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Decision

Matter of: Point Blank Enterprises, Inc.--Reconsideration

File: B-411897.5

Date: March 22, 2016

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Wade L. Brown, Esq., and Jan S. McNutt, Esq., Department of the Army, for the agency.

Elizabeth Witwer, 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 sustaining 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

Point Blank Enterprises, Inc. (Point Blank), of Pompano Beach, Florida, requests reconsideration of our decision sustaining the protest of Protect the Force, Inc. (PTF), of Alpharetta, Georgia, regarding the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract to three awardees, including Point Blank, under request for proposals (RFP) No. W91CRB-15-R-0027, which was issued by the Department of the Army for ballistic combat shirts. See Protect the Force, Inc., B-411897.2, B-411897.4, Nov. 24, 2015, 2015 CPD ¶ 369. Point Blank argues that our decision was in error as to matters of law and fact that warrant reversal of our decision sustaining Protect the Force's protest.

We deny the request for reconsideration.

BACKGROUND

On May 20, 2015, the Army issued the RFP for the procurement of ballistic combat shirts, described in the record as a flame-resistant Army combat shirt worn under body armor in combat operations. Agency Report (AR), Tab 21a, Original Purchase Description, at 1. The RFP contemplated the award of up to three fixed-price IDIQ

contracts to the offerors who submitted the lowest-priced, technically acceptable offers. RFP at 79.

The RFP included five contract line-item numbers (CLINs) requiring: submission of a technical data package (CLIN 1); first article testing (CLIN 2); delivery of complete samples after first article testing to be used in live-fire testing (CLIN 3); manufacture and delivery of a potential maximum quantity of 72,414 ballistic combat shirts (CLIN 4); and preparation and submission of a production process package (CLIN 5). Id. at 3-5. The RFP stated that the Army would evaluate proposals based on six factors: (1) technical, (2) workmanship, (3) quality assurance, (4) small business subcontracting, (5) delivery, and (6) price. Id. at 69, 79-83.

With respect to the technical evaluation factor, the RFP instructed offerors to submit: (a) product samples; (b) test documentation; (c) a technical narrative; and (d) a statement of compliance with the Buy American Act and the Berry Amendment. Id. at 69-71. Of relevance here are the requirements for test documentation and a technical narrative.

The requirement for test documentation stated: "Test documentation, which demonstrates that the[] [ballistic combat shirt] meets the requirements defined in Table 1, shall be provided by the Offeror." Id. at 69. The RFP included further explanation of this requirement with respect to both non-ballistic and ballistic testing. Id. at 70-71. Of relevance, the RFP stated that, with respect to non-ballistic testing, the testing needed to be conducted in accordance with the purchase description and that offerors were required to submit independent, non-ballistic test data for three specific measurements: areal density, thickness, and weight.¹ Id. at 70. Test data regarding "air permeability," which is at issue here, was not expressly listed as one of the measurements for which non-ballistic testing results needed to be included at the time of proposal submission.

The RFP's requirement for a technical narrative consisted of a single sentence, which stated: "Offerors shall submit a Technical Narrative that clearly addresses and demonstrates the thirteen (13) [key performance attributes] listed in Table 1 below." Id. at 71, 79. Section M of the RFP provided that the Army would evaluate offerors' technical proposals based, in part, on the narratives addressing each key performance attribute (KPA), and that, to be eligible for award, a proposal was required to be found acceptable for all 13 KPAs. Id. at 79.

¹ Specifically, the RFP required non-ballistic data regarding: (1) areal density measurements for the ballistic combat shirt (BCS) collar and yoke protection ballistics; (2) thickness measurements for the BCS collar and yoke protection ballistics; and (3) full-system weight measurements for a medium-sized BCS. RFP at 70.

The RFP's Table 1 also identified minimum requirements and testing standards for each of the 13 KPAs.² Id. at 80-81. Of particular relevance to Point Blank's request for reconsideration, KPA 10, regarding air permeability, provided:

KPA	Minimum Requirement
10. Air Permeability	Air Permeability of Outer Facing Cloths will be tested in accordance with the [purchase description] using ASTM D 737. ³

Id. at 81.

