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Decision

Matter of: Analytical Solutions by Kline, LLC

File: B-417161.3

Date: July 11, 2019

Eric S. Crusius, Esq., Mitchell A. Bashur, Esq., and Amy L. Fuentes, Esq., Holland & Knight LLP, for the protester.

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Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's request for reconsideration of a prior decision is denied where protester has not shown that the decision contains errors of fact or law.

DECISION

Analytical Solutions by Kline, LLC (ASK), of Parma, Ohio, requests reconsideration of our decision, Analytical Solutions by Kline, LLC, B-417161; B-417161.2, Mar. 12, 2019, 2019 CPD ¶ 105, in which we denied in part and dismissed in part ASK's challenges to the terms of request for proposals (RFP) No. 28321319R00000004, issued by the Social Security Administration (SSA) for information technology support services. ASK argues that our decision contains multiple errors of law that merit reconsideration.

We deny the request.

BACKGROUND

The agency issued the solicitation on October 4, 2018, seeking proposals for information technology support services. The solicitation provided that proposals would be evaluated under four phases: (1) SSA accessibility requirements and required quality certification; (2) relevant experience requirements; (3) detailed corporate experience; and (4) past performance. RFP amend. 4 at 413-15, 420-23. As relevant, under phase 1, the RFP required an offeror to provide either a capability maturity model/capability maturity model integration (CMM/CMMi) certification or an international organization for standardization (ISO) certification. Id. at 413. With respect to phase 2,

an offeror had to provide three references demonstrating the specific experience set forth in the solicitation; these same three references would be evaluated by the agency under phase 3, corporate experience, and under phase 4, past performance. Id. at 414-15. Proposals were to be evaluated on a pass/fail basis under phase 1 and phase 2, and any proposal that did not meet the requirements of either phase 1 or phase 2 would not be further evaluated or considered for award. Id. at 413-414.

Prior to the solicitation closing date, ASK filed a protest with our Office challenging the terms of the RFP. Specifically, ASK argued that the solicitation requirements for CMMi certification, for references demonstrating relevant experience, and for the number of past performance references an offeror could submit were unduly restrictive of competition. After receipt of the agency report, and the solicitation closing date had passed, ASK filed a supplemental protest alleging that the agency had improperly bundled disparate requirements that were previously separately solicited and that this improper bundling resulted in an unduly restrictive procurement.

Our Office issued a decision, which denied ASK's protest in part and dismissed it in part. As relevant, we dismissed ASK's protest regarding its claim that the CMMi certification was unduly restrictive as legally insufficient. In reaching this conclusion we found that the solicitation requirement for CMMi could not be restrictive of competition where the requirement could be alternatively met by providing an ISO certification, which the protester had not challenged as unduly restrictive. We also dismissed as untimely ASK's supplemental protest that the agency improperly bundled its requirements, and we denied ASK's contentions that the phase 2 relevant contract references requirement was unduly restrictive of competition. Analytical Solutions by Kline, LLC, supra at 4-8. This request for reconsideration followed.

DISCUSSION

Under our Bid Protest Regulations, to prevail on a request for 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); Precise Mgmt., LLC--Recon., B-410912.2, June 30, 2015, 2015 CPD ¶ 193 at 4. A request for reconsideration that reiterates arguments made previously and merely expresses disagreement with our prior decision does not meet the standard for granting reconsideration. 4 C.F.R. § 21.14(c); Epsilon Sys. Solutions, Inc.--Recon., B 414410.3, Sept. 20, 2017, 2017 CPD ¶ 292 at 3; Vinculum Solutions, Inc.--Recon., B-408337.3, Dec. 3, 2013, 2013 CPD ¶ 274 at 2.

