



Decision

Matter of: Gulf Civilization General Trading & Contracting Company--
Reconsideration

File: B-416140.3

Date: November 20, 2019

Gabriel Grillo, for the protester.

Kathleen D. Martin, Esq., Department of State, for the agency.

Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration of a prior decision denying a protest is denied where the protester does not show that the decision contains errors of fact or law that warrant reversal.
 2. Request to modify parts of a decision is dismissed where the requests concern matters that the protester acknowledges would not affect the outcome of the decision.
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DECISION

Gulf Civilization General Trading & Contracting Company (Gulf), of Al Salhiya, Kuwait, requests that we reconsider our decision in Gulf Civilization General Trading & Contracting Co., B-416140.2, July 31, 2019, 2019 CPD ¶ 270, where we denied the protester's challenge to the award of a contract to Tanzifco Company W.L.L. Kuwait, under request for quotations (RFQ) No. SKU200-17-Q-0010, which was issued by the Department of State (DoS) for janitorial services at the U.S. embassy in Kuwait. The protester requests that we reconsider our decision based on what the protester contends are errors in the decision and bias by the GAO attorney assigned to the protest. The protester also requests that we modify certain parts of the decision that the protester contends contain errors.

We deny in part and dismiss in part the request.

BACKGROUND

The RFQ was issued on September 19, 2017, for janitorial services at the U.S. embassy in Kuwait. The solicitation anticipated the award of an indefinite-delivery, indefinite-quantity fixed-priced contract, with a base period of 1 year and four 1-year options, to the responsible offeror¹ submitting the lowest-priced, technically acceptable quotation. RFQ at 5-11, 80. The procurement was conducted under the commercial item provisions of Federal Acquisition Regulation part 12. See id. at 82.

As relevant to this request for reconsideration, the RFQ explained that the contractor will be required to provide meals and housing for employees. RFQ at 5, 23-24, 33-34. The solicitation required offerors to address their approaches to meeting these requirements, and advised that the agency “may reject as unacceptable proposals/quotations which do not conform to the solicitation.” Id. at 74-76, 80.

The RFQ stated that the contractor will be required to provide “three (3) meals a day for labor[er]s.” Id. at 5. The RFQ contained a meal pattern requirement to ensure that provided meals are “healthy.” Id. at 23, 39. The solicitation also contained a table of caloric needs, ranging from a low of 1,600 calories per day for a sedentary female over age 50, to a high of 3,200 calories for an active 18-year-old male. Id. at 40.

The RFQ also required offerors to submit a housing and recruitment plan, and to indicate whether they will provide employees with housing accommodations. Id. at 74-75. Offerors were advised that the technical evaluation would “include a review of . . . [the] housing and recruitment plan, along with any technical information provided by the offeror with its proposal/quotation.” Id. at 80.

Gulf’s proposal stated that the protester would provide employees cash allowances in lieu of housing and meals. Agency Report (AR), Tab 2d, Gulf Housing & Recruitment Proposal, at 1, 4. DoS found Gulf’s proposal to be technically unacceptable on the basis that its proposed meal and housing allowances did not satisfy the solicitation requirements. AR, Tab 3, Gulf Initial Technical Evaluation, at 3-4, 6. On March 6, 2018, DoS made award to Tanzifco. Protest (B-416140), attach. 1, Award Notification, Mar. 6, 2018. On March 15, Gulf filed a protest with our Office, arguing that the agency unreasonably evaluated its proposal and did not conduct meaningful discussions. On March 27, the agency advised our Office that it would take corrective action in response to the protest. Agency Notice of Corrective Action, Mar. 27, 2019, at 1. Gulf withdrew its protest the following day. Protester’s Notice of Withdrawal, Mar. 28, 2018, at 1.

On September 16, DoS requested final proposal revisions (FPRs) and advised Gulf of the weaknesses concerning its proposed housing and meal allowances. AR, Tab 5a,

¹ Although the evaluation record and the agency’s responses here often refer to the receipt of “proposals” from “offerors,” the RFQ in fact solicited quotations. We use the agency’s nomenclature for consistency with the record.