Seven offerors, including Point Blank and Protect the Force, submitted final revised proposals. AR, Tab 4, Revised Technical Evaluation Report, at 3-4. The Army ranked the proposals by price as follows:

Offeror	Total Evaluated Price
Point Blank	\$17,063,153.51
Short Bark Industries	\$17,877,235.24
Carter Enterprises	\$18,875,522.73
Offeror 4	\$23,587,050.00
Offeror 5	\$28,308,127.69
Protect the Force	\$28,345,908.48
Offeror 7	\$36,059,651.30

AR, Tab 7, Price Negotiation Memorandum, at 19. The Army evaluated all seven proposals as technically acceptable. AR, Tab 4, Revised Technical Evaluation Report, at 3-4.

Both Point Blank and Protect the Force included in their proposals a blanket statement of compliance with the 13 KPAs, asserting that they would, if awarded a contract, provide materials that were compliant with the purchase description requirements. AR, Tab 9a, Point Blank Technical Proposal, at 4; Tab 10a,

² The 13 KPAs were: (1) design, (2) sizing, (3) area of coverage, (4) weight, (5) ballistic area density/thickness, (6) ballistic insert cover, (7) ballistic protection, (8) ballistic durability, (9) material durability, (10) air permeability, (11) laundering, (12) donning/doffing, and (13) outer facing cloth. RFP at 80-81.

³ "ASTM" is the acronym for American Society for Testing and Materials. AR, Tab 21a, Original Purchase Description, at 3. ASTM D 737 is the standard test method for the air permeability of textile fabrics. Id.

Protect the Force Technical Proposal, at 5. Additionally, Point Blank's proposal provided the following technical narrative with respect to KPA 10:

Air permeability of outer facing cloth has been tested in accordance with AR/PD 15-06 using ASTM D-737.

AR, Tab 9a, Point Blank Technical Proposal, at 11. Elsewhere in its proposal, Point Blank reproduced Table 1, adding a column titled "Requirement Met?" Id. at 7-8. For its narrative for KPA 10, Point Blank stated "Yes." Id. at 8.

Protect the Force's proposal provided the following technical narrative with respect to KPA 10:

Testing was performed according to ASTM D737 to confirm the compliance of all materials and values as per Table 1 (Basic Material Requirements) found in the purchase description. Table 11 [] below is a summary of the testing results.

AR, Tab 10a, Protect the Force, Technical Proposal, at 15. The table included in Protect the Force's proposal provided a comparison of the air permeability values required by the RFP with the results of Protect the Force's sample testing. Id. The proposal also referred the Army to an appendix containing a full set of the test results. Id.

On July 30, the Army made awards to Point Blank, Short Bark Industries, and Carter Enterprises. AR, Tabs 24a, 24b, and 24c, Agency e-mails to Awardees. The Army provided a debriefing to Protect the Force on August 10, and Protect the Force filed a protest with our Office on August 10.⁴

Of relevance to Point Blank's request for reconsideration, Protect the Force alleged that the RFP required offerors to provide test documentation for all 13 KPAs, which the awardees failed to do, Second Supp. Protest (B-411897.4), Sept. 28, 2015, at 13-17, and that the awardees' technical narratives for KPA 10 failed to comply with the RFP's requirement to address and demonstrate compliance. Id. at 6-12. In particular, Protect the Force argued that Point Blank "made no affirmative assertions in the narrative that its outer shell meets the KPA requirement for air

⁴ Protect the Force's initial protest was dismissed as untimely. See Protect the Force, Inc., B-411897.1, Sept. 4, 2015 (unpublished decision); Protect the Force, Inc.--Recon., B-411897.3, Sept. 30, 2015, 2015 CPD ¶ 306. It is our decision regarding Protect the Force's first and second supplemental protests, filed on August 17 and September 28, respectively, that is the subject of Point Blank's request for reconsideration. Protect the Force, Inc., B-411897.2, B-411897.4, Nov. 24, 2015, 2015 CPD ¶ 369.

permeability.” Id. at 10. Thus, Protect the Force contended that Point Blank’s proposal failed to “provide any basis for the Agency to reasonably conclude that Point Blank meets the KPA requirement for air permeability[.]” Id.

In response, the Army argued that the RFP did not require test documentation for all 13 KPAs. Supp. Legal Memorandum, Oct. 5, 2015, at 1, 3, 5. Rather, the test data for most of the non-ballistic requirements, including KPA 10, would be generated during first article testing. Id. Additionally, the Army argued that the RFP’s requirement for a technical narrative addressing and demonstrating compliance with the 13 KPAs meant only that offerors were “required to submit clear declarative statements for each of the thirteen (13) KPAs[.]” Id. at 3-4. Thus, the Army contended that the awardees, including Point Blank, appropriately did not provide test documentation for KPA 10, and adequately addressed the KPAs in their technical narratives. See e.g., id. at 4.

