



Decision

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Matter of: Darton Innovative Technologies, Inc.--Reconsideration

File: B-418034.3

Date: March 9, 2020

Michelle F. Kantor, Esq., and William J. Beckley, Esq., McDonald Hopkins LLC, for the requester.

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

DIGEST

Request for reconsideration of prior decision is denied where the requesting party has not shown that our decision contains either errors of fact or law or information not previously considered that warrants reversal or modification of the decision.

DECISION

Darton Innovative Technologies, Inc., of Plattsmouth, Nebraska, requests reconsideration of our decision, T3I Solutions, LLC, B-418034, B-418034.2, Dec. 13, 2019, 2019 CPD ¶ 428, sustaining T3I's protest of the award of a contract to Darton under request for proposals (RFP) No. FA680019RA005, issued by the Department of the Air Force, for courseware development and training services. We sustained T3I's protest on the basis that the awardee's proposal contained material misrepresentations concerning the availability of one of Darton's proposed personnel and that the agency relied on the misrepresentation in evaluating Darton's proposal. Darton argues that the decision is contrary to law because it ignored GAO precedent. Darton also contends that the decision's conclusion that the agency's evaluation relied upon the misrepresentation in Darton's proposal is based upon an error of fact.

We deny the request for reconsideration.

BACKGROUND

The agency issued the RFP on August 14, 2019, as a total small business set-aside, to acquire courseware development and training services. Agency Report (AR), Tab 5,

RFP at 1, 7.¹ The RFP sought a contractor to provide crew resource management training. AR, Tab 7, Performance Work Statement (PWS) at 3. The RFP provided that award would be made on a best-value tradeoff basis, considering three factors: mission capability (technical), past performance, and price. RFP at 58.

Regarding the technical factor, the RFP advised that the agency would evaluate technical proposals on an acceptable/unacceptable basis under three subfactors. As relevant here, under the manning requirements and analysis technical subfactor, offerors were required to submit a “manning level and personnel mix plan for all workload identified in the PWS.” RFP at 53. The RFP advised that the agency’s evaluation would consider whether the qualifications of personnel met the requirements of the PWS. Id. at 59. The solicitation did not require that offerors identify specific personnel, submit resumes or letters of commitment, or seek agency approval prior to substitutions of certain personnel. Id.

The agency received proposals from two offerors--T3I and Darton. AR, Tab 11, Proposal Analysis Report, at 21-22. The agency evaluated the proposals and selected Darton for award. Id. at 22.

On September 27, 2019, after being advised of the agency’s award decision, T3I filed a protest with our Office, challenging the agency’s price evaluation and best-value tradeoff decision. On October 26, the Air Force filed an agency report responding to the protest grounds and defending the agency’s evaluation and award decision.

On November 7, T3I filed comments on the agency report, and a supplemental protest. As relevant here, T3I’s supplemental protest argued that Darton’s proposal contained material misrepresentations because Darton proposed an incumbent employee to serve as the sole operators instructor when it did not have a reasonable expectation that this individual would be available for performance. T3I Solutions, LLC, supra, at 4. The agency and Darton argued that there was no misrepresentation because “[t]he solicitation did not require offerors to provide commitment letters or representations from employees that it planned to use to staff the effort, nor did Darton represent that it had obtained these from [this individual.]” Id.

Our Office concluded that Darton’s proposal contained a misrepresentation because it represented that Darton would provide an individual for the operators instructor position whom it did not have a reasonable basis to expect to furnish during contract performance, and that the misrepresentation was material because the agency relied upon Darton’s proposed use of the specific individual to meet a minimum pass/fail requirement. Id. at 5-6. We sustained the protest on this basis and recommended that the agency reevaluate Darton’s proposal, taking into account the misrepresentations. Id. at 8. We also recommended that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys’ fees. Id.

¹ Citations are to the AR provided in response to T3I’s initial protest, B-418034.

DISCUSSION

Darton raises two arguments in requesting reconsideration. First, it argues that our Office ignored, or unreasonably applied, a relevant prior decision, Insight Tech. Sols., Inc., B-417388, B-417388.2, June 19, 2019, 2019 CPD ¶ 239, bearing on the question of material misrepresentation. Second, Darton argues that our conclusion that the Air Force's evaluation relied upon a misrepresentation in Darton's proposal was based on an error of fact. For the reasons that follow, we find that neither argument presents a basis upon which to reconsider our prior decision.

