



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rosser, White, Hobbs, Davidson, McClellan,
Kelly, Inc.--Request for Reconsideration
File: B-224199.2

Date: March 20, 1987

DIGEST

Original decision is affirmed where protester in request for reconsideration fails to show error of fact or law in prior holding that there was no evidence of improper influence on contract award decision due to participation in technical evaluation of contracting agency officials with alleged conflict of interest.

DECISION

Rosser, White, Hobbs, Davidson, McClellan, Kelly, Inc. (Rosser White) requests reconsideration of our decision Rosser, White, Hobbs, Davidson, McClellan, Kelly, Inc., B-224199, Dec. 24, 1986, 66 Comp. Gen. _____, 86-2 CPD ¶ 714, denying Rosser White's protest of the award of a contract to the American Corrections Association (ACA) under request for proposals (RFP) No. N00600-86-R-4465 issued by the Navy for a Brig Program Study. We found that the Navy properly excluded Rosser White's proposal from the competitive range because its price was unreasonably high, and that there was no evidence that the procurement was improperly influenced in favor of ACA due to the participation of three Navy officials with an alleged conflict of interest. In its request for reconsideration, Rosser White challenges our conclusion regarding the conflict of interest issue, arguing that we applied an incorrect standard of review. We affirm our original decision.

ACA, the awardee, is a nonprofit professional organization for those in the corrections field. In its protest, Rosser White argued that three Navy officials who are members of ACA participated in the technical evaluation under the RFP; according to Rosser White, their membership gave rise to a conflict of interest under Department of Defense Directive 5500.7, which, standing alone, made award to ACA improper.

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In addressing Rosser White's contention in our original decision, we explained our standard of review as follows:

"In considering conflict of interest allegations in the context of a bid protest, our role is not to determine whether a violation of the applicable conflict of interest statutes or regulations occurred; rather, our review focuses on whether the individuals involved in the alleged conflict of interest exerted improper influence in the procurement on behalf of the awardee. See Sterling Medical Associates, B-213650, Jan. 9, 1984, 84-1 CPD ¶ 60. Thus, even assuming that the Navy officials' ACA membership constitutes a conflict of interest within the meaning of DOD Directive 5500.7, as Rosser White maintains, the award to ACA will not be disturbed unless there is a showing that the officials improperly influenced the procurement in favor of ACA."

In its reconsideration request, Rosser White argues that this standard is inconsistent with our prior cases, such as Trail Blazer Services, B-220725, Feb. 12, 1986, 86-1 CPD ¶ 275, and Sterling Medical Associates, B-213650, Jan. 9, 1984, 84-1 CPD ¶ 60, which, according to Rosser White, recognize that either a conflict of interest in the abstract or a showing of actual bias is sufficient to overturn a contract award. Neither of the cases Rosser White cites supports its contention. On the contrary, in Trail Blazer Services and Sterling Medical Associates, we examined only whether the award decision had been improperly influenced by individuals with alleged conflict of interest. This approach is consistent with our bid protest function to decide whether a procurement has been conducted improperly; it is not our role, as Rosser White suggests, to decide whether the conflict of interest statutes or regulations have been violated in the abstract.

Rosser White argues that our standard of review imposes an unreasonable burden of proof on the protester since, without an admission of wrongdoing from the contracting agency, it is virtually impossible to show bias. We do not agree that the burden of proof is unreasonable or that an admission of bias is required; rather, as we did here, we look at the circumstances of the procurement and the involvement of the agency personnel with the alleged conflict of interest to determine if the award decision was improperly influenced. As explained in detail in our original decision, in this case there was not the slightest indication of improper influence in the selection of ACA.

Since Rosser White has failed to show any error of law or fact in our original decision, that decision is affirmed.

Harry R. Van Cleve
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General Counsel