Request for FPRs, Sept. 16, 2018, at 1. The agency directed the protester to address whether the housing allowance was “sufficient to find safe, acceptable living conditions,” and whether the “proposed meal allowance [was] sufficient to be [] consistent with [the] meal pattern requirement.” Id.

Gulf responded by increasing both its proposed housing and meal allowances. AR, Tab 6a, Gulf FPR, Sept. 22, 2018, at 1. DoS requested that the protester provide additional information concerning its meal allowance, as follows:

Our evaluating team needs more clarification on [the] meal allowance proposed on your Final Proposal Revision received. You are kindly requested to clarify on how your staff member of the janitorial team will be able to purchase three meals per day from the proposed allowance that will meet the calorie and nutrition requirements as per the specifications in the contract. Based on our solicitation[,] meal allowance should be sufficient to purchase three meals a day that will meet “Estimated calorie needs per day, by age, sex”, nutrient needs within calorie limits, in recommended amounts . . . and as per meal pattern listed.

AR, Tab 7, Meal Allowance Questions, Email from DoS to Gulf, Oct. 18, 2018.

Gulf responded to DoS’s inquiry by submitting charts that identified food selections for breakfast, lunch, and dinner meals, the quantities of food, and prices in Kuwaiti dollars. Id., Email from Gulf to DoS, Oct. 18, 2018; RFQ at 39. Gulf asserted based on these charts that its proposed meal allowance would allow its employees to purchase the identified food items over a 30-day month. AR, Tab 7, Email from Gulf to DoS, Oct. 18, 2018, at 2. DoS concluded, however, that Gulf’s response to the request to justify its meal allowance did not provide the “daily calories as required per the scope of work.” AR, Tab 8a, Internal DoS Email, Oct. 18, 2018.

The agency found that the protester’s revised proposal was unacceptable under the meal and housing requirements. Protest, attach. 7, DoS Debriefing Letter, Apr. 19, 2019, at 1. The agency again made award to Tanzifco. Id.

On April 24, Gulf filed a protest with our Office challenging the award to Tanzifco. Protest (B-416140.2). Gulf argued that the agency unreasonably found its proposal unacceptable because it failed to meet the RFQ’s housing and meal requirements and that the agency conducted unequal and misleading discussions. Prior to filing the agency report, DoS requested that our Office dismiss parts of Gulf’s protest. We granted the request with regard to three arguments. First, we dismissed as legally and factually insufficient the allegation that the agency engaged in unequal discussions with other offerors. GAO Notice of Partial Dismissal, May 16, 2019, at 1; see also Gulf Civilization Gen. Trading & Contracting Co., supra, at 6 n.10 (citing 4 C.F.R. § 21.5(f)). Next, we dismissed the protester’s argument that DoS’s debriefing did not provide adequate detail because our Office does not generally review the adequacy of debriefings. GAO Notice of Partial Dismissal, May 16, 2019, at 1; see also Gulf

Civilization Gen. Trading & Contracting Co., *supra*, at 6 n.10 (citing Symplicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 4 n.4). Finally, we dismissed the protester's challenge to the exclusion of other offerors from the competition, as the protester is not an interested party to raise these arguments on behalf of other offerors. GAO Notice of Partial Dismissal, May 16, 2019, at 1; *see also* Gulf Civilization Gen. Trading & Contracting Co., *supra*, at 6 n.10 (citing 4 C.F.R. § 21.0(a)(1); 2M Res. Servs., B-413993.4, June 19, 2017, 2017 CPD ¶ 203 at 3).

