



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: B3 Solutions, LLC--Reconsideration

File: B-408683.5

Date: May 8, 2014

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Andrew Bramnick, Esq., Department of Defense, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of a prior decision sustaining a protest because the evaluation of awardee's proposal did not conform with the solicitation's terms is denied where the requester does not show that the prior decision contains errors of fact or law that warrant reversal or modification of our decision; the requester repeats arguments previously made, asserts new arguments that could have been raised previously, and disagrees with our decision.

DECISION

B3 Solutions, LLC, of Alexandria, Virginia, requests reconsideration of our decision in Gov't Logistics Support Servs., LLC, B-408683, et al., Dec. 3, 2013, 2014 CPD ¶ ____, in which we sustained a protest challenging the award of a contract to B3 on the grounds that its proposal failed to conform to a material solicitation requirement. B3 maintains that our prior decision was erroneous.

We deny the request for reconsideration.

The request for proposals (RFP) at issue contemplated the award of a contract to provide logistics support services. These services primarily involved moving furniture and other office supplies for certain Department of Defense (DOD) agencies within the Pentagon and the National Capital Region, including the Property Management Branch (PMB) of DOD's Washington Headquarters Service

(WHS). Award was to be made, on a best value basis, considering four evaluation factors, one of which was technical approach.

In its protest, Government Logistics Support Services (GLSS) challenged the evaluation of its and B3's proposals, as well as the award decision. As relevant here, GLSS argued that WHS should have rated B3's proposal unacceptable under the technical approach factor because B3 did not propose exclusive use of warehousemen for the PMB warehouse requirements set forth in the RFP's performance work statement (PWS), as required by the RFP after the issuance of amendment No. 3.

As we explained in our decision, this amendment modified an initial solicitation provision. The original RFP provided: "The purpose of the contract is to use laborers and warehousemen to support small moves and the issuing, turn-in, delivery of furniture and other durable office supplies and equipment . . ." RFP, PWS part 1.3, at 12. In amendment No. 3 to the RFP, this language was modified to remove the reference to laborers; the amended solicitation language provided: "The purpose of the contract is to use warehousemen to support small moves and the issuing, turn-in, delivery of furniture and other durable office supplies and equipment . . ." RFP, Amend. No. 3, PWS part 1.3, at 3. In our prior decision, we concluded that the RFP required offerors to provide exclusively warehousemen to perform these requirements, rather than other types of laborers.

The record showed that GLSS had revised its proposal in reaction to the amendment and changed its proposed staffing profile to include only warehousemen to perform the PMB requirement. In contrast, B3 proposed a mix of labor categories to perform the PMB requirement that ultimately gave it an advantage in terms of price. Given the language of the solicitation, we sustained GLSS's protest on this basis. We recommended that the agency either evaluate proposals in a manner consistent with our interpretation of the RFP (that is, as requiring the use of only warehousemen), or, in the alternative, amend the RFP to reflect its actual requirements, obtain revised proposals and make a new award decision.

B3's request for reconsideration raises two challenges to our prior decision, one procedural, and one substantive. We note at the outset that, in order to prevail on a request for reconsideration, the requesting party must show either that our decision contains errors of fact or law, or present information not previously considered, that would warrant reversal or modification of the prior decision. 4 C.F.R. § 21.14(a) (2014); Department of Veterans Affairs--Recon., B-405771.2, Feb. 15, 2012, 2012 CPD ¶ 73 at 3. Repetition of arguments previously made during our earlier consideration of the protest, and disagreement with our prior decision does 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.

B3 argues that we erred in finding that GLSS timely raised its allegation relating to the exclusive use of warehousemen. The protester points out that GLSS was made aware of B3's proposed labor mix in the agency's report filed on September 17, 2013. Because certain documents were not provided to the parties until the following day, comments responding to the agency report were scheduled to be filed on September 30, more than 10 days after GLSS became aware of B3's proposed labor mix. B3 argues that GLSS raised its allegation concerning the requirement to use only warehousemen for the first time in its comments, and that, since those comments were not filed until more than 10 days after GLSS became aware of B3's labor mix, the allegation was untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2).

We deny this aspect of B3's request for reconsideration. This assertion on the part of B3 is essentially the same timeliness argument that B3 made during the original protest. Compare B3's Request for Reconsideration, Dec. 13, 2013, at 5-7 with B3's Comments on the Agency Report, Oct. 24, 2013, at 2-3. We expressly addressed B3's timeliness objection in our earlier decision, and found the allegation timely, notwithstanding B3's challenge. Gov't. Logistics Support Servs., LLC, supra. at 10 n.8. As we explained in detail there, we concluded that the argument concerning the warehousemen was related to the initial protest grounds and was therefore timely. Id. B3's repetition of its previous argument, and its disagreement with our previous finding that the issue was timely raised, do not provide a basis for our Office to reconsider our earlier conclusion. Vinculum Solutions, Inc.--Recon., supra.

B3 also advances various arguments relating to its interpretation of the solicitation, and maintains that, when read as a whole, the RFP cannot reasonably be construed as requiring the exclusive use of warehousemen to perform the PMB requirement.¹ For example, B3 directs our attention to a question and answer that was provided to the offerors in amendment No. 1 to the RFP, as well as the solicitation's Service Contract Act provisions, in support of its position that the RFP did not require any specific types of personnel.

These assertions also provide no basis for our Office to reconsider our earlier decision. A party's assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest does not meet the standard for granting reconsideration; a party's failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of all parties' arguments on a fully developed record. Dep't. of the Navy--Recon., B-405664.3, May 17, 2012, 2013 CPD ¶ 49 at 2.

¹ The agency filed a brief concurring with, and largely echoing, this aspect of B3's request for reconsideration.

These contentions were not raised by B3 during the original protest, and B3 has not explained why it could not, or did not, raise these arguments earlier. B3's raising these arguments for the first time in its reconsideration request cannot provide a basis for us to reconsider our earlier decision. Moreover, these arguments also fail to demonstrate how our earlier decision was erroneous. For example, B3's reliance on the question and answer provided to offerors in amendment No. 1 is misplaced, inasmuch as the language considered in our earlier decision was incorporated in the RFP by amendment No. 3, which was issued after amendment No. 1.

The request for reconsideration is denied.

Susan A. Poling
General Counsel