



Comptroller General
of the United States

Washington, D.C. 20548

1467A1

Decision

Matter of: National Systems Management Corporation--
Reconsideration

File: B-246136.3

Date: May 27, 1992

Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for the requester.
Catherine M. Evans, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision sustaining protest on the basis that agency improperly reopened competition after making award to protester is denied where request fails to establish that General Accounting Office erred in concluding that original award was proper and reopening competition was therefore unwarranted.

DECISION

National Systems Management Corporation (NSM) requests reconsideration of our decision, BDM Int'l, Inc., B-246136.2, Apr. 22, 1992, 71 Comp. Gen. ____, 92-1. CPD ¶ ____, wherein we sustained BDM's protest of the Department of the Army's decision to reopen negotiations and request best and final offers (BAFO) after making award to BDM based on initial proposals under request for proposals (RFP) No. DAAA08-91-R-0012.

We deny the request.

The agency's decision to reopen negotiations after award followed a protest by NSM challenging the evaluation of proposals and alleging that the agency improperly had failed to request BAFOs. In the course of reviewing the procurement, the agency determined that certain improprieties in the procurement process warranted reopening the competition to conduct discussions and request BAFOs. BDM then protested the reopening.

In the agency report on the protest, the Army explained that the RFP had not provided offerors with sufficient notice of the probability that award would be based on initial proposals, since the RFP incorporated by reference, instead

of setting forth in full text, a provision for award on the basis of initial proposals. The agency also asserted that it had improperly evaluated the offerors' approaches to the RFP's sample tasks because it had downgraded proposals under this evaluation factor for failing to address requirements that were not stated in RFP.

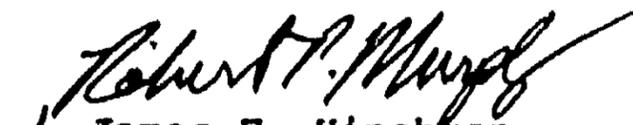
We sustained BDM's protest, finding that the RFP's failure to set forth the award provision in full text did not amount to a procurement impropriety sufficient to warrant reopening the competition after award. We also found that there was no evidence in the record of any impropriety in the evaluation of offerors' sample task responses. We recommended that the agency discontinue its actions under the reopened competition and allow BDM to proceed under its awarded contract.

NSM requests reconsideration on the basis that our decision allegedly ignored the contracting officer's findings that the RFP did not inform offerors of certain evaluation factors, and that it was necessary to hold discussions with the offerors to correct this impropriety. Our decision did not ignore these conclusions. To the contrary, our decision expressly found that the agency's rationale for reopening discussions was not supported by the record. In this regard, we noted that the agency did not explain which subfactors were involved in the allegedly improper evaluation, or what information the evaluators were looking for that the RFP had not requested. Furthermore, our review of the evaluation records and the RFP showed that the areas in which offerors' sample tasks were found deficient in fact were areas the RFP specifically required to be addressed. Since the record thus established that there was no impropriety in the evaluation, we concluded, and we remain convinced, that reopening the competition after award was not warranted. NSM's allegation that our decision improperly failed to consider the agency's stated basis for conducting discussions is therefore without merit.

NSM also maintains that BDM was not prejudiced by the agency's decision to reopen the competition. Again, NSM's argument is without merit. The agency's action clearly prejudiced BDM by placing it at risk that it would no longer be the successful offeror in a competition that it had already legitimately won.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must either show that our prior decision contains 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) (1992).

As NSM has not done so here, the request for reconsideration
is denied, Id.; R.E. Scherrer, Inc.--Recon., B-231101.3,
Sept. 21, 1988, 88-2 CPD ¶ 274.


James F. Hinchman
General Counsel