



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: tg Bauer Associates, Inc.--Second Request
for Reconsideration
File: B-229831.8
Date: June 21, 1989

DIGEST

Second request for reconsideration is denied where the protester reiterates previously raised issues and disagrees with prior decision which found that meaningful discussions were conducted with protester.

DECISION

tg Bauer Associates, Inc., requests that we review our decision in tg Bauer Assocs., Inc.--Reconsideration, B-229831.7, Mar. 2, 1989, 89-1 CPD ¶ 218, in which we denied the company's request for reconsideration of our decision in tg Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549. The December 2 decision denied Bauer's protest against the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00019-87-R-0059, issued by the Naval Air Systems Command, for various support services.

We deny the second request for reconsideration.

After several rounds of discussions and requests for best and final offers (BAFOs), Bauer's personnel proposal was found unacceptable. Award was made to the lowest priced, technically acceptable offeror as provided in the RFP. In order to be considered acceptable, an offeror had to propose a specified minimum number of hours by acceptable personnel.

Among other things, Bauer argued that because it was mistakenly informed that seven "marginal" employee resumes were rated "unacceptable," it needlessly substituted or moved its personnel to its proposal's detriment and increased its proposed price. In addition, Bauer asserted that the Navy failed to inform it of unacceptable ratings on 10 other resumes. Finally, Bauer raised a number of contentions arising out of its review of the evaluation work sheets used to rate Bauer.

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In our December 2 decision, we agreed that the Navy had misinformed Bauer with regard to the 7 marginal resumes and failed to inform it of the other 10 unacceptable resumes. However, we concluded that even giving Bauer's proposal full credit for all these personnel, its proposal still would not be acceptable. In this regard, the record shows that of the 54 persons proposed by Bauer in its first BAFO, the Navy found 27 resumes unacceptable and 7 marginal. When it decided to request a second BAFO, the Navy informed Bauer that 24 specific resumes (including the marginal resumes) were unacceptable and did not inform Bauer of the unacceptability of 10 of the resumes. Bauer's second BAFO proposed 63 resumes, a large percentage of which were found unacceptable. The Navy argued and we confirmed that even if Bauer was given full credit for 7 "marginal" resumes which Bauer alleges it did not have to change and the 10 unacceptable resumes which the Navy failed to mention during discussions, Bauer's second BAFO still did not contain sufficient acceptable resumes to meet the required minimum number of work hours set forth in the RFP. Consequently, we found Bauer was not competitively prejudiced by the agency's shortcomings during discussions, and denied the protest. tg Bauer Assocs., Inc., B-229831.6, supra. Further, we found no basis to challenge the Navy's determination that Bauer's personnel proposal was unacceptable.

In its first request for reconsideration, Bauer argued that as a small business it was uniquely prejudiced by the Navy's misleading discussions since it was led to misapply its limited resources. However, we found Bauer's claims in this regard both speculative and self-serving since its proposal was unacceptable, even assuming an acceptable rating for the personnel who were mislabeled or not mentioned during the discussions. tg Bauer Assocs., Inc., B-229831.7, supra. We also concluded Bauer had not shown "some evidence" that it would have been competitive, but for the agency's actions, such that we could disturb the procurement or contract. See B.K. Dynamics, Inc.--Reconsideration, 67 Comp. Gen. 264 (1988), 88-1 CPD ¶ 165. Further, in response to Bauer's criticism, we noted that we have consistently used the "mathematical approach" in determining a lack of prejudice. See, e.g., Levine Assocs., Inc., B-228543, Feb. 5, 1988, 88-1 CPD ¶ 117. Although Bauer continues to disagree with our conclusions in this regard, it has raised no new arguments or information which would cause us to modify our decision.

Bauer also argued in its first request for reconsideration that we had not considered its specific arguments as to the alleged acceptability of each of its finally submitted resumes for key personnel. Bauer contended that the Navy

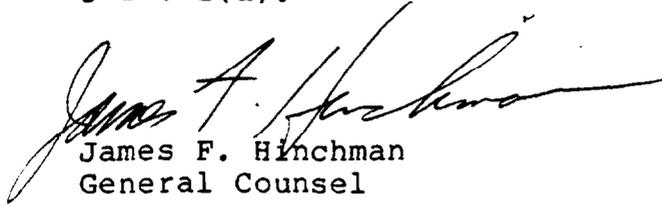
had failed to reevaluate certain "enhanced" resumes and had improperly failed to revise the unacceptable ratings the original resumes had received. However, we noted that Bauer had come into possession of the evaluation worksheets on its finally submitted resumes more than 2 months before it first filed the above arguments with our Office. Consequently, we rejected these arguments as an untimely, piecemeal development of Bauer's protest. See JWK International Corp.; tg Bauer Assocs., Inc., B-229831.4; B-229831.5, Sept. 29, 1988, 88-2 CPD ¶ 298; Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988) (protest must be filed within 10 working days after basis is known or should have been known).

In its second request for reconsideration, Bauer disagrees with our conclusion that the issue concerning evaluation of the resumes constituted untimely filed, new grounds of protest. Bauer argues that the agency's failure to evaluate the finally submitted resumes showed that meaningful discussions were not conducted.

We disagree. In our December 2 decision we found that the Navy generally conducted meaningful discussions with Bauer. tg Bauer Assocs., Inc., B-229831.6, supra. Further, Bauer was not prejudiced by the Navy's admitted errors during discussions. tg Bauer Assocs., Inc., B-229831.7, supra; tg Bauer Assocs., Inc., B-229831.6, supra. In this regard, while we are not entirely persuaded that Bauer's specific contentions about the finally submitted resumes were timely raised, we did review the entire record, including these specific contentions, in denying Bauer's protest, and found that Bauer had "not successfully challenged the Navy determination that Bauer's finally submitted personnel proposal was unacceptable." See tg Bauer Assocs., Inc., B-229831.6, supra, at 7. We have again reviewed Bauer's personnel proposals, the Navy evaluation thereof, and Bauer's specific arguments concerning the alleged acceptability of its resumes. We find the Navy has adequately documented its evaluation and reasonably found that Bauer's finally submitted personnel proposal was unacceptable.

Bauer essentially reiterates its original protest arguments which we have already considered and rejected. Its mere disagreement with our judgment forms no basis on which to disturb our prior decisions. Since the protester has

presented no argument or information establishing that our prior decisions were legally or factually erroneous, we deny the second request for reconsideration. See 4 C.F.R. § 21.12(a).



James F. Hinchman
General Counsel