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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Chandler Solutions, LLC--Reconsideration

File: B-409655.3

Date: September 18, 2014

Joseph A. Whitcomb, Esq., Whitcomb Law, P.C., for the protester.
Erik Claudio, Esq., and Nathaniel J. Greeson, Esq., Department of Homeland Security, Federal Emergency Management Agency, for the agency.
Evan D. Wesser, 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 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

Chandler Solutions, LLC, of Seattle, Washington, a small business, requests reconsideration of our decision in Chandler Solutions, LLC, B-409655.2, Aug. 13, 2014, 2014 CPD ¶ 239, in which we denied Chandler Solutions' protest challenging the award of a contract by the Department of Homeland Security, Federal Emergency Management Agency (FEMA) to JDR Unlimited, LLC, of Melbourne, Florida, for armed guard services.

We deny the request for reconsideration.

FEMA issued request for quotations (RFQ) No. HSFE10-14-Q-0003 on November 26, 2013, seeking quotations to provide commercial armed guard services at the Federal Regional Center, in Bothell, Washington, and the Northview Corporate Center, in Lynnwood, Washington. The RFQ, which was set aside for service-disabled veteran-owned small businesses, provided that a contract would be awarded to the firm that submitted the lowest-priced, technically-acceptable quotation. RFQ at 1, 44, 49.

As relevant here, one of the RFQ's four evaluation factors was "State and Local Requirements," which required vendors to provide licensing information, as follows:

The contractor shall obtain, possess and maintain state and/or local licenses and requirements,¹ except where precluded by local law or ordinance, by the deadline for submittal of quotes or provide official documentation from Washington State Licensing Department stating that the offeror has applied for state licensing by February 28th 2014.

RFQ, Evaluation Factors, attach., at 2.

On April 22, 2014, FEMA awarded the contract to JDR, whose quotation was evaluated as the lowest-priced, technically acceptable quotation. In its initial protest, Chandler Solutions asserted, inter alia, that JDR failed to satisfy the state and local licensing requirements of the RFQ because JDR failed to furnish proof that it had obtained, possessed, and maintained a commercial armed guard service license, or applied for such a license, prior to the RFQ's February 28 deadline. See, e.g., Protest at 1-2.

In its response to the protest, FEMA stated that it found that JDR established its compliance with the RFQ's licensing requirements by submitting to FEMA a copy of JDR's license application submitted to the Washington State Department of Licensing and a cancelled check for the accompanying registration fee, both of which were dated February 28. See, e.g., FEMA Motion to Dismiss at 10; Agency Report at 10. In response, Chandler Solutions challenged the veracity of the licensing documentation provided by JDR to FEMA, alleging that the materials were backdated. See Chandler Solutions' Comments at 6-8.

FEMA also asserted that it had waived for all vendors, including Chandler Solutions, the RFQ's requirement to submit official documentation regarding the status of the vendor's license or license application, and, therefore, Chandler Solutions could not establish competitive prejudice. See FEMA Supp. Agency Report at 2-5. Specifically, FEMA asserted that Chandler Solutions did not provide any official documentation regarding its licensing status, but, rather, submitted licensing information for an affiliate, Chandler Security, LLC. Id. In response, the protester challenged FEMA's waiver argument as an improper post hoc rationalization, and again asserted that it had provided license numbers in its quotation to demonstrate, and FEMA had accepted, that Chandler Solutions met the RFQ's license requirements. See Chandler Solutions' Supp. Comments at 1-3.

¹ The RFQ identified four such requirements: commercial armed guard service licensing, insurance/bonding, employee permits for carrying weapons and detaining persons, and adherence to minimum age requirements. RFQ, Evaluation Factors, attach., at 2.

In our decision, we found that FEMA reasonably waived the requirement for official state documentation for both firms and, thus, Chandler Solutions was not competitively prejudiced. See Chandler Solutions, LLC, supra, at 6.