Our Office issued the decision denying the protest on July 31. We found that the agency reasonably interpreted the RFQ to require the contractor to provide meals that met the nutritional requirements set forth in the solicitation, and that if an offeror elected to propose an allowance in lieu of providing meals, the allowance had to permit employees to meet the RFQ's nutritional requirements. Gulf Civilization Gen. Trading & Contracting Co., *supra*, at 7. We concluded that the agency reasonably found the protester's proposal to be unacceptable because it proposed a meal allowance but did not adequately explain how the proposed allowance would allow employees to meet the RFQ's nutritional requirements. *Id.* at 7-8. Because we found that the agency reasonably rejected the protester's proposal as unacceptable under the meal requirements, we did not need to address the agency's finding that the proposal was also unacceptable under the housing allowance requirement. *Id.* at 8-9. We also concluded that the agency did not engage in misleading discussions with Gulf. *Id.* at 9-10. This timely request for reconsideration followed.

DISCUSSION

Gulf requests that we reconsider our decision denying its protest based on errors of fact and law in the decision, as well as bias by the GAO attorney assigned to the protest. In addition, the protester requests that we modify our decision to delete portions which the protester contends are inaccurate or were unnecessary for our resolution of its arguments. For the reasons discussed below, we find no basis to reconsider our decision denying the protest. We also find no basis to modify our decision because none of the protester's requests concern matters that would affect the outcome of the decision.

Role of GAO Attorneys

As an initial matter, we wish to clarify the role of GAO attorneys who work on bid protest decisions issued by our Office. The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act (CICA), 31 U.S.C. §§ 3551-57. Our Office reviews alleged violations of procurement laws and regulations to ensure that the statutory requirements for full and open competition are met. 31 U.S.C. § 3552(a); Cybermedia Techs., Inc., B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. Under CICA, our Office provides a quasi-judicial forum for the objective, independent, and impartial resolution of disputes concerning the award of federal contracts. *See* Report to Congress on Bid Protests Involving Defense Procurements, B-401197, Apr. 9, 2009, 2009 CPD ¶ 101 at 3; Bid Protests at GAO: A

Descriptive Guide, GAO-09-471SP (10th ed. 2018), at 1, 4, available at <https://www.gao.gov/assets/700/691596.pdf> (last visited Nov. 14, 2019).

GAO assigns individual attorneys to be the primary points of contact for the parties to a protest, and these attorneys are responsible for the day-to-day activities in protests. See Bid Protests at GAO: A Descriptive Guide, supra, at 14. GAO attorneys, however, are not judges, and do not have independent authority to issue final decisions on bid protest matters, e.g., a decision to dismiss, deny, or sustain a protest. Instead, GAO attorneys assigned to a protest are part of a process that involves multiple individuals responsible for issuance of a decision on behalf of our Office. See id. at 6; see also 31 U.S.C. § 3553(a). With this description in mind, we turn to Gulf's arguments seeking reconsideration of our decision.

Request for Reconsideration

Gulf requests that we reconsider our decision denying its protest based on four primary arguments: (1) our decision was flawed, based on the time available for issuance of the decision; (2) our decision did not address all of the arguments raised by the protester; (3) our Office did not require the agency to provide all documents requested by the protester; and (4) the GAO attorney assigned to the protest was biased against the protester. For the reasons discussed below, we find no basis to reconsider our decision.²

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out factual and legal grounds upon which reversal or modification of the decision is warranted, specifying any errors of law made or information not previously considered. Bid Protest Regulations, 4 C.F.R. § 21.14(a), (c). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Id.; Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Additionally, a party's failure to make all arguments or present all information available during the course of the protest does not warrant reconsideration of our prior decision. Walker Dev. & Trading Grp.--Recon., B-411246.2, Sept. 14, 2015, 2015 CPD ¶ 284 at 2.

First, Gulf argues that the decision was flawed because of “[q]uality [c]onstraints,” arising from the amount of time the GAO attorney assigned to the protest was provided to prepare the decision. Request for Reconsideration at 7. The protester notes that the decision was initially assigned to one GAO attorney, and then later reassigned to a different attorney. Id. Based on the time between the reassignment of the protest and the issuance of the decision, the protester contends that “it does not seem as if there was sufficient time for the case to be properly reviewed.” Id.

