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Decision

Matter of: Segovia, Inc. d/b/a Inmarsat Government--Reconsideration

File: B-412097.3

Date: August 12, 2016

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DIGEST

Request for reconsideration of prior decision is denied where the requestor does not show that the prior decision contains errors of fact or law that warrant reversal or modification of the decision.

DECISION

Segovia, Inc., of Reston, Virginia, doing business as Inmarsat Government (Segovia), requests reconsideration of our decision in Intelsat Gen. Corp., B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30, in which we sustained a protest by Intelsat General Corporation (Intelsat), of McLean, Virginia. Intelsat protested the award of a contract to Segovia under request for proposals (RFP) No. HC1013-14-R-0004, which was issued by the Defense Information Systems Agency (DISA), for comprehensive commercial satellite services for the United States Navy. We sustained Intelsat's protest, finding that the agency conducted misleading discussions, failed to evaluate Segovia's proposal in accordance with the terms of the RFP, and relied on a flawed price realism analysis. Intelsat, supra. Segovia disagrees with our interpretation of the solicitation as presented in our decision.

We deny the request.

BACKGROUND

DISA issued the RFP on September 15, 2014, under the negotiated procurement procedures of Federal Acquisition Regulation (FAR) Part 15, to obtain worldwide end-to-end commercial satellite telecommunications services for the Navy. RFP at 6. The RFP divided global coverage into 13 different geographic service regions. Id. at 14-17.

Offerors were instructed to propose baseline services to meet the Navy's current requirements and, separately, to propose non-baseline services to meet optional surge requirements. Id. at 11-12. The RFP listed five different bandwidths that an offeror could use to provide broadband satellite coverage within each region.¹ Id. at 14-16. For each satellite an offeror proposed to use, the solicitation required that certain performance documentation be provided as part of the proposal. Id. at 12.

As to each possible combination of a geographic region and bandwidth, the RFP listed, by fiscal year and type of requirement (i.e., baseline or non-baseline) the required modem data rate and estimated capacity by variant.² Id., Appendix II—CSSC Bandwidth Estimates. The RFP provided that offerors would be evaluated on their “ability to provide satellite resources in sufficient quantities to satisfy bandwidth capacity identified in the PWS Appendix II—CSSC Bandwidth Estimates.” Id. at 104. However, the majority of cells in Appendix II either had a zero value or were blank.³ Id., Appendix II—CSSC Bandwidth Estimates.

The agency received three proposals by the October 28, 2014, closing date, including those of Segovia and Intelsat. Agency Report (AR) at 19. DISA awarded the contract to Segovia, and Intelsat filed a protest with our Office.

In our decision, we found that Appendix II presented the agency's requirements for bandwidth and data rate by region. Intelsat, supra, at 8. We held that, if an offeror proposed to use a specific bandwidth to provide coverage in a region where Appendix II contained zero values for that particular combination of region and bandwidth, the agency had no metric upon which to evaluate whether the offeror's proposed bandwidth capacity met the agency's needs. Id. at 8-9. Correspondingly,

¹ These bandwidths were C-band, commercial Ka-band, military Ka-band, Ku-band, and X-band. RFP, Appendix II—CSSC [Commercial Satellite Services Contract] Bandwidth Estimates. In four of the geographic regions, there were only four bandwidths listed. Id. at 15-16.

² A modem data rate refers to the volume of data that can be transmitted per fixed time unit. The agency provided an estimate of the required capacity in megahertz (MHz). The variant refers to the type of naval shipboard terminal.

³ Empty cells were considered to be equivalent to zero. Intelsat, supra, at 8 n.11.

we concluded that, where Appendix II contained only zero values for a particular bandwidth in a region, that bandwidth could not form part of an offeror's solution to the RFP's coverage requirement for that region. Id. at 8. We sustained the protest, finding that the agency erred in concluding that the RFP allowed the requirements of regional coverage and bandwidth capacity to be separately evaluated. Id. at 15.

We also found that DISA allowed Segovia to propose specific satellites to satisfy the RFP's coverage requirements, even though Segovia had not included the required performance documentation for those satellites. Id. at 14. We sustained the protest because Segovia did not provide documentation for all of its proposed satellites, as required by the RFP, and the agency therefore erred in concluding that Segovia satisfied the RFP's documentation requirements. Id. at 18. Further, under the terms of the solicitation, proposed satellites lacking complete documentation could not be considered as part of an offeror's proposed solution.⁴ Id. at 17. We sustained the protest because, without those satellites, Segovia's proposal failed to provide the coverage, by certain bandwidths and region, that the RFP required. Id. at 15-16.

We further concluded that, as a result of the errors identified in the agency's evaluation, the agency's price realism analysis was flawed. Id. In addition, we sustained the protest ground alleging misleading discussions, finding that the agency's interpretation of the solicitation changed after its initial discussions with Intelsat, and that the agency failed to advise Intelsat of this change. Intelsat, supra, at 12.