In requesting reconsideration, Chandler Solutions argues that FEMA's response to its protest, including relying on the allegedly backdated JDR license application and cancelled check, is evidence of FEMA's general bad faith in the conducting of the procurement. See Request for Recon. at 1-3. Additionally, the protester argues that our decision contains several alleged factual errors, as follows: (1) we erred in finding that Chandler Solutions' quotation did not include official state licensing documentation; (2) we erred in finding that the contracting officer concluded that none of the quotations had the required state documentation regarding licensing because the contracting officer allegedly conceded that Chandler Solutions submitted sufficient licensing documentation; (3) we erred in finding that FEMA was unsuccessful in obtaining information from the state licensing agency about whether any specific firm submitted an application; (4) we erred in finding that the discussions e-mail intended for JDR was sent to the wrong e-mail address; (5) we erred in finding that JDR's March 13 revised quotation included a copy of a check and a signed application by JDR for a state license because the documentation was allegedly backdated; and (6) we erred in finding that Chandler Solutions did not provide evidence that it would have altered its quotation to its advantage if notified of the waiver. See id. at 3-7. 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) (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.

Chandler Solutions' request, in essence, repeats arguments it made previously and expresses disagreement with our decision. In this regard, the protester's objections fail to demonstrate factual or legal error regarding the dispositive holding of our Office's decision, namely, that Chandler Solutions failed to establish competitive prejudice from FEMA's waiver of the RFQ's licensing documentation requirement for JDR because FEMA similarly waived the same requirement for the protester.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. See, e.g., Zel Techs., LLC, B-409641, B-409641.2, July 2, 2014, 2014 CPD ¶ 203 at 7 n.6. As we explained in our prior decision, our Office has found that

where an agency waives a requirement for both the protester and the awardee that neither fully meets, there is no basis for our Office to find that the protester was prejudiced by the agency's action. Chandler Solutions, LLC, supra, at 6.

As discussed above, in our prior decision we found that FEMA reasonably waived the requirement for official state documentation for both JDR and Chandler Solutions, and, thus, the protester was not prejudiced. See Chandler Solutions, LLC, supra, at 6. In its request for reconsideration, the protester argues that it provided license numbers in its quotation that established that Chandler Solutions was properly licensed and that FEMA had previously found that Chandler Solutions satisfied the RFQ's license requirements. See Request for Recon. at 3, 4, 6.² The protester's argument regarding the sufficiency of the license numbers to establish Chandler Solutions' licensing status appears to rely on its previous argument that Chandler Solutions is the same corporate entity as Chandler Security, the entity holding the state license, because the two firms are corporate affiliates under common ownership and management. See, e.g., Chandler Solutions' Supp. Comments at 2.

Chandler Solutions' request for reconsideration, however, merely repeats the arguments previously raised and considered by our Office in its initial protest. See, e.g., Chandler Solutions, LLC, supra, at 2, 6; Protest at 1-2; Chandler Solutions' Comments at 6-8; Chandler Solutions' Supp. Comments at 2. The protester has not submitted any evidence, either in the initial protest or upon reconsideration, that Chandler Solutions and Chandler Security are the same corporate entity (e.g., one is a trade name for the other). Thus, Chandler Solutions has failed to identify any meritorious factual or legal basis for reconsideration of our prior decision on this issue.

Because Chandler Solutions has failed to establish that it was prejudiced by FEMA's relaxation of material licensing requirements and given that FEMA made award to JDR as the lowest-priced, technically-acceptable quotation in accordance with the terms of the RFQ, the remaining alleged errors, even if they were found to be meritorious, are not prejudicial.

² Chandler Solutions also argues that "FEMA had a duty to verify proposals if it suspected any mistakes." Request for Recon. at 4. This argument, raised for the first time on reconsideration, is untimely. 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. B3 Solutions, LLC--Recon., B-408683.5, May 8, 2014, 2014 CPD ¶ 146 at 3.

The request for reconsideration is denied.

Susan A. Poling
General Counsel