



Decision

Matter of: Sigma Space Corporation--Reconsideration

File: B-410062.4

Date: March 9, 2015

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DIGEST

Request for reconsideration of a prior decision denying 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

Sigma Space Corporation (Sigma), of Lanham, Maryland, requests reconsideration of our decision in Sigma Space Corp., B-410062 et al., Oct. 16, 2014, 2014 CPD ¶ 309, in which we denied Sigma's protest challenging the award of a contract issued by the National Aeronautics and Space Administration/Goddard Space Flight Center (NASA) to Science Systems and Applications, Inc. (SSAI), of Lanham, Maryland, under request for proposals (RFP) No. NNG13454034R, for hydrospheric and biospheric sciences support services.

We deny the request for reconsideration.

BACKGROUND

On August 15, 2013, NASA issued the RFP for a variety of scientific support services as a small business set-aside with a total estimated value of \$250 million. RFP at 1, 18, 42.¹ On June 19, 2014, NASA informed Sigma that award had been

¹ NASA submitted its agency report (AR) with Bates numbers; citations to the AR use the Bates numbers assigned by the agency.

made to SSAI, and on July 7, NASA provided Sigma with a debriefing. Sigma filed a protest with our Office on July 9, which was docketed as B-410062. Two supplemental protests followed.

In its first protest, Sigma argued that NASA unreasonably applied the RFP evaluation criteria, leading to ratings for the awardee and Sigma that were inconsistent with their respective proposals. The protester also challenged the past performance rating for the awardee and further argued that the agency's best-value tradeoff was unreasonable, inaccurate and unsupported. In its supplemental protests, Sigma alleged that the source evaluation board (SEB) chair had engaged in improper contact with the awardee and also argued that the cost proposals of the awardees' subcontractors had expired prior to the date of award and were thus invalid. On October 16, we denied Sigma's consolidated protests, concluding that the SEB chair's actions were not improper, the agency's past performance evaluation was reasonable, and the remainder of the allegations lacked merit. Sigma Space Corp., supra.

REQUEST FOR RECONSIDERATION

On October 20, Sigma filed a request for reconsideration, arguing that our decision contained two errors that warranted reconsideration. Specifically, Sigma contends that we overlooked evidence it cited in support of its argument that SSAI's proposal extension was signed by an unauthorized individual. Req. for Recon. at 2. Sigma also claims that we failed to address its allegation that two SSAI subcontractor cost proposals expired prior to contract award, "making NASA's cost analysis invalid" and prohibiting award to SSAI. Id. For the reasons discussed below, we find no basis to grant the request for reconsideration.

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) (2014). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Sigma first argues that we erred in our decision in finding that Sigma had failed to support its claim that SSAI's proposal extension was signed by an unauthorized individual, when Sigma had in fact cited to such evidence. Specifically, Sigma takes issue with footnote 8 of our decision, in which we wrote:

In its final supplemental argument, Sigma claims that SSAI's proposal expired on May 14, 2014, and therefore was not a valid offer when the SSA selected SSAI for award on June 13. The agency produced documentation of SSAI's extension of its offer, showing that SSAI

agreed to an extension of its proposal prior to its expiration, factually refuting Sigma's allegation. See Supp. AR, Tab 24, Proposal Extension, at 2011. In its supplemental comments, Sigma responded by claiming that the extension was signed by an unauthorized SSAI individual. Supp. Comments at 10. We find no merit to this argument as Sigma did not include any evidence to support its allegation and failed [to] show that the agency violated the RFP.

Sigma Space Corp., supra, at 7 n.8. Sigma argues that we erred because it "did, in fact, provide . . . [such] evidence" by citing to SSAI's proposal at AR Tab 6 at 277. Id. at 2.

In its earlier protests, Sigma argued that we should have found that the SSAI employee who signed the proposal extension lacked authority to do so. Protest (B-410062.3) at 2. In our decision, we concluded: "[w]e find no merit to this argument as Sigma did not include any evidence to support its allegation and failed show that the agency violated the RFP." Sigma Space Corp., supra, at 7 n.8. Sigma's request for reconsideration alleges that this sentence means that we failed to consider the document it cited. Req. for Recon. at 2. However, the phrase "did not include any evidence to support its allegation" does not mean that there was no citation, but that the document cited "did not include any evidence to support [Sigma's] allegation." Therefore, because we find no error of fact or law, we find no basis for reconsideration of our decision. Nonetheless, we provide below additional detail as to how the cited document failed to provide evidentiary support for the protester's argument.

The RFP includes the requirement to complete Standard Form (SF) 33. RFP, at 38. Block 16 of SF 33 requires the "NAME AND THE TITLE OF PERSON AUTHORIZED TO SIGN OFFER." AR, Tab 6, SSAI proposal, at 277, 279. When SSAI completed its proposal, it submitted the name of its Chief Financial Officer for this block, and the Chief Financial Officer signed the proposal on behalf of SSAI. Id.