As relevant to Point Blank’s request for reconsideration, our decision found that there was “much disagreement in the record” regarding whether the RFP required the submission of test documentation for all 13 KPAs. Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 6 n.8. In any event, we held that “our analysis is not dependent upon resolving that dispute,” id., because “[o]n this record, even adopting, for the purposes of this discussion, the agency’s reading of the RFP concerning test documentation, we find that the agency’s evaluation of the awardees’ narratives addressing the requirements for KPA 10 was unreasonable and not consistent with the stated evaluation criteria.” Id. at 6-7. In other words, we reached no conclusion regarding the RFP’s test documentation requirement, electing instead to sustain the protest on the basis of Protect the Force’s second protest ground.

With respect to Protest the Force’s second allegation, we sustained the protest finding that the agency’s evaluation of the awardees’ narratives addressing KPA 10 was unreasonable and inconsistent with the stated evaluation criteria. Id. at 6-8. Regarding Point Blank’s narrative specifically, we concluded that its proposal failed to provide “a meaningful narrative for this KPA.” Id. at 8. Instead, its “proposal simply stated that its product had been tested using the prescribed method, without any narrative concerning compliance with the [purchase description] requirements.” Id. In sum, we found that “the awardees’ proposals did not demonstrate how their products met the requirements set forth in KPA 10, as required by the evaluation criteria” and the Army “provided no explanation of its rationale for finding that these offerors’ proposals were technically acceptable for this KPA.”⁵ Id.

⁵ As we noted in our decision, Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 7-8, the Army’s technical evaluation did not explain why the agency found Point Blank’s narrative acceptable. See AR, Tab 3b, Point Blank Initial Technical Evaluation, at 1, 3; Tab 4, Summary of Technical Evaluation, at 4. Rather, the
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DISCUSSION

Point Blank asserts numerous bases for reconsideration. However, nearly all of these arguments stem from a central premise: Point Blank contends that our decision implicitly held that the RFP required the submission of test documentation for all 13 KPAs. As we explain below, our decision expressly disavowed such a conclusion. Moreover, in finding that Point Blank's technical narrative for KPA 10 did not comply with the RFP's requirement to "address[]" and demonstrate[]" compliance with the purchase description, we did not implicitly introduce new requirements or require offerors to submit test documentation. Rather, our decision found that the Army's evaluation of the awardee's proposal was inconsistent with the evaluation criteria set forth in the RFP. Accordingly, we find no basis to reconsider our prior decision.

Point Blank's Central Premise

Point Blank contends that our decision to sustain Protect the Force's protest was based on an erroneous interpretation that the RFP required offerors to submit test documentation evidencing compliance with all 13 KPAs. Req. for Recon. at 1. We disagree. Our decision expressly declined to resolve the dispute involving the interpretation of the RFP's requirement as it related to test documentation. Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 6 n.8. Moreover, we stated that, for the purposes of reviewing the agency's evaluation of the offerors' technical narratives, we would adopt the agency's reading of the RFP's requirement concerning test documentation, *i.e.*, that the RFP did not require the submission of test documentation for all 13 KPAs. Id. at 6-7.

In its request for reconsideration, Point Blank acknowledges our decision's express holding. Req. for Recon. at 1, 5. Nonetheless, the protester argues that, in finding Point Blank's narrative for KPA 10 unacceptable, but not Protect the Force's narrative, we implicitly held that the RFP required the submission of test documentation for all 13 KPAs. Id. at 1, 5-7, 8-9. Point Blank alleges that the two offerors' technical narratives concerning KPA 10 were "indistinguishable" except for the fact that Protect the Force also included test documentation. Id. at 1-2, 5. Accordingly, by finding Point Blank's narrative unacceptable, but not Protect the Force's, Point Blank argues that our Office implicitly imposed a requirement that offerors' submit test documentation for KPA 10. Id. at 1-2, 5-7, 8-9. We find no merit to this argument, as Point Blank's request misstates the holding of our decision.

(...continued)

Army's evaluation contains only the notation "acceptable" without any accompanying rationale or discussion. Id.

The RFP required offerors to submit a narrative “that clearly addresses and demonstrates” compliance with the 13 KPAs listed in Table 1. RFP at 71. Our decision found that the agency’s interpretation of the RFP as only requiring “clear declarative statements for each of the thirteen (13) KPAs,” Supp. Legal Memorandum at 3-4, failed to recognize that the term “demonstrates” requires more than a declarative statement of compliance. Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 7-8. Rather, as we held, it requires a showing or an illustration.

