



The Comptroller General
of the United States

Washington, D.C. 20548

Cunningham

Decision

Matter of: John W. Gracey--Request for Reconsideration

File: B-228540.2

Date: May 31, 1988

DIGEST

Request for reconsideration is denied where protester disagrees with prior decision but does not demonstrate legal error made in decision or information not considered previously.

DECISION

John W. Gracey has requested reconsideration of our decision of February 26, 1988, which denied his protest against the exclusion of his proposal from the competitive range under request for proposals (RFP) No. J0278008, issued by the Bureau of Mines, Department of the Interior, for a study project entitled "Methodology to Measure the Economic Impact of Mining and Mineral Processing Waste Regulations." Mr. Gracey argued that the evaluation leading to his exclusion was improper.

The request for reconsideration is denied.

As we related in our prior decision, each member of Interior's Technical Evaluation Committee (TEC), independently and as a group, found Mr. Gracey's proposed methodology to be seriously inadequate and also found his experience was not optimum. Specifically, the TEC found Mr. Gracey's proposed methodology did not address certain fundamental factors affecting economic effects of compliance costs. In addition, the TEC noted that Mr. Gracey lacked substantial experience in minerals economics and regulatory economic analysis. The contracting officer adopted these findings.

In reply, Mr. Gracey argued that the RFP, fairly read, did not require discussion of the economic factors referenced by the agency. He also disagreed with Interior's assessment of his experience.

Interior disputed Mr. Gracey's position, maintaining that the factors that Mr. Gracey insisted were not listed in the

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RFP, and which he did not discuss in his proposal, are fundamental considerations of minerals economics. The agency also defended its evaluation of Mr. Gracey's experience.

Based on our review of the record, we did not question the exclusion of Mr. Gracey's proposal from the competitive range given the reasonable determination by Interior that Mr. Gracey's proposal did not adequately demonstrate his understanding of the project. We also did not find unreasonable the agency's determination that Mr. Gracey's experience was not optimum.

In his reconsideration request, Mr. Gracey again argues that he was improperly downgraded "based on factors that were not present in the RFP," but he does not advance any new argument on this issue. We see no reason to question the soundness of our decision based solely on Mr. Gracey's reiteration of his arguments on this issue.

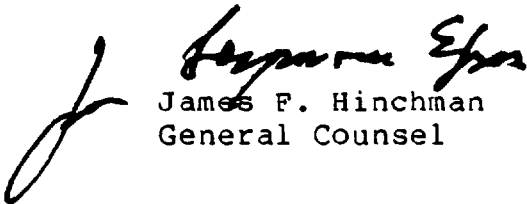
Mr. Gracey also insists that his proposal was improperly downgraded because he "bid on the contract as an individual" as opposed to some larger organization. The protester suggests Interior was biased against individuals as contractors. Although the TEC did observe that Mr. Gracey proposed to conduct the effort "independently," we think this comment must be read in the context in which it was made, which was with reference to necessary experience which was not demonstrated in Mr. Gracey's proposal. We do not think this was an expression that individual contractors were "not welcome," as Mr. Gracey put it, but simply a recognition that there would not be working with him any other person whose experience would compensate for weaknesses in his own.

Finally, Mr. Gracey complains that we improperly dismissed an issue he raised as to the "possible preferential treatment" of another concern in the evaluation process. We dismissed this issue because Mr. Gracey is not an interested party as to this issue under our Bid Protest Regulations, 4 C.F.R. part 21 (1988), given our upholding of the exclusion of his proposal from the competitive range for the procurement. Mr. Gracey argues that we should have considered the preferential treatment issue before we resolved the issue of the propriety of his proposal's exclusion from the competitive range and that, if we had, we would have reviewed the preferential treatment issue on the merits.

Our Office must first review any issue affecting whether a protester should be found to lack status as an interested party since, if that issue is resolved against the

protester, the protest is otherwise for dismissal. See Chesire/Xerox; Miller/Bevco; Automecha, Ltd., B-226939, et al., Aug. 31, 1987, 87-2 CPD ¶ 208. Manifestly, if the exclusion of Mr. Gracey's proposal were to be upheld, Mr. Gracey would not be an interested party as to any other issue. Thus, it was procedurally appropriate for us to consider first whether Mr. Gracey's proposal was properly excluded from the competitive range. Given the propriety of that exclusion, the protest about alleged preferential treatment was properly for dismissal.

A request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is warranted and specify errors of law made or information not considered previously. See 4 C.F.R. § 21.12(a) (1988). Mr. Gracey has failed to demonstrate legal error made or information not considered previously and, thus, the request for reconsideration is denied.



James F. Hinchman
General Counsel