On May 9, NASA sent SSAI a letter requesting that the firm extend its proposal, as the proposal was set to expire on May 14. AR, Tab 24, Proposal Extension, at 2011; Tab 6, SSAI proposal, at 277, 279, block 12. The bottom portion of the letter was a form to be completed by SSAI and returned. AR, Tab 24, Proposal Extension, at 2011. The form required SSAI to check one of two options: (1) "No extension is granted;" and (2) "Proposal validity extended until July 30, 2014." Id. The SSAI Contracts Manager completed the form by checking the second box, signing and printing her name, and dating the form. Id.

Sigma effectively argued that SSAI's act of listing one authorized representative deprived all other SSAI employees and officers of the authority to extend the validity of Sigma's offer. Sigma cited no legal authority for the interpretation that listing a single authorized individual in block 16 of SF 33 is an exclusive--rather than

inclusive--act. See Protest (B-410062.3) at 2. Therefore, to the extent that Sigma again asks us to find that SF 33, block 16 is exclusive as to when an individual may bind the company, Sigma has again failed to demonstrate any error of law and merely disagrees with our decision. As discussed above, this is an insufficient basis upon which to reconsider our original decision.

Sigma's second basis for requesting reconsideration asserts that our Office failed to address its argument "that the cost proposals of SSAI's two significant subcontractors . . . had expired[,] making NASA's cost analysis invalid." Request for Recon. at 2. In its original protest, Sigma argued that it had been "competitively prejudiced because Sigma's HBS proposal, in fact, was valid, unexpired, and acceptable at the time of the June 13, 2014 NASA HBS Source Selection," while SSAI's proposal was not expired, thus "represent[ing] a compromise of the integrity of the competitive procurement system . . ." Protest (B-410062.3) at 3, citing Asset Mgmt. Real Estate, LLC, et al., B-407214.5 et al., Jan. 24, 2014, 2014 CPD ¶ 57.

In our prior decision, we stated that "[w]e have reviewed all of Sigma's arguments and conclude that none of them have merit." Sigma Space Corp., supra at 5. Thus, while we did not specifically address this argument, it was not overlooked. In this regard, although our Office reviews all issues raised by protesters, our decisions may not necessarily address every issue raised. Our practice is consistent with the statutory mandate that our bid protest forum provide for "the inexpensive and expeditious resolution of protests." See Research Analysis & Maint., Inc.--Recon., B-409024.2, May 12, 2014, 2014 CPD ¶ 151 at 6, citing 31 U.S.C. § 3554(a)(1). In further keeping with our statutory mandate, our Office does not issue decisions in response to reconsideration requests to address a protester's dissatisfaction that a decision does not address each of its protest issues. See Ahtna Facility Servs., Inc.--Recon., B-404913.3, Oct. 6, 2011, 2012 CPD ¶ 270 at 3.

In any event, Sigma's underlying argument lacks merit and therefore provides no basis to reconsider our prior decision. The protester alleged that the cost proposals of SSAI's two significant subcontractors "expired by their own terms and were no longer valid as of May 14, 2014," several weeks prior to award. Protest (B-410062.3) at 2. However, the expiration of a subcontractor's cost proposal does not by itself invalidate the prime contractor's proposal.

As we have previously held, it is not improper for an agency to accept an expired offer without reopening negotiations where acceptance is not prejudicial to the competitive system. Scot, Inc., B-295569, B-295569.2, Mar. 10, 2005, 2005 CPD ¶ 66. Even where the acceptance period has expired on all offers, an agency may allow the successful offeror to waive the expiration of its proposal acceptance period without reopening negotiations and make award on the basis of the offer as submitted. Id.; Pride Mobility Prods. Corp., B-292822.5, Dec. 6, 2004, 2005 CPD ¶ 72. Thus, NASA was free to accept the expired proposals as long as there was no negative effect on free and open competition.

In support of its claim that the competitive system was prejudiced, Sigma cites the agency's failure to exclude SSAI from award. Protest (B-410062.3) at 3. We have held, however, that circumstances that compromise the system's integrity are generally limited to an offeror's express or implied refusal of a request to extend its offer, and a subsequent request to revive the proposal subject to the offeror's own interests, i.e., situations in which the expiration changes the negotiating power of the parties. See Logistics 2020, Inc., B-408543.4, Feb. 28, 2014, 2014 CPD ¶ 110 at 3. Therefore, because Sigma failed to describe how the expiration of subcontractor costs proposals changed the negotiating positions of the parties or otherwise affected the competitive system, there was no basis to sustain the protester's argument that the agency was precluded from accepting SSAI's offer.

The request for reconsideration is denied.

Susan A. Poling
General Counsel