The common dictionary definition of the term “demonstrate” means to show clearly; to prove or make clear by reasoning or evidence; or to illustrate and explain through example. Merriam-Webster Dictionary, available at <http://www.merriam-webster.com/> (last visited March 21, 2016). See also Oxford English Dictionary, available at: <http://www.oed.com/> (last visited March 21, 2016) (defining “demonstrate” as establishing the truth of a claim by reasoning or deduction or by providing practical proof or evidence). Thus, the use of the term demonstrate in this context contemplates something more than a declarative statement that an offeror would supply a compliant product. To adopt the agency’s interpretation of the RFP would ignore the term demonstrate.

The RFP did not dictate how offerors were to demonstrate compliance in their technical narratives; thus, offerors could have employed a number of different methods, explanations, and examples to demonstrate compliance.⁶ Point Blank’s technical narrative, however, did not specifically address or demonstrate compliance with KPA 10. Instead, the narrative indicated only that its product “has been tested” using the prescribed method. AR, Tab 9a, Point Blank Technical Proposal, at 11. The proposal did not include any narrative demonstrating, i.e., showing or illustrating, compliance with the purchase description.⁷ Contrary to Point Blank’s contentions, see Req. for Recon. at 8, we concluded that an offeror’s statement that testing had occurred did not satisfy the RFP’s requirement to address and demonstrate compliance with the purchase description. As noted above, although the RFP may not have required the submission of test documentation, the RFP expressly required more than a declarative statement of

⁶ That Protect the Force’s proposal may have exceeded the requirements of the RFP to demonstrate compliance with the KPAs does not render its proposal unacceptable, nor require other offerors to demonstrate compliance by the same method.

⁷ None of the other declarative statements in Point Blank’s proposal demonstrate its compliance with the KPAs. See AR, Tab 9a, Point Blank Technical Proposal, at 4 (offering blanket representation that Point Blank’s product “will be fully compliant with the requirements as defined in the solicitation [] and Purchase Description[].”); id. at 8 (answering “Yes” in response to the question “Requirement Met?”).

compliance. For that reason, we held that Point Blank's proposal failed to provide any narrative--let alone a meaningful narrative--concerning compliance with the purchase description. Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 8.

Put differently, our decision accepted the Army's contention that the RFP did not require offerors to conduct tests or submit test data to satisfy the requirement to "demonstrate" compliance with the KPAs. Id. at 6-7. Instead, we concluded that where an offeror elects to demonstrate compliance with the KPAs by citing testing on its product, the offeror was required to provide a narrative explaining why the testing demonstrated compliance. Id. at 8.

Accordingly, we sustained Protect the Force's protest not because we implicitly concluded that test documentation was required, but because the agency determined Point Blank's proposal to be technically acceptable despite Point Blank's failure to submit "any narrative concerning compliance[.]" Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 8. As such, we properly reviewed the agency's analysis to determine whether it was consistent with the evaluation criteria, XLA Assocs., Inc., B-412333.2, Jan. 29, 2016, 2016 CPD ¶ 54 at 9, determining, in fact, that it was not.

Point Blank's Ancillary Arguments

Having addressed and denied the central premise upon which Point Blank's request for reconsideration is based, we briefly turn to Point Blank's additional arguments, which also rely upon this central premise. First, Point Blank argues that our decision improperly resolved a patent ambiguity in the RFP in favor of the protestor, rather than the agency. Req. for Recon. at 1 (citing Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 6-7 n.8). See also id. at 3-5, 7. More precisely, in our decision, we recognized that the parties disagreed regarding whether the RFP required offerors to submit test documentation showing compliance with all 13 KPAs. Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 6 n.8. We stated, however, "that, to the extent that the RFP language could reasonably be construed in more than one way, it would present an issue of patent ambiguity." Id. We did not discuss this possible patent ambiguity any further or address the ramifications of any such finding because, as explained, we expressly declined to resolve the dispute, opting instead to adopt the agency's reading of the RFP. Id. at 6-7 n.8. Having already determined that our decision did not resolve this issue--either expressly or implicitly--in favor of Protect the Force, we find no basis to grant Point Blank's request for reconsideration on this ground.

