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Decision

Matter of: Department of Justice; Hope Village, Inc.--Reconsideration

File: B-414342.5; B-414342.6

Date: May 21, 2019

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Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration alleging errors in the underlying decision based on information that was available, but not submitted, during the initial protest is denied because relevant evidence, information, or analysis available to a party, but withheld or not submitted for initial consideration cannot form a valid basis for reconsideration of a decision.
 2. Request for reconsideration is denied where requester reiterates arguments which merely reflect the requester's disagreement with the decision, but fails to show that the initial decision contains either errors of fact or law that warrant reversal or modification of the decision.
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DECISION

The Department of Justice, Bureau of Prisons (BOP), and Hope Village, Inc., of Washington, D.C., request reconsideration of our decision, Hope Village, Inc., B-414342.2 et al., Feb. 21, 2019, 2019 CPD ¶ 86, sustaining in part and denying in part, Hope Village's protest challenging the evaluation of proposals and award of a contract to CORE DC, under request for proposals (RFP) No. RFP-200-1270-ES, issued by the BOP, for residential re-entry center and home confinement services. The agency argues that the decision found that Hope Village was an interested party to challenge the evaluation of CORE DC's proposal based on an error of fact. Hope Village asserts that the decision improperly failed to consider "key" documents in the record.

We deny the requests for reconsideration.

BACKGROUND

The RFP sought residential reentry center (i.e., halfway-house) services for male federal offenders. Agency Report (AR), RFP at 3.¹ As relevant here, the RFP included a requirement that “[t]he contractor will accept all inmates for placement at the facility” unless local laws or ordinances prohibited placements of a particular type of offender. AR, RFP, attach.1, Statement of Work (SOW), at 43.

The agency received five proposals, AR, Contracting Officer Statement (COS) at 4, established a competitive range of three of them, including those submitted by Hope Village and CORE DC, and conducted discussions. See AR, Tab 17, Competitive Range Determination, at BOP000005; Tab 31, Source Selection Decision (SSD), at 2. After multiple rounds of discussions, the agency concluded that Hope Village’s proposal did not meet the requirement to accept all offenders for placement or provide copies of laws or ordinances that prohibited placement of certain offenders at its proposed facility; the agency therefore assessed an unsatisfactory rating to Hope Village’s proposal for the technical/management factor. AR, Tab 31, SSD, at 34. The agency awarded the contract to CORE DC. Id.

After being advised of the award decision, Hope Village filed a protest with our Office. The protest challenged the evaluation of both Hope Village’s and CORE DC’s proposals, the conduct of discussions, and the agency’s responsibility determination.

We denied and/or dismissed all of Hope Village’s challenges to the evaluation of its proposal. Specifically, we denied Hope Village’s argument that the RFP did not require offerors to accept all offenders for placement, finding that the protester’s interpretation of the solicitation was not reasonable and was inconsistent with the plain language of the solicitation. We also denied Hope Village’s challenge to the adequacy of discussions where the record reflected that the agency repeatedly informed Hope Village during discussions that its proposal was deficient for failing to address the clearly stated solicitation requirement to accept all offenders for placement at the facility or otherwise address the existence of any local and/or state laws or ordinances that precluded the housing of certain types of inmates. With regard to Hope Village’s assertion that the requirement to accept all offenders was new and lacked a reasonable basis, we dismissed the argument as an untimely challenge to the terms of the solicitation.

After concluding that the agency reasonably evaluated Hope Village’s proposal as unsatisfactory, we concluded that Hope Village was an interested party for purposes of challenging the evaluation of CORE DC’s proposal. In this regard, our decision noted that while “[a] protester in Hope Village’s position would ordinarily lack the requisite interest to challenge other aspects of the evaluation or the selection decision,” in this

¹ Citations are to the AR provided in response to Hope Village’s underlying protest, B-414342.2 et al.

instance, because “only CORE DC’s proposal was found acceptable for award, and the agency would be faced with resoliciting the requirement,” we found that “Hope Village [was] an interested party for purposes of challenging the acceptability of CORE DC’s proposal.” Hope Village, supra, at 8 n.7.

With respect to Hope Village’s challenge to the evaluation of CORE DC’s proposal, we sustained the protest, finding that the awardee failed to provide sufficient proof of its right to use its proposed facility as required by the solicitation, and there was no indication in the contemporaneous record that the agency assessed the validity of the awardee’s right to use its proposed facility as required by the solicitation.

DISCUSSION

Hope Village and BOP both request reconsideration of the decision. Hope Village asserts that the decision improperly failed to consider “key” documents in the record and failed to address all arguments raised in the protest. BOP argues that the finding that Hope Village was an interested party to challenge the evaluation of CORE DC’s proposal was based on an error of fact in the decision that CORE DC’s proposal was the only acceptable proposal at the time of award.

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). The repetition of arguments made during our consideration of the original protest and disagreement with our prior decision do not meet this standard. Wyle Labs., Inc.--Recon., B-416528.3, Mar. 6, 2019, 2019 CPD ¶ 102 at 3. As discussed in detail below, we find that none of the arguments presented by either requester provides a basis to grant the requests for reconsideration.

Hope Village’s Request for Reconsideration

Hope Village argues that our decision contained two errors that warrant reconsideration. First, Hope Village contends that we overlooked evidence it cited as support for its argument that the agency unreasonably evaluated its proposal as unsatisfactory for failing to comply with the requirement to accept all inmates at its facility. Second, Hope Village argues that we overlooked documents in the record in concluding that its challenge to the requirement to accommodate all offenders was an untimely challenge to the terms of the solicitation. Hope Village also claims that we failed to address all of the allegations raised in the protest. Req. for Recon. at 14. As noted above, we find that none of the arguments provides a basis to grant the request for reconsideration.

With respect to the evaluation of its proposal as unsatisfactory, Hope Village argues that we erred in finding that it had failed to support its claim that it was unreasonable for BOP to demand that Hope Village accommodate all inmates at its facility, given BOP’s past practices under this contract. Protest at 27-28. Specifically, Hope Village takes issue with a sentence on page 6 of our decision, in which we wrote: “Hope Village has

not provided any information showing that the SOWs of its previous contracts contained similar or identical language to that in the current solicitation.” Hope Village, supra, at 6. Hope Village argues that “the agency record which Hope Village briefed in detail provided precisely that information.”² Req. for Recon. at 11.

In addressing this argument in our decision, we concluded that there was nothing in the solicitation to support the protester’s argument that “because the agency allowed Hope Village to bar certain types of offenders under its prior contracts, it ‘reasonably understood that this practice would continue under’ the current contract.” Hope Village, supra, at 6. Rather, we found that “the solicitation clearly state[d] that ‘[t]he contractor will accept all inmates for placement,’” and also “required an offeror to specifically identify in its proposal . . . ‘any laws or ordinances in place which precludes the housing of certain types of inmates.’” Id. We also found that “Hope Village [had] not provided any information showing that the SOWs of its previous contracts contained similar or identical language to that in the current solicitation.” Id. In this regard, we noted that “[t]he protester acknowledges that ‘[d]espite the parties’ longstanding understanding . . . the . . . solicitation in this procurement changed course and announced that . . . all offenders ‘are offered the opportunity for community placement’” Id. n.6.

The protester asserts that our statement that the protester had not established whether the prior contracts contained similar or identical language to the current solicitation was a factual error in our decision. Even if the statement was an error, however, it was not a material error. In this regard, even assuming the prior solicitations contained identical language to the current solicitation--which was, in fact, Hope Village’s point--the agency’s failure to enforce the requirements during the previous procurements does not render the current RFP requirement unreasonable, particularly in light of the multiple rounds of discussions. Although Hope Village disagrees with this aspect of our decision, our Office will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contained a material error of law or fact, or identifies material information that was not previously considered. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Hope Village’s allegations here have not met this standard.

Next, Hope Village disagrees with the conclusion in our prior decision that Hope Village’s argument that the agency unreasonably imposed a new requirement to accommodate all offenders was an untimely challenge to the terms of the solicitation. In our decision, we found: “There is no dispute that the requirement that ‘[t]he contractor will accept all inmates for placement at the facility’ has been part of the solicitation as originally issued.” Hope Village, supra, at 7.

² For example, Hope Village points to the response it provided during the second round of discussions, which stated: “Both RFPs for our current Contract Numbers DJB200821 and DJB200898 had similar requirements for the contractor to accept all offenders. However, Hope Village, Inc. has never been willing to accept sex offenders or arsonists because the local community has opposed such action. The BOP has never found Hope Village deficient for this requirement.” AR, Tab 8D, Discussions Response, at 2.

Hope Village essentially contends that our decision erred in finding this protest allegation untimely because we overlooked two documents in the record. Hope Village's arguments in this regard, however, simply repeat the arguments it raised during the protest and disagree with our conclusions. See Protest at 24-28; Protester's Comments & Supp. Protest at 22-28; Protester's Supp. Comments at 12-30. This repetition of arguments that we previously considered, and speculation that our Office failed to consider facts, do not provide a basis for reconsidering our decision. Veda, Inc.--Recon., supra.

In its request for reconsideration, Hope Village also complains that the decision failed to specifically address all of the issues raised in the protest regarding the evaluation of the awardee's proposal. Our decision explained that although we did not specifically address all of Hope Village's numerous allegations, we fully considered them and found that none, except as discussed in the decision, provided a basis to sustain the protest. Hope Village, supra, at 5. While our Office reviews all issues raised by protesters, our decisions may not necessarily address with specificity every issue raised; this 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 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. Id.

BOP's Request for Reconsideration

BOP argues that our conclusion that Hope Village was an interested party to challenge the evaluation of the awardee was based on an error of fact, i.e., that the awardee's proposal was the only acceptable proposal eligible for award. The agency contends that it was evident, based on the record before our Office, that there was more than one acceptable proposal at the time of award. The agency also asserts that information documented in redacted portions of its source selection decision, which it did not disclose to our Office, shows that there was at least one offeror, other than CORE DC, that the agency found to be acceptable for award. The agency argues that the error of fact and the "information not previously considered" warrant reversal of our prior decision. As discussed below, we find no merit to these arguments.

As an initial matter, the previously redacted portions of the selection decision do not provide a basis for reconsideration because while the agency had this information, it did not furnish the information in the prior protest proceedings. In order to provide a basis for reconsideration, additional information not previously considered must have been unavailable to the requesting party when the initial protest was being considered. Department of Commerce--Recon., B-417084.2, March 21, 2019, 2019 CPD ¶ 112 at 2. 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--and cannot justify reconsideration of our prior decision. Department of Veterans Affairs--Recon., B-405771.2, Feb. 15, 2012, 2012 CPD ¶ 73 at 4. Here,

there is no question that the information now relied upon by the agency was available and could have been submitted during our initial consideration of the protest. In this regard, we have repeatedly warned that parties that withhold or fail to submit all relevant evidence, information, or analyses for our consideration do so at their own peril. Department of the Air Force--Recon., B-244007.3, Mar. 17, 1992, 92-1 CPD ¶ 287 at 6. Thus, this additional information fails to provide a viable basis to request reconsideration of our prior decision.

We also find no merit to BOP's assertion that it can be determined from the record before our Office that there was more than one acceptable proposal at the time of award. In support of its argument, the agency cites to two documents: the draft selection decision and the final selection decision. Specifically, BOP points to the following statement in the draft selection decision: "CORE DC submitted the only satisfactory solution for meeting the requirements of the solicitation." AR, Tab 23, Draft Selection Decision, at 44.

The agency points out that the above sentence is deleted from the final selection decision, which instead states that, "CORE DC's proposal provides the best value to the government." AR, Tab 31, Final Selection Decision, at 46. The agency asserts that the difference in the language between the draft and final selection decisions corroborates that "in the [final selection decision] the [contracting officer] was evaluating more than one acceptable proposal." Req. for Recon. at 4.

We disagree with the agency that the difference in the language between the draft and final selection decisions, as asserted by the agency, made it evident that there was more than one proposal found acceptable at the time of award. To the contrary, the final selection decision contains language implying that only one of the three proposals in the competitive range was found satisfactory. For example, the SSD stated that "[t]he proposals submitted by [DELETED] and Hope Village did not provide a satisfactory solution for meeting the requirements of the solicitation," but the proposal submitted by CORE DC did "receive[] a rating of Satisfactory" for both non-price factors. AR, Tab 31, Final Selection Decision, at 45. The BOP has failed to demonstrate that the decision was based on an error of fact or law and therefore fails to provide a valid basis for reconsideration.

The requests for reconsideration are denied.

Thomas H. Armstrong
General Counsel