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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: InSpace 21 LLC

File: B-410852.4

Date: April 3, 2015

Marcia G. Madsen, Esq., David F. Dowd, Esq., Cameron S. Hamrick, Esq., and Michelle E. Litteken, Esq., Mayer Brown LLP, for the requester.
Mark D. Colley, Esq., Kara L. Daniels, Esq., Ronald A. Schechter, Esq., Lauren J. Schlanger, Esq., and Brandon M. Bodnar, Esq., Arnold & Porter LLP, for Range Generation Next LLC, the intervenor
Christine Piper, Esq., and Maj. Michael G. King, Department of the Air Force, for the agency.
Paula J. Haurilesko, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration is denied where the protester has not demonstrated that the decision contained errors of law or fact that merited modification or reversal of our decision.

2. Request for reconsideration is denied where based on new information arising from events that occurred after issuance of our decision

DECISION

InSpace 21 LLC, of Colorado Springs, Colorado, requests reconsideration of our decision in InSpace 21 LLC, B-410852, B-410852.3, Dec. 8, 2014, 2014 CPD ¶ 363, in which we dismissed a protest challenging the award of a contract to Range Generation Next LLC, of Sterling, Virginia, under request for proposals (RFP) No. FA88-11-13-R-0001, issued by the Department of the Air Force for operations, maintenance, and sustainment services at two Air Force missile ranges. InSpace 21 argues that we erred in finding that it was not an interested party to pursue the protest.

We deny the request for reconsideration.

BACKGROUND

InSpace 21 is a limited liability company registered in Delaware. The majority member of the company is PAE Applied Technologies LLC; the minority member is Honeywell Technology Solutions, Inc. InSpace 21 LLC Operating Agreement at 19.

As relevant here, InSpace 21, along with several other offerors, submitted proposals in response to the RFP. After evaluating proposals, the Air Force awarded a contract to Range Generation.

Upon receiving notice of the award to Range Generation, InSpace 21's Management Board met to discuss whether or not the firm should file a protest. The board members, however, could neither agree on whether to file a protest nor on whether InSpace 21's operating agreement required a majority vote or a unanimous vote to authorize filing a protest. Minutes of InSpace 21 Management Board Meeting, Nov. 21, 2014.

On November 24, 2014, the president of InSpace 21 (Mr. M), who was also a vice president at PAE, filed a protest on InSpace 21 letterhead challenging the award to Range Generation. On November 25, Honeywell submitted a letter to our Office asserting that because the decision to file a protest was not approved by a unanimous vote of the Management Board in accordance with InSpace 21's operating agreement, PAE was not authorized to file a protest in the name of InSpace 21. Honeywell Letter, Nov. 25, 2014, at 2.

We concluded that the disagreement concerning whether the InSpace 21 operating agreement authorized the protester to file the protest on behalf of InSpace 21 was a dispute between private parties, which we would not resolve. Because this authority was in doubt, we found that the protester had not demonstrated that it was an interested party for purposes of filing the protest, and we dismissed the protest. InSpace 21 LLC, supra, at 3-4.

DISCUSSION

In requesting reconsideration, InSpace 21 asserts that we erred in determining that InSpace 21 was not an interested party to file the protest. Further, according to InSpace 21, in finding that the protester did not demonstrate that it was an interested party, we in effect interfered in an internal dispute. Finally, InSpace 21 asserts that we should reconsider our decision based on a subsequent resolution of the dispute over Mr. M's authority to file a protest.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(a). Repetition of arguments previously

made during our earlier consideration of the protest, or disagreement with our prior decision, do not provide a basis for our Office to reconsider our earlier decision. Vinculum Solutions, Inc.--Recon., B-408337.3, Dec. 3, 2013, 2013 CPD ¶ 274 at 2. Here, InSpace 21 has not demonstrated that reversal or modification of our decision is merited.

As an initial matter, while InSpace 21 argues that we erred in finding that it was not an interested party to file a protest, Recon. Request at 5, 17, InSpace 21 misunderstands our decision. In general, we will accept a protest that, because it is written on company letterhead and filed by a company official, on its face appears to be filed by an interested party. See, e.g., Burns & Roe Servs. Corp., B-291530, Jan. 23, 2003, 2004 CPD ¶ 85 (apparent that Burns & Roe was acting as authorized agent for joint venture). However, where, as here, we receive information that calls that interested party status into question, the burden is on the protester to demonstrate its interested party status. Compare Advanced Comm. Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 (team members provided letters agreeing that ACS should pursue protest) with Robert Wall Edge--Recon., B-234469.2, Mar. 30, 1989, 89-1 CPD ¶ 335 (major stockholder is not interested party where record did not indicate authorization to file protest on behalf of company).

Here, our decision noted that the protest was filed on behalf of InSpace 21 by an individual associated with the company. Further, we did not find that InSpace 21 was not an interested party to protest. Rather, we concluded that, because we would not review the dispute between private parties regarding their interpretation of the operating agreement and the organization's internal process for authorizing the filing of a protest, we could not conclude that the individual purporting to file on behalf of InSpace 21 was in fact authorized to represent InSpace 21. InSpace 21 LLC, supra, at 3-4. In these circumstances, we concluded that the protester had not met the requirement to establish the protester's status as an interested party. See 4 C.F.R. §§ 21.0(a)(1), 21.1(c)(5), 21.1(i).

InSpace 21 further argues that we improperly intruded on a dispute between private parties in dismissing the protest. This, too, is inaccurate. Our decision to dismiss the protest was not based on a resolution of the dispute, but rather on consideration of our Bid Protest Regulations--namely, whether the protester had met the requirement to establish the protester's status as an interested party. See 4 C.F.R. §§ 21.0(a)(1), 21.1(c)(5), 21.1(i). Our decision specifically stated that, in addressing this requirement, we would not intrude on a dispute between private parties as to whether the operating agreement required a majority vote or an unanimous vote by the Managing Board to authorize filing a protest. InSpace 21 LLC, supra, at 3. In our view, had we not dismissed the protest based on the information available to us, we would, in effect, have resolved the private dispute, the exact action to which the protester objects.

InSpace 21 also argues that our decision contained material errors of fact. In this regard, InSpace 21 first argues that our Office improperly referred to InSpace 21 as a joint venture rather than a limited liability company (LLC), and therefore misunderstood the legal implications of the corporate form. Recon. Request at 10.

InSpace 21 has not demonstrated that we erred. First, the protester's counsel, in responding to Honeywell's allegations, referred to InSpace 21 as a joint venture ("Although it is a joint venture of PAE and Honeywell, InSpace 21 is a limited liability company…"). Protester Letter, Dec. 1, 2014, at 1. Second, Honeywell--one of two members of the LLC--also identified InSpace 21 as a joint venture. Honeywell Letter, Nov. 25, 2014, at 1. Third, the addendum to the operating agreement that summarized amendments to the agreement also characterized InSpace 21 as a joint venture. InSpace 21 Operating Agreement, Revisions, at 1. In any event, the corporate structure of InSpace 21 was not central to our decision; rather, as discussed above, our dismissal was based on the protester's inability to demonstrate that Mr. M was authorized to file the protest on behalf of InSpace 21 as a result of the dispute between private parties.[1]

InSpace 21 next argues that our decision mischaracterized the position of the individual who signed the protest, Mr. M. InSpace 21 states that Mr. M is the president of InSpace 21, not a board member. Recon. Request at 8.

To the extent that the president of a joint venture (operating as a limited liability corporation) is not a board member of the joint venture (or LLC), we acknowledge the error. That said, InSpace 21 has not explained how this error warrants reversal or modification of our decision. Our decision concluded that the dispute between private parties raised a question as to whether Mr. M was authorized to file the protest. This conclusion did not rely solely on Mr. M's position at InSpace 21 or at PAE, but rather on evidence of the dispute, such as the minutes of the managing board meeting. See InSpace 21 LLC, supra, at 3.

InSpace 21 finally asks that we reconsider our dismissal of the protest in light of the January 23, 2015, resolution by the Circuit Court for Fairfax County, Virginia, of the dispute between PAE and Honeywell as to the interpretation of InSpace 21's Operating Agreement.[2] We decline to do so. As noted above, to obtain

[1] InSpace 21 also asserts that we erred in stating that both it and Honeywell asked that GAO resolve the dispute concerning the proper interpretation of the operating agreement. Recon. Request at 11. InSpace 21 does not explain why this alleged error would merit reversal or modification of our decision.

[2] On December 23, 2014, PAE Applied Technologies LLC filed suit with the Circuit Court for Fairfax County, Virginia, for interpretation of the InSpace 21 operating agreement with respect to authorization of a bid protest. On January 22, 2015,

(continued...)

reconsideration the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(a). Information not previously considered does not mean information that arises from events that took place after we issued our decision. See Environmental Prot. Agency; CGI Fed., Inc.--Recons., B-299504.3, B-299504.4, July 23, 2008, 2008 CPD ¶ 149 at 3-4. Here, we issued our decision on December 8, 2014, after PAE and Honeywell were unable to reach a voluntary resolution of their dispute before our Office about whether the protest was properly filed. PAE was forced to file before the Circuit Court on December 28, where the parties were, again, unable to voluntarily resolve their dispute. Nearly one month later, on January 23, 2015, the Circuit Court was required to resolve this ongoing dispute between two private parties. The subsequent court decision does not provide grounds for our Office to conclude that we erred in deciding that InSpace 21 had not established that it was an interested party.

The request for reconsideration is denied.

Susan A. Poling
General Counsel

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during a hearing, the Court concluded that only a majority vote was required to authorize a bid protest. Case No. CL-2014-16399, Transcript at 3.