ASK alleges that our decision contained errors of law and argues that we failed to consider relevant information in the record necessary to make a proper decision. In particular, ASK contends that we dismissed its challenge of the CMMi certification requirement based on the erroneous conclusion that ASK had not also challenged the alternative ISO certification as unduly restrictive of competition. According to ASK, its initial protest unequivocally referenced and challenged the solicitation's requirement for

either the CMMi certification or the ISO certification. ASK maintains that it challenged the purpose of the certification requirement in its initial protest and used the CMMi certification as an example of the unreasonableness of the solicitation requirements. Req. for Recon. at 7-9.

The record reflects that the initial protest filed by ASK provided extensive detail and argument regarding the protester's concerns with the CMMi certification requirement, and included a "CMMI / CERTIFICATION" heading under the "BASIS OF PROTEST" section of its filing. Protest at 10. To the extent ASK now asserts that it also challenged the ISO certification in its initial protest, the assertion is without support. Unlike the CMMi certification, the protest did not include any discussion of specific concerns regarding the alternative ISO certification. While ASK points to three references to ISO in its protest to support its request for reconsideration, these references do nothing more than restate questions asked by potential offerors regarding both ISO and CMMi--they do not reflect any specific arguments or concerns regarding the ISO certification as an alternative to the requirement for CMMi certification. This is consistent with prior representations by ASK as reflected in our decision, which expressly noted that "the protester concedes that it focused only on the CMMi certification in its protest." Analytical Solutions by Kline, LLC, supra at 4 n.3. Accordingly, our decision properly found that the initial protest was limited to a challenge of the CMMi certification and thus did not provide a valid basis to challenge the solicitation as unduly restrictive where the alternative ISO certification requirement was not timely challenged.

Next, we find no basis to conclude that we committed an error of fact or law in dismissing as untimely ASK's arguments that the agency engaged in improper bundling of its requirements. As explained in our prior decision, ASK asserted that this ground of protest was timely since ASK had alleged that the agency improperly bundled the solicitation in its initial protest; that the agency responded to this allegation in its agency report; and that the agency report failed to show that the agency had complied with the procedural regulations governing an agency's decision to bundle or consolidate its requirements. Id. at 8. Contrary to ASK's arguments, we concluded that this ground of protest--improper bundling--was "noticeably absent" in its initial protest and we dismissed this protest issue as untimely filed since it was first raised after the agency submitted its report responding to the protest. Id. at 9.

To the extent ASK again points to references to the term "bundling" in its initial protest, as previously explained in our decision, these references were made in the context of the protester's contention that the solicitation was overly restrictive where it limited offerors to only three past performance submissions notwithstanding the wide range of work covered by the RFP. Id. Specifically, the protest asserted that a majority of small businesses will not be able to compete "given the combination of bundling of 193 widely disparate 'unique elements' (skills, technologies, tasks, etc.) with the fact that THREE (3) and ONLY THREE (3) past performance references may be used." Protest at 17 (emphasis in original). This argument is fundamentally different from the improper consolidation arguments subsequently advanced by ASK in its supplemental protest. Because the protester's various arguments relating to this basis of protest were first

raised in its underlying supplemental comments, and were specifically addressed in our decision, ASK's repetition of its arguments does not support a basis for reconsideration.

Finally, ASK complains that its allegations regarding the vague and poorly defined pass/fail evaluation methodology for phase 1 and phase 2 were not addressed in our underlying decision, and maintains that this constitutes reversible error. Req. for Recon. at 10-11.

While ASK would have liked our Office to have substantively discussed each area it believes the solicitation was defective, a lack of discussion is not indicative of an error of fact or law. As the protester acknowledges, our decision stated that although we did not specifically address all of ASK's allegations, we fully considered them and found that none provided a basis to sustain the protest. See Analytical Solutions by Kline, LLC, supra, at 3 n.2. Although 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 solely to address a protester's dissatisfaction that a decision does not address each of its protest issues. Id.; see also, Ahtna Facility Servs., Inc.--Recon., B-404913.3, Oct. 6, 2011, 2012 CPD ¶ 270 at 3. Thus, we find no basis to grant the request for reconsideration simply because our prior decision did not specifically address these arguments.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel