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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Lovelace Scientific Resources, Inc.--Reconsideration

File: B-256315.2

Date: November 25, 1994

Herbert L. Whitaker, Ph.D. for the protester.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration is denied where protester fails to demonstrate that prior decision contained error of law or fact.

2. Request for recovery of proposal preparation and protest costs is denied where protest is not found to have merit.

DECISION

Lovelace Scientific Resources, Inc. requests reconsideration of our decision, Lovelace Scientific Resources, Inc., B-256315, June 9, 1994, 94-1 CPD ¶ 355, in which we denied its protest of the exclusion of its proposal from the competitive range under request for proposals (RFP) No. NIH-WH-93-30-E/W. The RFP, which was issued by the National Institutes of Health (NIH), Department of Health and Human Services, sought proposals for the performance of clinical trials and observational studies as part of the Women's Health Initiative, a group of studies focusing on chronic disease in older women. The protester also requests that we modify our decision to allow it to recover its proposal preparation and protest costs.

We deny the request for reconsideration and the request for costs.

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) (1994). Neither repetition of arguments made during our consideration of the original protest nor mere

disagreement with our decision meets this standard. Dictaphone Corp.--Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2. Nor will we consider arguments that could have been, but were not, raised during our initial consideration of the protest since to do so would undermine the goal of our bid protest forum. Ford Contracting Co.--Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90.

In its request for reconsideration, the protester disputes our conclusion that the agency reasonably determined that its proposal could not be improved enough through discussions to stand a reasonable chance of being selected for award. In this regard, Lovelace concedes that it could not have demonstrated through discussions that it had experience, either as an organization or through its principal investigator, in conducting large scale clinical trials involving women, but argues that these are the only areas that could not have been improved through discussions.

We disagree. The areas cited by the protester were not the only areas of weakness that could not have improved through discussions. As we noted in our decision, other fundamental weaknesses in the protester's proposal included the marginal size of the target population pool and the protester's lack of experience in recruiting members of minority groups into clinical trials. Given these weaknesses, we remain of the view that the agency reasonably concluded that the protester's proposal could not have been improved enough through discussions to stand a reasonable chance of being selected for award.

Lovelace also disputes several of the agency's criticisms of its proposal. Specifically, the protester objects to the agency's findings that it failed to set forth detailed procedures to protect the rights of participants and that it failed to document adequately its plans to provide and ensure adherence to, the interventions. Lovelace also takes issue with the agency finding that its principal investigator's proposed level of effort was insufficient.

We did not address these particular arguments in our prior decision because they were not raised. With regard to the first point, Lovelace in fact conceded in its comments on the agency report that it had not included sample patient consent forms in its proposal "since it was [its] understanding that sample forms would be provided by the NIH." Similarly, with regard to the second point, the protester conceded that it had not developed full plans for administering the nutritional and hormone replacement therapies since, according to the protester, "it would have been inconsistent with good clinical trial operating

procedures for it to have developed full plans for implementation of these interventions without permitting its site personnel to review the protocol."

Lovelace also objects to the agency's characterization of its target population as marginally sufficient, arguing that the RFP did not set forth a standard for judging the sufficiency of a target population. Again, this is not an argument that the protester raised during our initial consideration of the protest, and we thus will not consider it now.[1]

Further, the protester disputes the agency's findings that it failed to articulate effective strategies for the recruitment of Hispanic and African-American women and that its past experience in conducting large scale trials was not relevant to the Women's Health Initiative. With regard to these two points, the protester is basically just disagreeing with the agency assessment of the merits of its proposal. As we noted in our original decision, mere disagreement with the agency's judgment does not provide a basis for finding the agency's evaluation unreasonable. Moreover, as we discussed in our prior decision, we think that the agency clearly had a reasonable basis for distinguishing between the type of large scale trials in which Lovelace had previously been involved, which were not clinical trials involving interventions and which did not focus on women or minority group members, and the type of study to be undertaken here.

Next, Lovelace asserts that we erred in our decision in interpreting the evaluators' comment that its clinical dietitian lacked post-doctoral experience as meaning that she lacked experience subsequent to receiving her degree. (The protester had contended that this comment demonstrated that the agency was downgrading its clinical dietician because she did not have a Ph.D., a degree which the RFP did not require.)

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[1]Rather than objecting to the RFP's failure to define the level of population that would be considered adequate, the protester complained in its protest that the proposal submitted by the University of New Mexico, which targeted the same population, had been included in the competitive range. We responded to this argument by noting that the size of the target population had been viewed as a weakness in the evaluation of the University of New Mexico's proposal as well, but that the proposal was stronger than Lovelace's in other areas and had thus been included within the competitive range.

The evaluators noted, in reviewing Lovelace's proposal, that "[t]he nutritionists have appropriate training, but limited postdoctoral experience." We understood--and continue to understand--this to mean that their educational background was adequate, but that their experience was limited. It appears to us, in fact, that rather than unfairly downgrading Lovelace's lead dietitian because she did not have a Ph.D., the evaluators understood--apparently wrongly--that she had a doctorate.[2]

Lovelace also argues that we missed the point of its argument concerning agency bias against for-profit institutions and in favor of universities and medical schools. We did not miss the point of the protester's argument; we responded to it by noting that there was no evidence in the record to substantiate the protester's allegation. We also noted, since Lovelace had alleged bias in favor of universities and medical schools, that an independent research institute[3] had in fact received the highest West region technical score.

With regard to Lovelace's request that we award it proposal preparation and protest costs, the Competition in Contracting Act of 1984 (CICA) authorizes our Office to declare a protester to be entitled to such costs only where we determine that "a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation." 31 U.S.C. § 3554(c)(1)(1988); see also 4 C.F.R. § 21.6(d). Since we did not make such a determination here, we have no legal basis upon which to award costs. The Potomack Partnership, B-252860, Aug. 3, 1993, 93-2 CPD ¶ 75.

The protester also complains that we denied its request for a 2-day extension of the time period for filing its request for reconsideration. We denied Lovelace's request because our Regulations do not authorize such extensions. The Regulations require that a request for reconsideration be filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier, 4 C.F.R.§ 21.12(b), and do not give us

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[2]Lovelace noted in its proposal that the lead dietitian had received a "graduate degree" in Nutrition and Dietetics in 1992; the proposal did not indicate whether the graduate degree was a Masters or a Ph.D., however.

[3]It was not clear from the record whether this institution was a for-profit or a non-profit entity.

the discretion to consider untimely requests. Compare 4 C.F.R. § 21.2(c), which provides for consideration of untimely protests under certain circumstances.

The request for reconsideration and the request for declaration of entitlement to costs are denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel