information, opinions and recommendations given to the SSEB by the former government employee. Second, HLJ alleged that the decision to award to Dragon was improperly tainted by political pressure. Lastly, HLJ alleged that the several rounds of BAFOs constituted auctioneering and technical leveling.

In our decision, we found that the record showed that, as a government employee, the individual in question participated for a short time as an evaluator for this contract award. The record further showed that the employee had been temporarily employed by Dragon to work on another project which could have led to his permanent employment by Dragon for that project. While we stated that these facts caused us concern, HLJ presented no probative evidence that there was any contact between Dragon and the government employee prior to his resignation from the government or that the employee sought a job with Dragon prior to his retirement.

With regard to the influence of this employee on Dragon's selection as awardee, we found that the record established that the source selection process was designed to preclude knowledge of the offerors' identity outside the closed environment of the SSEB. The evaluation workpapers were

^{1/} New identification letters were assigned to the final best and final offers (BAFOs).

locked away except when being used. The log sheets indicated that the employee never logged out a proposal. We further found that the protester failed to show that the employee had any impact on the evaluation process, that he possessed information as to the proposals or evaluations which could benefit Dragon, or that he communicated with Dragon prior to the award selection. In this respect, the record demonstrated that, although the employee served on the technical committee for a limited time after receipt of initial offers, amendments were issued after the employee left the SSEB, and that proposals were revised several times thereafter. The record also indicated that Dragon was rated highest technically throughout the procurement process and that its initial proposal received the highest technical rating and subsequent revisions thereto resulted in lower technical ratings. On the other hand, the record demonstrated that HLJ initially was ranked third best technically but in its final rating was ranked second best technically. Also, the record indicated that, by the time the employee contacted Dragon concerning employment on May 18, the evaluation was already completed, so that any information he allegedly possessed could not have been used by Dragon in its offer.

We also rejected HLJ's argument that the proposed award to Dragon was the result of improper political pressure to award to a North Carolina based firm. We found that the record indicated that the proposed award to Dragon was based on the evaluation scheme and not the result of political pressure and that HLJ had failed to show otherwise. HLJ argued that in 1985, two Senators entered into a formal agreement to steer the award under the instant procurement to a North Carolina based firm in exchange for an agreement as to the firm to be awarded the food services contract at Fort Leonard Wood. HLJ contended that this alleged agreement was memorialized in an August 7, 1985 memorandum that HLJ argued was in the Army's possession. The Army advised that it was unaware of such a memorandum and was unable to locate it in either its Fort Bragg or Fort Leonard Wood files. HLJ requested that we compel the Army to produce this document. HLJ's only evidence that this memorandum existed was an affidavit from its outside general counsel describing a meeting and conversation where a Federal Bureau of Investigation (FBI) agent allegedly informed HLJ of the existence of this document. We noted that the HLJ affidavit did not state that a memorandum of a meeting actually existed, only that the FBI agent "implied" the meeting concerned a prior contract at another Army base and that the HLJ counsel stated that he believed the meeting also involved an agreement to steer the Fort Bragg contract to a North Carolina firm. We thus concluded that the

affidavit was entirely speculative as to the nature of the meeting and any written agreement. Since there was no evidence supporting the existence of this memorandum and the purpose of securing this alleged memorandum was merely to further demonstrate improper political influence, and our Office had already determined that award was made without knowledge of the proposed awardee's identity, we declined to consider this matter further.

Lastly, HLJ's allegation that the contract was improperly auctioned and that the contracting officer engaged in technical leveling was based on the fact that several rounds of BAFOs were requested, and thus allegedly gave Dragon the opportunity to substantially increase its technical score and/or substantially decrease its price. In our decision, we found that the Army did not act improperly. The record showed that after receipt of initial BAFOs, a number of changes to the requirement was made which necessitated the issuance of amendments to clarify the RFP scope of work. We did not find the Army unreasonable in requesting multiple BAFOs to permit offerors to revise their offers to address the changes and clarifications. We also noted that the repeated BAFO requests permitted HLJ to improve its technical ranking and lower its price, and thus benefited HLJ.

