The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DataVault Corporation--Request for Reconsideration

File: B-223937.3

Date: January 20, 1987

DIGEST

Decision is affirmed on reconsideration where it is not shown to be legally or factually erroneous.

DECISION

DataVault Corporation requests reconsideration of our decision in DataVault Corp., B-223937, B-223937.2, Nov. 20, 1986, 86-2 C.P.D. ¶ 594, in which we dismissed DataVault's protest under Department of Health and Human Services (HHS) request for proposals (RFP) No. HCFA-86-037/MDW. We affirm our decision.

DataVault alleged in its protest that the award to Data Base Corporation was improper because Data Base's proposed facility for data tape storage did not meet certain RFP requirements. We found that HHS in fact had relaxed certain requirements somewhat in accepting Data Base's proposal--for instance, by applying other than Underwriters Laboratories, Inc., fire rating standards as provided for in the RFP--but we dismissed the protest since there was no evidence that DataVault was prejudiced by the relaxation of the requirements.

DataVault argues on reconsideration that it in fact was prejudiced by the agency's actions because it would have received the award had Data Base's proposal been rejected for failure to meet RFP requirements. DataVault concludes that our decision dismissing its protest therefore was legally erroneous.

DataVault's argument ignores the import of our decision. The issue in question was not whether Data Base's proposal should have been rejected for failure to meet the RFP requirements;

HHS's acceptance of Data Base's proposal evidenced a determination, in essence, that Data Base satisfied the government's true minimum needs, and that the RFP overstated those needs. The determinative question, then, as indicated in our decision, was whether the award to Data Base based on relaxed requirements was proper in light of HHS's failure also to inform DataVault that the requirements had been relaxed, in other words, whether such an award would be unfair, or prejudicial, to DataVault.

The question of prejudice, as explained in our decision, turned on consideration of whether DataVault would have altered its proposal to its competitive advantage had it been afforded an opportunity to respond to the reduced requirements. We define prejudice in this manner--rather than basing prejudice on the mere failure to receive the award, as DataVault urges--to insure that a technical procurement deficiency will not result in an award to a protester that would not have received the award even absent the deficiency. See Centennial Computer Products, Inc., B-211645, May 18, 1984, 84-1 C.P.D. ¶ 528; KET, Inc.,--Request for Reconsideration, B-190983, Jan. 12, 1981, 81-1 C.P.D. ¶ 17.

We found no prejudice to DataVault because the firm's offered facilities met the original, stricter requirements, and there was no evidence or reason to believe that DataVault would have offered different, less expensive facilities, or otherwise lowered its proposed price, had it been advised of the changed requirements. DataVault's request for reconsideration likewise contains no evidence or argument in this regard.

DataVault has not established that our decision was legally or factually erroneous, and we therefore affirm that decision, including denial of the claim for costs.

for Seymour Efros
Harry R. Van Cleve
General Counsel