Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Brown Associates Management Services, Inc.--Request for Reconsideration

File: B-235906.3

Date: March 16, 1990

Walter T. Rose, Jr., Esq., Rose and Weller, for the requesting party.
William A. Roberts III, Esq., Howrey & Simon, for the protester, Holmes & Narver Services, Inc./Morrison-Knudsen Services, Inc., a joint venture.
Daniel S. Koch, Esq., Kurz, Koch & Doland, for the protester, Pan Am World Services, Inc.
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision is affirmed because request for reconsideration does not show that initial decision contained errors of fact or law or that information not previously considered exists that would warrant its reversal or modification.

DECISION

Brown Associates Management Services, Inc., requests reconsideration of our decision Holmes and Narver Services, Inc./Morrison-Knudson Services, Inc., a joint venture; Pan Am World Services, Inc., B-235906, B-235906.2, Oct. 26, 1989, 89-2 CPD ¶ 379, in which we sustained protests by Holmes and Pan Am against the award of a contract by the Army to Brown Associates for support services for Redstone Arsenal.

We affirm our decision.

The primary allegation in the protests was that the contract award was tainted by the possibility that Brown Associates received procurement sensitive information from former Redstone Arsenal officials. We concluded that the awardee's

proposal was drafted in significant part by a retired Army colonel who, by virtue of his government responsibilities, had access to restricted information concerning the procurement. We also concluded that it was unlikely that the colonel could have avoided using restricted information in drafting Brown Associates' proposal since any restricted information he might have been aware of as a result of his Army duties would necessarily have shaped his judgment in preparing the proposal. We stated that these circumstances, and the high rating which the awardee's proposal received, led us to the conclusion that it was likely that Brown Associates obtained an unfair competitive advantage. We decided that the best way to eliminate the likely competitive advantage and therefore to ensure the integrity of the competitive system was for the Army to reopen negotiations with all offerors in the competitive range, to release to each the restricted information to which the colonel had access--the acquisition plan and source selection plan--and to request new best and final offers (BAFOs).1/

In its request for reconsideration, Brown Associates first argues that our decision erroneously concluded that the retired colonel was aware of and used procurement sensitive information in preparing the firm's proposal and that the colonel drafted a "significant part" of the proposal. Brown Associates argues that these conclusions are contradicted by an affidavit submitted by the retired colonel in response to the original protest and by an affidavit prepared by Brown Associates' program manager for its reconsideration request. Brown Associates also requests that we conduct an informal conference and a fact-finding conference pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.5(a) and (b) (1989), in order to resolve these issues.

The established standard for reconsideration is that a requesting party must show that our prior decision contains either errors of fact or law or information not previously considered that warrants reversal or modification of the decision. 4 C.F.R. § 21.12(a); Department of the Air Force, et al.--Request for Reconsideration, 67 Comp. Gen. 372 (1988), 88-1 CPD ¶ 357. Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Id. Here, Brown Associates was represented at the informal conference on the protests, filed a number of submissions in

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1/ By letter of December 28, 1989, the Army reported that it was complying with this recommendation.

response to the protests and otherwise fully participated in the development of the protest record. Thus, the firm had every opportunity to submit evidence and make arguments in support of its position. The affidavit of Brown Associates' project manager, which includes the assertion that the colonel did not use procurement sensitive information in preparing the proposal, appears to be evidence which was previously available but not timely submitted. As such, and since the firm has not indicated why the affidavit was not provided at the appropriate time, that document does not provide a proper basis for reconsideration. Department of the Navy, et al.--Requests for Reconsideration, B-232999.2 et al., July 14, 1989, 89-2 CPD ¶ 45. Moreover, that affidavit does not contradict our conclusion that it was unlikely that the retired colonel could have avoided using restricted information to which he had access because any restricted information he might have been aware of as a result of his prior duties with the Army would necessarily shape his judgment.

Further, although Brown Associates argues that there was no factual basis for our conclusion that the retired colonel drafted a significant part of its proposal, we believe that this conclusion is supported by his affidavit, which lists the areas of the proposal on which he worked. Brown Associates has submitted nothing to refute this. Since in our view the record clearly supports our conclusions on these factual issues, we also find that the conferences requested by Brown Associates would serve no useful purpose. Recon Optical, Inc.--Request for Reconsideration, B-232125.2, Feb. 24, 1989, 89-1 CPD ¶ 201.

Brown Associates also argues that our original decision was inconsistent with previous decisions of our Office in which we stated that a determination of an unfair competitive advantage must be based on "hard facts," not "suspicion and innuendo" and that we would accord deference to contracting officials as to whether an unfair competitive advantage exists. In this connection, Brown Associates cites and relies on the same decisions that it cited in its submissions responding to the protests. Although in our decision we did not specifically address every contention raised in those submissions by Brown Associates, an interested party, we carefully considered all arguments raised in reaching our decision. We think that no useful purpose would be served by a point-by-point rebuttal of those arguments. Further, although Brown Associates disagrees with our decision, we do not find that its arguments show that a legal error exists in our decision; thus, we see

no reason to disturb the decision. See Department of the Air Force, et al.--Request for Reconsideration, 67 Comp. Gen. 372, supra.

Finally, Brown Associates argues that this Office's bid protest jurisdiction under the Competition in Contracting Act of 1984, 31 U.S.C. § 3554 (Supp. V 1987), extends only to ensuring agency compliance with statutes and regulations and, since our initial decision included no finding that a statute or regulation had been violated, we overstepped our authority. It is well established that our role in resolving bid protests is to ensure that the statutory requirements, 10 U.S.C. §§ 2302 and 2304(a)(1)(A) (1988), for full and open competition are met. See Container Prods. Corp., B-232953, Feb. 6, 1989, 89-1 CPD ¶ 117. We think that our original decision, in which we recommended remedial action to eliminate an unfair competitive advantage, was fully consistent with our role of assuring that the statutory mandate for full and open competition is achieved.

The initial decision is affirmed.

Milton J. Socolar

for Comptroller General
of the United States