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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Rante Corporation--Reconsideration

File: B-411188.2

Date: September 30, 2015

Timothy J. Los, Esq., Rante Corporation, for the protester.
Ashley Bender, Esq., Department of the Treasury, Internal Revenue Service, for the agency.
Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of a prior decision dismissing a protest is denied, where the protester does not show that the prior decision contains errors of fact or law that warrant reversal or modification of the decision.

DECISION

Rante, Corporation, of New York, New York, requests reconsideration of our decision in Rante Corp., B-411188, June 1, 2015, in which we dismissed Rante's protest of the rejection of Rante's unsolicited proposal by the Department of Treasury, Internal Revenue Service (IRS).

We deny the request for reconsideration.

BACKGROUND

Rante submitted an unsolicited proposal to the agency to "provide the IRS with the appropriate tools to address IRS technology limitations," with regard to foreign account and asset reporting. Agency Report (AR), Tab 4, Rante's Proposal, at 47-48. The IRS's Foreign Account and Tax Compliance Act (FATCA) program management office and its International Data Management group reviewed Rante's unsolicited proposal under the procedures outlined in Federal Acquisition Regulation (FAR) § 15.607. The agency found that the protester's proposal duplicated the functionality of an existing IRS blanket purchase agreement, and, thus concluded that Rante's unsolicited proposal did not provide an innovative or unique solution. Contracting Officer Statement at 1; AR, Tab 7, Email from

Information Technology (IT) Program Management Office (Feb. 11, 2015), at 1. Rante then filed a protest with our Office on March 4, which was docketed as B-411188.

Rante's protest challenged IRS's evaluation of its unsolicited proposal, and disagreed with the agency's conclusion that the protester's proposal was neither innovative nor unique. Specifically, the protester argued that "[t]he mere existence of an existing system does not preclude [another] product of being innovative or unique." Protest at 2. The protester also claimed that the agency improperly engaged subject matter experts from the Foreign Account Compliance Program Office to review its proposal, arguing that the agency should have used evaluators with more "technical expertise." Protest at 3. On June 1, we dismissed Rante's protest, concluding that "[g]iven that one of the objectives of our bid protest function is to ensure full and open competition, we consider it inappropriate, generally, to review a protest which would mandate an agency to procure from a particular firm on a sole-source basis." Rante Corp., B-411188, June 1, 2015, 2015 CPD ¶ 166 at 2, citing S.T. Research Corp., B-231752, Aug. 16, 1988, 88-2 CPD ¶ 152 at 1-2; University of Dayton Research Inst., B-220589, Jan. 30, 1986, 86-1 CPD ¶ 108.

REQUEST FOR RECONSIDERATION

On June 8, Rante filed this request for reconsideration, arguing that our decision contained errors of law and fact that warranted reconsideration. Specifically, Rante contends that our decision erroneously relied on S.T. Research Corp., and University of Dayton Research Inst. for the proposition that our Office should not review the protest. Request for Reconsideration at 1. In essence, the protester interprets the citation to those decisions in our prior decision to suggest that our Office could, in circumstances other than those raised by the protester, "mandate" that an agency award a contract on a sole-source basis. See Request for Reconsideration at 2-3. The protester argues that such an interpretation is improper, because it would improperly limit an agency's discretion in conducting a procurement, and because it violates the Constitutional separation of powers between the Legislative and Executive branches of government. For the reasons discussed below, we find no basis to reconsider our decision.

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), (c) (2015). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Id.; Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

As a threshold matter, most of the arguments raised in the request for reconsideration mirror the arguments that were previously raised and considered by

our Office in the earlier protest. As addressed above, Rante was previously afforded a full opportunity to present these arguments. The same arguments raised again fail to state an adequate basis for reconsideration of our decision. 4 C.F.R. § 21.14(c).

In any event we find that Rante's arguments have no merit. As stated above, Rante contends that our prior decision's reliance on S.T. Research Corp., and University of Dayton Research Inst. impliedly asserts that our Office could sustain a protest "and mandate the agency to accept a sole-source award," and that such an action would "remove the discretion vested in administrative officials within the agency, whose actions are being challenged in negotiated procurements." Request for Reconsideration at 1. We conclude that the protester's interpretation of our decisions is not correct.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Pacific Photocopy & Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. In the event that our Office sustains a protest, we do not order an agency to take actions; rather, our Office "recommends" corrective action to the pertinent agency--thus avoiding any separation of powers issue. 31 U.S.C. § 3554(b); 4 C.F.R. § 21.8(a)

Our prior decision in Rante explained that one of the objectives of our bid protest function is to ensure full and open competition; for this reason, our Office considers it inappropriate, generally, to review a protest which seeks a remedy of our Office recommending that the agency procure from a particular firm on a sole-source basis. Rante Corp. supra, at 2. To the extent the protester believes that the use of the term "mandate" implies that our Office could require an agency to make an award to a protester, this interpretation is not consistent with our decisions S.T. Research Corp., and University of Dayton Research Inst. Instead, those decisions held, consistent with CICA and our Bid Protest Regulations, that our Office will not review protests which seek to mandate a sole-source award, or, put differently, seek the remedy of a sole-source award.

Additionally, Rante argues in its request for reconsideration that other potential remedies exist, rather than our Office recommending that the procurement be directed to a particular firm. Request for Reconsideration at 4-5. We find that this argument does not provide a basis to reconsider our prior decision because it was not raised in the initial protest. In this regard, a party's failure to make all arguments available during the course of the protest does not warrant reconsideration of our prior decision. See Department of the Army--Recon., B-237742.2, June 11, 1990,

90-1 CPD ¶ 546 at 4. Here, Rante's initial protest specifically requested "award of the contract." Protest at 4.

The request for reconsideration is denied.

Susan A. Poling
General Counsel