

Burke



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Leading Edge Aerospace Consulting--Request for Reconsideration
File: B-229938.2; B-229938.3

Date: March 17, 1988

DIGEST

1. Protest based on confusion regarding minimum wage rates is denied where agency takes proper action to clarify wage rate and protester is not prejudiced by misunderstanding the rate.
2. A dismissal is a summary decision based on the initial protest which on its face is without legal merit without the need for an agency report and the protester's comments.
3. A dismissal is affirmed when a request for reconsideration is based on the General Accounting Office failure to consider a protester's comments plus other factors which essentially restate the grounds of the original protest.

DECISION

On January 4, 1988, Leading Edge Aerospace Consulting protested the award of a firm-fixed-price contract, No. F44650-87-C0031, awarded in response to request for proposals (RFP) No. F44650-87-R0017 issued by the Department of the Air Force, Langley Air Force Base, Virginia, to obtain civilian instructors. Leading Edge contended that the agency failed to exercise sound judgment in its acquisition planning and management and that the agency failed to follow the Federal Acquisition Regulation by not setting aside this contract for small businesses. On January 9, Leading Edge supplemented its protest by alleging that the agency awarded the contract based on a wage rate which was below the minimum wage rate as determined by the Department of Labor (DOL). On January 29, we dismissed the protest with respect to the allegations contained in the January 4 letter. With respect to the allegation that the contract was awarded at rates below DOL minimums, we requested a report from the agency and identified the protest as B-229938.2. Leading Edge filed a request for reconsideration of our dismissal of the original protest on February 15 (B-229938.3).

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We deny the protest concerning the wage rates (B-229938.2) and affirm the dismissal of the original protest.

PROTEST OF WAGE RATES (B-229938.2)

Leading Edge originally contended that the awardee proposed and was awarded the contract based on a wage rate below the minimum wage rate established by DOL. The wage determination included in the RFP consisted of two minimum hourly rates: flight simulator instructors were to receive \$14.67 per hour, and academic instructors were to receive \$12.11 per hour. In fact, the awardee's wage rates comply with the DOL determination.

On July 28, 1987, the contracting officer stated in a letter to Leading Edge that for the purpose of this solicitation one person will be performing the functions of simulation and academic instructors and therefore \$14.67 should be used as the minimum wage rate for either type of instructor. Leading Edge alleges that on or about July 29 it contacted the contracting officer to clarify this issue and received explicit instructions to use the higher rate (\$14.67).

In an August 3 letter to Leading Edge, the contracting officer altered his interpretation of the instructor wage determination. The letter stated as follows:

"Q: Although Captain Small made the determination to use \$14.67 as the minimum wage when instructors perform both academic and contract trainer duties, if only academics are taught at certain areas in FY 88, should the lower wage of \$12.11 be used in those instances?

"A: It is up to you as to what you feel you should pay your instructors as long as you meet the minimum hourly wage set forth in the WD [Wage determination]. Legally, you only have to pay the \$12.11 for the basic year for academic instructors but that does not mean you can't surpass that figure."

Moreover, a contract specialist states that on August 3 she called "all offerors on the above RFP, and advised substantially as reflected in the attached letter . . ." Leading Edge acknowledges receiving a telephone call from the government regarding the wage determination but apparently contends that it continued under the misunderstanding that the minimum rate for academic instructors was \$14.67.

In a letter filed on February 1, 1988, Leading Edge modified its protest to state that "the government, in creating uncertainty regarding wage rates, and in failing to relieve same, created error and thus affected a faulted source selection."

From our review of the record, we think that the contracting officer took proper action and made clear that \$12.11 was the minimum wage rate for academic instructors. The contracting officer also indicates that other offerors did not confuse this issue as three offerors used the \$12.11 per hour minimum for that portion of the requirement utilizing academic instructors.

Even assuming, arguendo, that the contracting officer was responsible for Leading Edge's confusion, Leading Edge was not prejudiced. For example, if Leading Edge was allowed to modify its offer by utilizing the \$12.11 minimum rate for academic instructors, its proposal would be reduced by an amount which does not even approach the \$700,000 margin between its proposal and the awardee's.

REQUEST FOR RECONSIDERATION (B-229938.3)

Leading Edge asserts that our January 29 dismissal should be reversed because among other things we did not consider its comments. Our decision was a summary one pursuant to our Bid Protest Regulations which provide for the summary dismissal of a protest without requiring the submission of an agency report or protester's comments where, as here, the protest on its face does not state a valid basis for protest. 4 C.F.R. § 21.3(f).

Moreover, our regulations require that a request for reconsideration contain a detailed statement of the factual and legal grounds upon which reversal or modification is warranted and that it specify errors of law made or information not considered previously. 4 C.F.R. § 21.12(a) (1987). Information not considered previously refers to information to which the protester did not have access to when the initial protest was pending. H.L. Carpenter Company--Reconsideration, B-220032.2, Jan. 2, 1986, 86-1 CPD ¶ 3.

In addition to its assertion that we did not consider its comments, Leading Edge's request for reconsideration essentially restates the grounds of its initial protest, which we have already addressed in our decision.

The protest is denied and our dismissal of the initial protest is affirmed.



James F. Hinchman
General Counsel