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Decision

Matter of: New Tech Solutions, Inc.

File: B-417956.3

Date: March 6, 2020

William T. Welch, Esq., J. Patrick McMahon, Esq., and Johana A. Reed, Esq., McMahon, Welch and Learned, PLLC, for the protester.
Thomas K. David, Esq., Kenneth D. Brody, Esq., and Katherine A. David, Esq., David, Brody & Dondershine, LLP, for NCS Technologies, Inc., the intervenor.
Dorothy M. Guy, Esq., and Tal Kedem, Esq., Social Security Administration, for the agency.
April Y. Shields, Esq., Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed as untimely where it is essentially a request for reconsideration of a prior decision filed more than 10 days after the issuance of that decision.

DECISION

New Tech Solutions, Inc., of Fremont, California, protests the elimination of its previously successful quotation from a competition held by the Social Security Administration. The elimination of New Tech's quotation followed our decision sustaining an earlier protest filed by another vendor, NCS Technologies, Inc., of Gainesville, Virginia, challenging the agency's establishment of a blanket purchase agreement (BPA) with New Tech, under request for quotations No. 28321319Q00000008, for laptops, workstations, peripheral equipment, and installation services. New Tech argues that the agency has now wrongly concluded, based on that decision, that New Tech's BPA was based on a Federal Supply Schedule (FSS) contract that would expire during the BPA's period of performance.

We dismiss the protest, as we conclude it, in essence, is an untimely request for reconsideration of our earlier decision.

On December 13, 2019, our Office issued a decision in the protest described above, concluding that New Tech was ineligible to receive the BPA at issue here. NCS Techs., Inc., B-417956, B-417956.2, Dec. 13, 2019, 2019 CPD ¶ 427. The decision discussed

several reasons for finding that New Tech was ineligible for award and that the agency's establishment of a BPA with New Tech was "improper and inconsistent with applicable procurement law and regulation." See id. at 5-11. Specifically, the decision concluded that New Tech--which held two overlapping FSS contracts when it submitted its final revised quotation--was ineligible for award because its quotation was based on its first FSS contract "which did not meet the RFQ's period of performance requirements[,] and because it could have, but did not, revise its quotation to be based on its second FSS contract." Id. at 11.

In sustaining the protest, the GAO decision stated:

We recommend that the agency cancel this BPA. We also recommend that the agency evaluate the remaining quotations and make a new selection decision in accordance with the terms of the solicitation. Alternatively, we recommend that the agency reopen the competition, provide clarification regarding [General Services Administration (GSA)] policy and procedure, request and evaluate final revised quotations, and make a new selection decision in accordance with the terms of the solicitation.

Id.

On January 30, 2020, more than 45 days after the decision was issued, the contract specialist for the underlying procurement sent a letter to New Tech. The agency's letter explained that, "based on the GAO's decision, New Tech Solutions, Inc.[,] is no longer eligible for further consideration for award." Protest, exh. 1, Letter from Contract Specialist to New Tech, Jan. 30, 2020, at 1.

On February 10, New Tech filed this protest with our Office.

As an initial matter, New Tech's protest did not challenge the agency's decision to reevaluate the remaining quotations and make a new selection decision, and did not challenge the agency's decision not to adopt the alternate recommendation stated above. Instead, New Tech argues that, "[d]espite the terms of the GAO decision . . . , New Tech's [quotation] remained responsive and eligible for award under the terms of the solicitation[.]" Protest at 2.

In short, the current protest does not challenge the agency's decision about our recommendation, which was the basis of the agency's January 30 letter. Rather, it continues to argue about the conclusions GAO reached in the earlier decision. Indeed, in the conclusion of its protest, New Tech states that it "respectfully requests that the GAO recognize, which the agency itself could have done prior to its decision of January 30, 2020, that New Tech did remain eligible for award per GSA specific policy and, instead, [] recommend" that the agency continue to consider its quotation. Protest at 7.

In our view, New Tech's current protest, in essence, is a request for reconsideration (or a request for modification of remedy) that, to be timely, had to be filed not later than 10 days after the issuance of our decision.¹ Our Bid Protest Regulations contain strict rules for the timely submission of protests, as well as for requests for reconsideration. Under these rules, a request for reconsideration must be filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier. 4 C.F.R. § 21.14(b).

Here, New Tech waited until February 10, 2020--more than 45 days after our decision was issued on December 13, 2019--to file any action challenging our conclusion that it was ineligible for award. Accordingly, we dismiss New Tech's February 10 filing as untimely. 4 C.F.R. § 21.14(c); see, e.g., Aalco Forwarding, Inc., et al., B-277241.20, B-277241.21, July 1, 1998, 98-2 CPD ¶ 1 at 11 (viewing protest "as essentially an untimely request for reconsideration of our earlier decision" where the protesters "could have requested our consideration of their view . . . during the pendency of the earlier protests or at least requested reconsideration of the resulting decision . . . within 10 days of the issuance of our decision").

We also reject New Tech's claim that it protests only the agency's "determination" to eliminate it from the competition based on the contract specialist's letter of January 30, 2020. Protester's Response to Agency Request for Dismissal, Feb. 20, 2020, at 2. The agency's letter simply reiterates our decision and does not provide a new basis for this protest. See 4 C.F.R. § 21.2(a)(2); Protest, exh. 1, Letter from Contract Specialist to New Tech, Jan. 30, 2020, at 1 ("based on the GAO's decision, New Tech Solutions, Inc.[.] is no longer eligible for further consideration for award"). Moreover, as noted above, the plain language of New Tech's protest challenges our decision, not the agency's. See, e.g., Protest at 2 ("[d]espite the terms of the GAO decision . . . , New Tech's [quotation] remained responsive and eligible for award under the terms of the solicitation"). In sum, we have considered all of New Tech's contentions and find its February 10 filing untimely.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

¹ We also note that New Tech could have requested our consideration of its views during the pendency of the earlier protest, but it did not. New Tech requested, and was granted, status as an intervenor in that protest, but did not file any comments. As the agency points out, New Tech "had every opportunity to provide comments setting forth its position on how GAO should interpret GSA's [policy and procedure], but it chose not to do so until now." Agency Request for Dismissal, Feb. 18, 2020, at 3-4.