² Gulf raised other collateral arguments in support of its request that we reconsider and modify our decision. Although our decision does not address every argument, we have considered them all and find no basis to reconsider or modify our prior decision.

CICA mandates that our Office issue decisions on protests within 100 calendar days. 31 U.S.C. § 3554(a)(1). The protest was filed on April 24, 2019, and the 100-day due date for the protest was August 2. Our Office initially assigned an attorney to handle the protest, and then reassigned the matter to a different attorney on July 19. Electronic Protest Docketing System (EPDS) Docket Entry No. 23, July 19, 2019. The decision was issued by our Office on July 31, two days before the 100-day deadline.

As discussed above, GAO bid protest decisions are products of our Office, rather than an individual attorney. Our Office may change attorney assignments during the course of a protest to address the needs of the Office (e.g., to balance workload or other staffing needs). Although our Office assigned a different attorney during the 100-day period for the protest, the overall responsibility for the decision remained with GAO as an office--including other individuals who participated in the review and issuance of the decision. Our Office resolved the protest within the required 100-day deadline, and we see no basis to conclude that the protester's concerns regarding the process by which our Office prepared and issued our decision provides a basis for reconsideration.

Next, Gulf requests that we reconsider our decision because it did not address all of the arguments raised in its protest, and instead repeated arguments raised by the agency. Request for Reconsideration at 7. Our decision concluded that the agency reasonably found the protester's proposal unacceptable with regard to the RFQ's meal requirements. Gulf Civilization Gen. Trading & Contracting Co., supra, at 6-8. The protester raised numerous arguments challenging the agency's evaluation, and our decision addressed the agency's findings and the protester's challenges to those findings. Id. In particular, we found that the agency reasonably interpreted the RFQ to require offerors that proposed a meal allowance in lieu of providing meals to demonstrate that the allowances were "consistent with" the nutritional requirements set forth in the solicitation. Id. at 7 (citing RFQ at 23-24). We also concluded that the agency reasonably found the protester's proposed allowance to be insufficient to meet the RFQ requirements. Id. at 7-8.

Although the protester disagrees with our Office's resolution of its arguments, its request for reconsideration primarily reasserts and reiterates arguments previously raised in its protest and comments. As our Office has explained, repetition of the protester's arguments, without more, does not provide a basis to reconsider a decision. 4 C.F.R. § 21.14(c); Lockheed Martin Integrated Sys., Inc., B-410189.7, Aug. 10, 2017, 2017 CPD ¶ 258 at 4-5. None of the protester's arguments in its request for reconsideration demonstrate that our decision contained legal or factual errors with regard to our conclusion that the agency reasonably found the protester's proposal to be technically unacceptable. We therefore find no basis to reconsider our decision.³

³ Additionally, our decision advised that although the protester raised other arguments not addressed in the decision, "we have considered them and find that none provides a basis to sustain the protest." Gulf Civilization Gen. Trading & Contracting Co., supra,
(continued...)

Next, Gulf argues that our decision was flawed because we did not require DoS to provide documents concerning the evaluation of the awardee's proposal, as requested by the protester. Request for Reconsideration at 8-9; see Protest at 12. The agency's response to the protester's request for documents objected to providing the evaluation of the awardee's proposal because, among other things, the protester did not raise specific challenges to the awardee's proposal. Agency Response to Document Requests, May 15, 2019, at 3. Our Office agreed, and did not require the agency to provide the requested documents. See GAO Ruling on Document Requests, EPDS Docket Entry No. 12, May 12, 2019.

