



Comptroller General
of the United States
Washington, D.C. 20548

L. Glass
1146583

Decision

Matter of: CH2M Hill Southeast, Inc.--Reconsideration

File: B-244707.3

Date: May 5, 1992

Donald G. Gavin, Esq., L. James D'Agostino, Esq., Lori R. Shapiro, Esq., and William L. Cregger, Esq., Wickwire Gavin, P.C., for the protester.
Phillip H. Harrington, Esq., Wiley, Rein & Fielding, for Research Triangle Institute, an interested party.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and previously considered by the General Accounting Office.

DECISION

CH2M Hill Southeast, Inc. requests that we reconsider our decision, CH2M Hill Southeast, Inc., B-244707; B-244707.2, Oct. 31, 1991, 91-2 (CPD ¶ 413). In that decision, we found proper the Environmental Protection Agency (EPA) award of a contract to Research Triangle Institute (RTI) under request for proposals (RFP) No. W002296-D1. We found that the evaluation and selection were fair and reasonable and consistent with the evaluation criteria. We also found that CH2M's argument of bias by one evaluator who scored CH2M's proposal low was untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1992). CH2M disagrees with our view that the evaluation and award were proper and argues that it timely raised the allegation of bias concerning an individual evaluator. We deny the request for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet

(this standard, R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

(CH2M argues that we improperly dismissed its allegation of bias concerning an individual evaluator before we had a complete record. CH2M asserts that its claim of bias was based upon its review of the individual evaluators' worksheets received on August 28, 1991, and that it did not have a valid basis for asserting its bias claim until it reviewed the high scores and supporting narrative of the other evaluators, and contrasted them with the extremely low scores and lack of supporting narrative from the alleged biased evaluator.

(By letter dated September 18, 1991, EPA requested that our Office dismiss as untimely the protester's allegation of bias. By letter dated September 27, CH2M opposed the agency's dismissal request by raising the arguments it now asserts in its request for reconsideration. We concluded that the protester's allegation of bias, raised for the first time in its comments to the agency report which we received on September 10, was untimely because it was based on the low scoring of its proposal by the one evaluator, a matter evident from the copy of the agency report received by the protester on August 19. It was our view that the summary of scores matrix included in the agency report which identified each panel member, reflected each evaluator's individual pre-consensus score for each evaluation criterion, and gave the panel's consensus score for each criterion--was the basis for the bias complaint. We disagreed with the protester's contention that it did not have a basis for alleging bias until it received the individual evaluation sheets and compared the high scores and favorable comments by other evaluators that contrasted with the extremely low scores and lack of supporting comments by one evaluator. We concluded that CH2M's basis of protest should have been apparent from the scoring matrix since the extremely disparate scoring was obvious from that document and its protest of bias primarily relied on the low scores.

(We think the information the protester received subsequent to August 19--the individual scoring sheets--largely duplicated the information already in CH2M's possession. The allegedly biased evaluator's failure to provide narrative comments on his scoring sheets does not appear from the protest to have been necessary to the allegation of bias; it merely provided additional support for the allegation. Also in its request for reconsideration, CH2M provides documentation that shows that at the time the protester received the original agency report, which contained the low scoring of the allegedly biased evaluator, it was in possession of information that demonstrated that the evaluator in question consistently had rated the protester's prior

contract performance as poor. (The evaluator was one of 23 work assignment managers. During the contract performance period of February 1, 1990 and May 31, 1990, this evaluator was the only manager to give CH2M an overall performance rating of poor.) The record thus shows that the protester had evidence concerning this individual which, when combined with the low scores this individual gave to CH2M's proposal, reasonably should have given rise to a basis for protest.¹

Although we dismissed the bias issue as untimely, because of the seriousness of such an allegation to the integrity of the procurement system, we provided the protester with our opinion that the record does not support the allegation. We noted that in addressing allegations of bias on the part of an evaluation official we focus on whether the individual involved influenced the procurement on behalf of the awardee or against the protester. (See Quality Sys., Inc., IB-235344; IB-235344.2, Aug. 31, 1989, 89-2 (OPD ¶ 197). We stated that the record showed that the source selection board, consisting of two officials, integrated the technical evaluation panel and business evaluation panel findings into a report and made a recommendation that was evaluated and approved by the source selection official. Notwithstanding any alleged bias on the part of one evaluator, the source selection report detailed the perceived strengths and weaknesses of each proposal, the board report did not contain any information which suggested bias against CH2M based on its performance as the incumbent contractor, and there was no evidence in the record to show that the evaluator improperly influenced the source selection report, source selection official, or ultimately the outcome of the procurement.

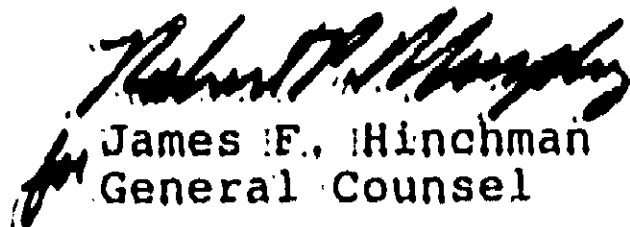
CH2M expresses concerns about our resolution of its protest before the agency responded to the merits of its argument. CH2M contends, among other things, that it expended funds unnecessarily in connection with this issue and was denied the opportunity to respond to the agency's position on the merits of its allegation of bias.

The bias issue was first raised by CH2M in its comments to its original protest. We considered this allegation as raising an independent basis of protest and treated it as a separate protest. We sent out acknowledgment letters requesting a report from the agency. The EPA then requested

¹The protester's counsel states that he only received this information from his client on November 7, but does not disclose when his client received it. The information addresses performance a year prior to the filing of the protest, and the firm was aware of this evaluator's low opinion of its performance prior to the protest.

dismissal of the additional protest as untimely. The protester was given an opportunity to comment on the EPA request and did so. Our Bid Protest Regulations provide that when the propriety of a dismissal becomes clear only after information is provided by the contracting agency, we will dismiss the protest at that time. 48 C.F.R. § 21.3(m). Pursuant to this regulation, we dismissed the bias allegation as untimely after giving full consideration to the position of the parties on the issue of timeliness. Had we delayed doing so until the record was fully developed, CH2M might well have incurred further unnecessarily.

CH2M's reconsideration request is based on the same arguments the firm made initially. Since the protester has submitted no new information which would warrant reversal of our decision, the request for reconsideration is denied.²


James F. Hinchman
General Counsel

²The protester maintains that we ignored its assertion that the technical evaluation panel did not follow the source evaluation and selection procedures guidelines required by 48 C.F.R. § 15.15.608 (1990). In a footnote to our decision, we specifically found that the point scores presented to the source selection official in the source selection board report were accompanied by detailed narrative discussions of the strengths and weaknesses of each proposal as found by the evaluators. We concluded that this provided the source selection official with a sufficient basis on which to make an informed decision, which was not subject to objection simply because the procedures of EPA's evaluation regulations may not have been followed precisely.