DISCUSSION

Segovia requests that we reconsider our decision sustaining Intelsat's protest. The requestor contends that we misapplied the governing law and facts relating to whether the RFP's ambiguity with regard to regional coverage by bandwidth was latent or patent, whether the discussions were misleading, and whether Intelsat's proposal complied with the terms of the RFP. Req. for Recon. at 2. For the reasons below, the request is denied.

Under our Bid Protest Regulations, in order to obtain reconsideration, the requesting party must show that our prior decision contains errors of either fact or law, or must present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(c); Waterfront Techs., Inc.--Recon.,

⁴ Our interpretation was consistent with the agency's interpretation. See AR, Tab 6C, Intelsat First ENs, EN 25 at 1 (where DISA informed Intelsat that its proposal "does not provide sufficient coverage" because, without the required documentation, the satellite could not be considered as part of its proposed solution).

B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Id. As explained below, we find that Segovia's contentions essentially repeat arguments raised during the protest, disagree with our conclusions, and fail to demonstrate error in our decision.

As to Segovia's allegation that the solicitation contained a patent--rather than latent--ambiguity with regard to the regional bandwidth requirements, which would have rendered Intelsat's protest untimely, this argument was previously raised and considered by our Office. Intelsat, supra, at 7, 10. In this regard, we found that the discussions "reasonably supported the protester's interpretation that the agency's capacity evaluation also evaluated coverage, which would render any ambiguity latent." Id. at 12. Segovia's request for reconsideration provides no new legal or factual basis to reconsider our decision and merely disagrees with our conclusion. Req. for Recon. at 3.

Next, Segovia argues that, in finding that the agency conducted misleading discussions, we misinterpreted Intelsat's own interpretation of the solicitation. Req. for Recon. at 8. Segovia's argument fails to account for the substance of the discussions themselves and the apparent change in the agency's interpretation of the RFP, both of which we considered and addressed in our decision. Intelsat, supra, at 10-13. Here, the protester disagrees with our conclusion, but fails to specify errors of law or fact in our decision.

Segovia also contends that Intelsat's protest was untimely because "the Agency's discussions alerted Intelsat [to the fact] that the Agency might be interpreting the RFP's coverage and capacity requirements in a manner different from its own." Req. for Recon. at 10. This argument was previously raised by both Segovia and DISA. Supp. AR at 3-4; Intervenor's Supp. Comments at 3. We found that the protest was timely because the ambiguity was latent, not patent. Intelsat, supra, at 12. The repetition of arguments made during our consideration of the original protest and disagreement with our decision does not meet the standard for revising or reversing our decision on reconsideration. 4 C.F.R. § 21.14(c).

In addition, Segovia argues that, where Appendix II contained a zero value for baseline capacities in a certain bandwidth, but non-zero values for non-baseline capacities in a different bandwidth, we should have interpreted the solicitation as allowing offerors to propose that second bandwidth to satisfy regional baseline requirements. Req. for Recon. at 12-13. This contention was not raised by Segovia during the original protest, and Segovia has not explained why it could not, or did not, raise this argument earlier. The introduction of these arguments for the first time in a reconsideration request cannot provide a basis for us to reconsider our earlier decision. B3 Solutions, LLC--Recon., B-408683.5, May 8, 2014, 2014 CPD ¶ 146 at 4. Moreover, Segovia fails to demonstrate how our earlier decision was erroneous. For example, Segovia's argument fails to consider that there is no basis

in the RFP to find that a non-baseline, i.e., surge, capacity in one bandwidth could satisfy the RFP's requirements for baseline coverage in a different bandwidth.

Finally, Segovia contends that our conclusion regarding its failure to provide required performance documentation is internally inconsistent because "[i]f the missing documentation means that the satellites in question cannot be considered part of [Segovia's] solution, [Segovia's] proposal cannot then be considered non-compliant for failing to provide documentation for those satellites[.]" Req. for Recon. at 16-17. See also Intelsat, supra, at 14, 18. Segovia thus argues that we should use our conclusion--that the agency cannot consider satellites with missing performance documentation as part of Segovia's proposed solution--as a finding that Segovia did not, in fact, propose those satellites.

Under Segovia's reasoning, our conclusion removed those satellites from its proposal and as a result, it is excused from the corresponding documentation requirements. This argument has no merit. The record shows that the satellites in question were, in certain places, part of Segovia's proposal. See, e.g., AR, Tab 11C, Segovia Final Proposal, at II-11m; II-14. See also Intelsat, supra, at 14. Our conclusion does not, as a matter of fact, amend Segovia's proposal. Where Segovia did not provide documentation for this proposed satellite, the conclusion that Segovia failed to satisfy the RFP's documentation requirement and the conclusion that the agency erred in considering the satellites missing this documentation are not inconsistent with each other. In sum, this argument provides no basis for us to modify or reverse our prior decision.

The request is denied.

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General Counsel