Although Gulf's request for reconsideration reiterates its argument that our Office should have required the agency to provide the evaluation of the awardee's proposal, the protester's arguments in the protest and in response to the agency's objections did not raise any specific allegations regarding the awardee's proposal. Rather, Gulf speculates that production of the documents "would have shown that the awardee was not evaluated in the same manner" as the protester. Request for Reconsideration at 8; see also Protester's Response to Document Production, May 17, 2019, at 3. Here again, the protester's request for reconsideration relies on arguments previously raised and considered. We therefore find no basis to reconsider our decision not to require the agency to produce these documents.⁴

Finally, Gulf argues that our decision was flawed because of "a significant bias" against the protester by the GAO attorney who was reassigned to the protest on July 19. Request for Reconsideration at 7. Gulf cites two conversations with the GAO attorney, which the protester contends reflect bias: (1) a discussion on July 19, the date the protest was reassigned, which involved a representative for the protester, counsel for DoS, and the GAO attorney; and (2) a conversation on August 1, after the decision had been issued, between the representative for the protester and the GAO attorney, which was for the purpose of addressing the protester's request for redactions to the decision.⁵ See Request for Reconsideration at 8; Request for Conference Call, EPDS

(...continued)

at 6 n.10. The fact that our decision did not address in detail every argument raised by the protester does not provide a basis to reconsider our decision. See AOC Connect, LLC--Recon., B-416658.3, Feb. 12, 2019, 2019 CPD ¶ 79 at 3-4 n.1.

⁴ Further, our Office did not issue a protective order for the protest because Gulf was not represented by counsel eligible for admission to a protective order. See 4 C.F.R. § 21.4(a), (c). Thus, even if Gulf had raised valid arguments concerning the awardee's proposal, we would not have required the agency to provide documents concerning competing offerors, such as the awardee, to the protester. See id. Instead, our Office would have reviewed these documents in camera. Id. § 21.4(c).

⁵ For the record, while both the agency and the protester were invited to participate in this second administrative call, the agency elected not to participate. See Email from GAO to the Parties, Aug. 1, 2019 (1:24 pm ET).

Docket Entry No. 23, July 19, 2019; Email from GAO to the Parties, Aug. 1, 2019 (1:24 pm ET). The protester contends that the GAO attorney made comments during these calls which suggested a personal interest in the outcome of the decision, and that the tone of exchanges reflected a desire for “retaliation” against the protester. Request for Reconsideration at 7.

Our decisions have consistently explained that government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. Lawson Env'tl. Servs. LLC, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 5 n.5. The burden of establishing bad faith is a heavy one. Id. A protester must present facts reasonably indicating, beyond mere inference and suspicion, that the agency acted with specific and malicious intent to harm the protester. Id. Although we have not addressed this matter in the context of bias allegations against GAO attorneys, we think this presumption applies with equal force here.

We have reviewed the protester’s allegations and see no basis to conclude that the GAO attorney assigned to the protest, or any of the other individuals from our Office responsible for this decision, were motivated by a specific and malicious intent to harm the protester. We further conclude that even if the protester’s representation of the conversations were accurate, there is no basis to find bias or bad faith on the part of the GAO attorney.⁶ In sum, we find no basis to conclude that our decision contained any errors of fact or law, or that there is any basis to reconsider our decision denying Gulf’s protest.

Request for Modification

Gulf requests that we modify parts of our decision that it believes are “superfluous” or inaccurate. Request for Reconsideration at 1-7. For the reasons discussed below, we find no basis to modify our decision and therefore dismiss this part of the request.

In addition to requesting that our Office reconsider a decision, our regulations also permit parties to request “modification” of a decision. 4 C.F.R. § 21.14(a). Modification of a decision is generally limited to recommendations by our Office to the agency where we sustain a protest. See, e.g., General Servs. Admin.: SBD Alliant, LLC--Recon. & Modification of Remedy, B-417126.5, B-417126.6, Aug. 23, 2019, 2019 CPD ¶ 299 at 5; Department of the Army--Recon. & Req. for Modification of Recommendation,

⁶ Additionally, in situations where bias is alleged, a protester must demonstrate that such bias translated into action that unfairly affected the protester’s competitive position in the procurement. ABIC Ltd., B-286460, Jan. 12, 2001, 2001 CPD ¶ 46 at 7-8. As discussed herein, the protester does not identify any independent basis for concluding that our decision contained errors of fact or law that warrant reconsideration of the decision.