In its request for reconsideration, HLJ asserts that we erred in not insisting that certain documents requested by HLJ be produced by the Army as required by 4 C.F.R. § 21.3(d)(2) (1988). HLJ argues that we should have drawn unfavorable inferences against the Army for its failure to produce requested documents. Additionally, HLJ contends that we adopted a restrictive view of the facts, ultimately concluding that there was not sufficient evidence of political interference or conflict of interest to void the procurement. HLJ argues that it presented an "incredible amount of information and proof" and was only unable to "conclusively" establish its case due to the Army's refusal to produce the requested documents.

Our Office will not consider a request for reconsideration which does not contain a detailed statement specifying errors of law made or information not previously considered, which would warrant reversal of our prior decision. Where a protester merely restates previously considered arguments we will not further consider the matter. 4 C.F.R. § 21.12(a); Pacific Consolidated Industries-- Reconsideration, B-228724.3, Jan. 19, 1988, 88-1 CPD ¶ 46.

In this case, we think that the protester has merely restated its earlier arguments (which were considered in our

first decision) without offering any new evidence or information. First, as to the allegation that negative inferences should have been drawn from the failure of the Army to produce requested documents, we thoroughly reviewed HLJ's request for documents and the Army's response and independently concluded, in accordance with our regulation, (4 C.F.R. § 21.3(d)(1) and (2), (f)), that the Army was responsive to HLJ's request and produced all the relevant documents it had.

Second, regarding HLJ's allegation that it presented an "incredible amount of information and proof" with respect to the issues of political interference and conflict of interest, we find that the protester's submission on reconsideration essentially expresses disagreement with our reading of the record and merely constitutes a restatement of its earlier arguments. This proof HLJ refers to was in the form of affidavits from various individuals, several with a relationship to HLJ, who allegedly were aware of the former employee's contact with the awardee prior to his retirement. As indicated in our decision, we reviewed all documents submitted, including HLJ's affidavits.

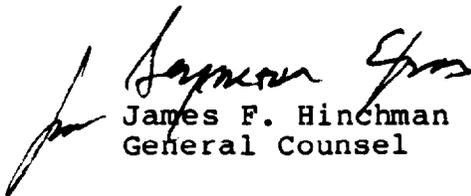
For example, HLJ contended that Dragon offered the former employee a position in early 1988 and that the former employee, by virtue of his participation in negotiations concerning modification of HLJ's current base contract had detailed knowledge of HLJ's proposal, approach, manpower plans and cost data for this contract. To this extent, HLJ contended that the individual assisted Dragon in preparing its revised BAFO by improperly providing Dragon with inside information concerning HLJ's proposal. The Army, on the other hand, stated that by virtue of its own internal investigation, it had found nothing to contradict the individual's statement that he began negotiating for employment after his resignation.

The record showed that, as a government employee, the individual in question participated for a short time as an evaluator for this contract award. The record further showed that the employee had been temporarily employed by the awardee to work on another project which may lead to his permanent employment by the awardee for that project. We were not persuaded by HLJ's presentation that there was any contact between Dragon and the former government employee or that the employee sought a job with Dragon prior to his retirement. There also was no evidence that the former employee had any influence on the agency's award selection. HLJ's reconsideration provides no new information showing that our conclusion was incorrect.

Lastly, HLJ contends that the protester should not have to "conclusively" establish a conflict of interest to prevail, and suggests that showing an appearance of impropriety should be sufficient. As stated in our first decision, the question, within the confines of a bid protest, is to determine whether any action of the former government employee may have resulted in prejudice for, or on behalf of, the awardee during the award selection process. Wall Colmonoy Corp., B-217361, Jan. 8, 1985, 85-1 CPD ¶ 271. An exclusion for conflict of interest must be based upon "hard facts" and not mere "suspicion or innuendo." CACI, Inc.-Federal v. United States, 719 F.2d 1567 (Fed. Cir. 1983); NFK Engineering, Inc., 65 Comp. Gen. 104 (1985), 85-2 CPD ¶ 638.

We find no error in our previous conclusion regarding this issue. There was no evidence in the record to show that the former employee had any influence on the agency's award selection, nor was there evidence that the award resulted from political pressure. To the extent HLJ contends that its failure to provide this evidence was the result of the Army's refusal to produce relevant documents, we once again state that the documents provided by the Army were responsive to the document request.

The request for reconsideration is denied.


James F. Hinchman
General Counsel