Second, Point Blank contends that, in evaluating whether Point Blank's proposal complied with the terms of the RFP, our decision improperly reached beyond the four corners of Point Blank's proposal to incorporate information contained in another offeror's proposal. Req. for Recon. at 2, 10-13 (citing Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 8 n.10). Our discussion of the other

offeror's proposal, however, was not an independent basis upon which we sustained the protest. Instead, as discussed above, our decision found Point Blank's technical narrative itself to be deficient. Although our decision highlighted additional evidence that the agency could have considered in evaluating the technical acceptability of Point Blank's proposal, see e.g., George G. Sharp, Inc., B-401077, B-401077.2, Apr. 15, 2009, 2009 CPD ¶ 87 at 4 (an agency is not bound by the four corners of an offeror's proposal but may use other information of which it is aware), this issue did not affect our reasons for sustaining Protect the Force's protest with regard to the Army's evaluation of Point Blank's proposal. For this reason, this issue provides no basis upon which to grant Point Blank's request for consideration.

Third, Point Blank contends that our decision relied upon an inapplicable legal authority. Req. for Recon. at 2 (citing Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 8). Specifically, Point Blank objects to our reliance upon United Satellite Systems, B-237517, Feb. 22, 1990, 90-1 CPD ¶ 201, for the proposition that blanket statements of compliance are not enough to demonstrate technical acceptability. Point Blank argues that our decision in United Satellite Systems is distinguishable because that protest involved a brand name or equal procurement in which blanket statements of compliance do not establish acceptability. Req. for Recon. at 2.

Although our decision in United Satellite Systems may not directly support this legal conclusion in the exact context presented here, our Office has, in numerous other decisions, reached this same conclusion, i.e., that blanket statements of compliance do not establish technical acceptability where the terms of the solicitation require a level of detail beyond simple acknowledgement of the solicitation's requirements or certification that an offeror will meet them. See e.g., Axxon Int'l, LLC, B-412147, Dec. 22, 2015, 2015 CPD ¶ 399 at 2, 4 (holding that "blanket statements of compliance are generally not sufficient to demonstrate technical acceptability" where the solicitation required offerors to include a technical description of the items being offered "in sufficient detail to evaluate compliance"); MELE Assocs., Inc., B-299229.4, July 25, 2007, 2007 CPD ¶ 140 at 3-4 (finding that an offeror may not rely on "blanket statements of compliance" with the solicitation where the solicitation required offerors to develop a technical plan explaining how an offeror would comply); Nat'l Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 6 (agency reasonably eliminated proposal from consideration for award where the proposal contained general statements of compliance with the technical requirements but failed to clearly demonstrate how its equipment would comply with the requirements.); Neeser Constr., Inc./Allied Builders Sys., A Joint Venture, B-285903, Oct. 25, 2000, 2000 CPD ¶ 207 (holding that "blanket statements of compliance" with solicitation requirements are insufficient to meet a specific requirement to "show" certain criteria).

Having already found that the RFP here required more than a blanket statement of compliance, we find that our decision to sustain the protest was proper.⁸ Point Blank's objection to our legal citation provides no basis for us to reconsider our prior decision.

Finally, Point Blank contends that we "improperly found that [Protect the Force] was an interested party to protest." Req. for Recon. at 3, 13-14 (citing Protect the Force, Inc., B-411897.2, B-411897.4, supra, at 5-6). Upon further review of Point Blank's arguments, however, we believe Point Blank to be arguing, not that our decision was legally erroneous in this regard, but rather, that if we were to alter our prior decision with respect to the agency's evaluation of Point Blank's proposal, then Protect the Force would not be an interested party. Req. for Recon. at 3 ("[T]he GAO's reconsideration and correction of its decision as it related to Point Blank will entirely eliminate PTF's 'interested party' status."). We need not reach a decision on this point because, as explained above, modification of our prior decision is not warranted.

The request for reconsideration is denied.

Susan A. Poling
General Counsel

⁸ For this reason, this case is readily distinguishable from Allied Technology Group, Inc. v. United States, 649 F.3d 1320 (Fed. Cir. 2011), the principal case relied upon by Point Blank in its request. Req. for Recon. at 12-13. In that case, the solicitation required offerors to merely "accept" each of the 114 technical requirements included in a "Requirements List." Allied Tech. Grp., 649 F.3d at 1323. Thus, the United States Court of Appeals for the Federal Circuit concluded that, where an offeror has certified that it meets the technical requirements of the solicitation, the agency is entitled to rely upon such certification. Id. at 1330 (citation omitted). By contrast, here, the RFP required a significantly more detailed demonstration of compliance.