B-411760.3, June 15, 2016, 2016 CPD ¶ 162 at 4. We generally do not entertain requests for modification that have no practical purpose and, in effect, seek modification of a part of our decision that would not change the outcome of the protest. See National Aeronautics & Space Admin.--Recon., B-408823.2, May 8, 2014, 2014 CPD ¶ 147 at 5 (dismissing agency's request to modify a decision that denied the underlying protest because the request would not affect the outcome of the decision).

Gulf acknowledges that none of the requested modifications would affect the outcome of the decision, and that none provides an independent basis to reconsider our decision. Request for Reconsideration at 2-7. For example, Gulf requests that we remove portions of our decision that address DoS's evaluation of its proposal regarding the RFQ's housing requirements. Specifically, the protester requests that we delete footnote 4 in our decision, which addressed whether offerors that proposed to provide a housing allowance in lieu of providing housing for employees were required to provide a "plan" that addressed the adequacy of the proposed allowance. Id. at 1-2. The protester also requests that we delete footnote 12, which addressed the agency's calculations of the minimum acceptable housing allowance, and also states that the protester's proposal did not meet the agency's calculation of the minimum allowance. Gulf Civilization Gen. Trading & Contracting Co., supra, at 9 n.12. In both cases, the protester acknowledges that the requested changes would "not affect" our decision, because our decision did not address whether the agency reasonably evaluated its proposal in connection with the housing requirement. Request for Reconsideration at 2, 6. Because these portions of our decision do not concern the basis for denying the protest, we find no basis to grant the protester's request to modify the decision. See National Aeronautics & Space Admin.--Recon., supra.

Similarly, Gulf requests that we delete footnote 11 in our decision, which addressed DoS's concern that it had had observed some workers in Kuwait "eating food that had been thrown away." Gulf Civilization Gen. Trading & Contracting Co., supra, at 8 n.11. The protester contends that this footnote inaccurately implies that the agency had observed the protester's own employees eating food from the garbage because of inadequate meal allowances. Request for Reconsideration at 5. As the footnote explained, however, the agency's observations concerned "workers who received compensation similar to Gulf's," and nothing in the text of our decision stated that the agency had observed the protester's employees. See Gulf Civilization Gen. Trading & Contracting Co., supra, at 8 n.11. More importantly, the protester again acknowledges that this modification would not change the outcome of the decision. Request for Reconsideration at 5. For this reason, we see no basis to modify our decision. See National Aeronautics & Space Admin.--Recon., supra.

Finally, Gulf requests that we delete footnote 7, which discussed the protester's response to DoS's request for additional information concerning its meal allowance. See Gulf Civilization Gen. Trading & Contracting Co., supra, at 5 n.7. The protester's response cited information from the website www.cookitsimply.com, which lists weight and volume conversions for different types of food. Id. Our decision stated that the protester's information for "fruit" and for "carrots" cited erroneous conversions from U.S.

standard volume into grams, and therefore understated the amount of food necessary to meet the RFQ's requirements. Id. The protester contends that the data cited in its response to the agency was correct, as shown by the www.cookitsimply.com references cited in our decision. Request for Reconsideration at 2. The protester argues that our decision erroneously compared the protester's information for "apples" to "mixed fruit" and that the protester's information for carrots is different from the information cited in our decision because of the various ways in which carrots may be prepared. Id. As the protester notes, however, the information in footnote 7 was not provided by or relied upon by the agency in its evaluation of the protester's proposal. Id. at 2-3. For this reason, we see no basis to modify our decision, as doing so would not have any effect on the outcome. See National Aeronautics & Space Admin.--Recon., supra.

The request is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel