



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joseph L. De Clerk & Associates, Inc.--Request
for Reconsideration

File: B-233166.3

Date: April 6, 1989

DIGEST

Reconsideration request is denied where the protester has presented no evidence that prior decision was based on factual or legal errors.

DECISION

Joseph L. De Clerk and Associates, Inc., requests that we reconsider our decision, Joseph L. De Clerk and Assocs., Inc., B-233166, Jan. 18, 1989, 68 Comp. Gen. ____, 89-1 CPD ¶ 47, denying its protest of any award of a contract under request for proposals (RFP) No. F09603-88-R-58351, issued by the Department of the Air Force for on-call computer maintenance services in support of the Expanded Missile Data Analysis System (EMDAS).

We deny the request for reconsideration.

The EMDAS, located at nine continental United States sites, monitors the operational status and readiness posture of the Minuteman Missile System. The Air Force limited competition to two known qualified sources based on a determination that an unusual and compelling urgency for the services existed. De Clerk, who was terminated for default on the previous contract for the solicited services, principally argued that the agency improperly excluded it as an available source.

We denied the protest, stating that where an agency properly determines due to urgent circumstances that it must use noncompetitive procedures provided for under the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(c)(2) (Supp. IV 1986), the agency properly may limit the number of sources to those firms it reasonably believes can promptly and properly perform the work. We held that the Air Force reasonably determined De Clerk was not a potential source for a 12-month, emergency contract because De Clerk, who was terminated for default on the previous contract for the

solicited services, had encountered problems in an aspect of performance critical to the emergency contract. We also held that De Clerk's contention that the termination of its contract was improper concerned a matter of contract administration within the jurisdiction of the contracting agency and the Armed Services Board of Contract Appeals under the disputes clause of De Clerk's contract and, therefore, was not for consideration by our Office under our Bid Protest Regulations, 4 C.F.R. part 21 (1988).

In its request for reconsideration, De Clerk contends we did not address all 87 allegations made in its protest. For example, De Clerk argues we should address allegations made in its comments on the agency report that: (1) "Some government personnel, directly involved with EMDAS, are guilty of conflict of interest by interviewing, seeking employment, and gaining employment with Datagate, Inc., which has been performing EMDAS maintenance since the termination of De Clerk's contract" and (2) "some government personnel, directly involved with EMDAS, are guilty of conflict of interest by interviewing and seeking employment with Hewlett Packard" during De Clerk's contract and "by their prejudicial behavior toward De Clerk".

We initially considered that De Clerk had made these allegations in support of its contention that the termination of its contract was improper, a matter of contract administration, which was not for our consideration. In any event, De Clerk has not cited any statute or regulation that may have been violated. We have consistently held that the interpretation and enforcement of the restrictions on the nature and scope of dealings that former government employees may have with their former agencies, e.g., 18 U.S.C. § 207 (1982), are primarily matters for the Department of Justice and not with this Office. The Earth Technology Corp., B-230980, Aug. 4, 1988, 88-2 CPD ¶ 113.

Our role within the context of a bid protest, when a conflict of interest is alleged, is to determine whether any action of the former government employee resulted in prejudice for, or on behalf of the awardee. Id. The fact that a former government employee is subsequently employed by a company awarded a contract by the employee's former agency is an insufficient basis to challenge the award where there is no evidence that the former employee influenced the award. Damon Corp., B-232121, Feb. 3, 1989, 89-1 CPD ¶ _____. Further, there must be credible evidence and not mere suspicion or innuendo that a conflict of interest exists before a firm may be excluded from a competition on this basis. Imperial Schrade Corp., 66 Comp. Gen. 307, 87-1 CPD ¶ 254.

De Clerk has submitted no credible evidence to support its allegations, and its conjecture provides no basis to preclude Datagate or Hewlett from the competition. See Eagle Research Group, Inc., B-230050 et al., May 13, 1988, 88-2 CPD ¶ 123. We will not conduct investigations for the purpose of establishing the validity of a protester's speculative statements. Louisiana Foundation for Medical Care, B-225576, Apr. 29, 1987, 87-1 CPD ¶ 451.

De Clerk also complains that we ignored its allegation that Hewlett did not promptly perform its work under previous EMDAS contracts, and yet was not issued any cure notices. We assumed these allegations were made to support De Clerk's contentions about the propriety of its termination for default, a matter of contract administration which we would not consider under our Bid Protest Regulations. To the extent that De Clerk objected in its comments to the inclusion of Hewlett as a restricted source, its objection is untimely. Our Bid Protest Regulations require that a protest be filed within 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. Tri-States Service, B-232322, Nov. 3, 1988, 88-2 CPD ¶ 436. Our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Id.

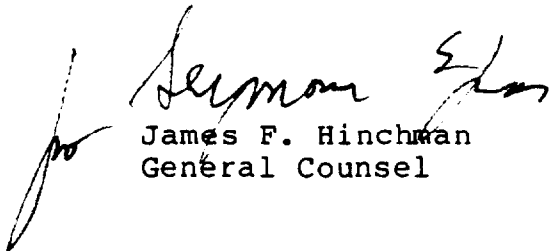
De Clerk was aware of the identity of the restricted sources when it submitted its protest that the Air Force improperly excluded it as an available source, since it named the restricted sources in its protest letter. De Clerk's comments indicate it learned the basis of its allegations about Hewlett's performance on previous contracts at a December 9, 1987, meeting with the Air Force. Since it is clear that De Clerk had the information to protest the inclusion of Hewlett as a restricted source when it filed its initial protest, this aspect of its protest was untimely raised in De Clerk's comments on the agency report, and will not be considered.

De Clerk also complains that it has been discriminated against because it is a woman-owned business. Bias will not be attributed to procurement officials based on inference or supposition. Imagineering Systems Corp., B-228434.2, Feb. 4, 1988, 88-1 CPD ¶ 109. De Clerk has submitted no evidence of prejudicial motive or treatment on the part of Air Force officials, nor is there any evidence of bias in the record.

De Clerk also requests that we investigate antitrust and restraint of trade allegations it has made concerning Hewlett's alleged refusal to sell De Clerk software support. However, we do not consider under our bid protest function allegations regarding restraint of trade or antitrust violations; these are matters for the Justice Department. Monarch Enterprises, Inc., B-208631, May 23, 1983, 83-1 CPD ¶ 548.

Finally, De Clerk repeats its argument that vendor delay was a reason for its failure to deliver software support, its vendor problem has been solved, and therefore it should not have been prevented from competing under the RFP. As we considered this argument in our decision, De Clerk's repetition of the argument shows that it simply disagrees with the conclusion in our prior decision. Mere disagreement or reiteration of previously-rejected positions does not provide a basis for reconsideration. Interstate Diesel Services, Inc.--Reconsideration, B-230107.3 et al., Aug. 30, 1988, 88-2 CPD ¶ 190.

As De Clerk has not presented evidence that our original decision was based on factual or legal error, see 4 C.F.R. § 21.12(a), we deny its request for reconsideration.



James F. Hinchman
General Counsel