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.

With respect to Darton's argument that our Office failed to address or reasonably consider our prior decision in Insight Tech., we find the requester's arguments to be without merit. Darton points to Insight Tech., arguing that in that case, the solicitation did not require resumes or letters of commitment, or agency approval for substitution of personnel, and that our Office concluded that the awardee did not make any material misrepresentations in its proposal. Insight Tech., supra, at 6. Darton asserts that, similar to the solicitation in Insight Tech., the RFP in the instant procurement does not require resumes or letters of commitment, or agency approval for substitution of personnel, and therefore, our decision similarly should have found that there was not a material misrepresentation.

As relevant here, our decision concluded that Darton's proposal contained a material misrepresentation, in part, because it represented that Darton would provide a specific individual for the operators instructor position, whom it did not have a reasonable basis to expect to furnish during contract performance. T3I Solutions, LLC, supra, at 5. Our decision also noted that "we are unpersuaded by the agency and the intervenor's views that there was no misrepresentation because '[t]he solicitation did not require offerors to provide commitment letters or representations from employees that it planned to use to staff the effort, nor did Darton represent that it had obtained these from [this individual].'" Id. at 7 (citing Supp. Contracting Officer Statement/Memorandum of Law at 6; Darton Supp. Comments at 1-3). Our decision explained that "[t]he issue here is what the RFP required and what Darton chose to propose to meet that requirement; under these circumstances, any arguments about what the RFP did not require are inapposite." Id. (citing ManTech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 2, 5).

Although our decision did not cite specifically to Insight Tech., the decision addressed the same arguments raised by Darton that were raised in Insight Tech.--that is, that there was no misrepresentation because the RFP did not require resumes, letters of commitment or representations from employees. See Darton's Supp. Comments at 1-3 (asserting that the case is analogous to Insight Tech. and that "the solicitation did not require the submission of resumes or letters of commitment."). As noted above, our decision considered this assertion and found that "any arguments about what the RFP did not require are inapposite." T3I Solutions, LLC, supra, at 7. We explained that what matters is "what the RFP required and what Darton chose to meet that requirement." Id.

While Darton may disagree with our Office's resolution of its arguments, its request for reconsideration essentially reasserts and reiterates the argument previously raised in its comments. As our Office has explained, repetition of arguments, without more, does not provide a basis to reconsider a decision. 4 C.F.R. § 21.14(c); Department of Defense--Recon., B-416733.2, Mar. 18, 2019, 2019 CPD 110 at 2-3. None of Darton's arguments in its request for reconsideration demonstrates that our decision contained legal or factual errors with regard to our conclusion that Darton materially misrepresented the availability of an incumbent employee in its proposal. We therefore find no basis to reconsider our decision.

Next, Darton argues that our conclusion that the Air Force's evaluation relied upon a misrepresentation in Darton's proposal was based on factual error. As relevant here, the decision concludes that the misrepresentation in Darton's proposal was material based on our finding that the agency relied on Darton's proposed use of a specific individual to meet a minimum pass/fail requirement. T3I Solutions, LLC, supra, at 6.

Darton asserts that the record directly contradicts this finding. Darton maintains that the record shows that the agency "did not rely on Darton providing a specific person for an instructor position in order to find its technical proposal 'Acceptable'" because the record demonstrates that the agency also gave T3I's proposal an acceptable rating even though T3I "did not identify by name any specific personnel for the same position." Request for Reconsideration at 3. Darton maintains that, instead, T3I's proposal "merely provided that it 'has instructors certified to instruct the requirements of the PWS' and that '[n]ew instructors will be hired as necessary to comply with the PWS and contract specifications.'" Id.

Rather than demonstrate factual error, Darton's allegation presents a new argument that it could have raised, but did not, during the earlier protest proceedings. A party's assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest does not meet the standard for granting reconsideration; a party's 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. B3 Solutions, LLC--Recon., B-408683.5, May 8,

2014, 2014 CPD ¶ 146 at 3; Department of the Navy--Recon., B-405664.3, May 17, 2012, 2013 CPD ¶ 49 at 2. Because Darton did not raise this contention previously, and has not explained why it could not raise this argument earlier, this argument provides no basis for us to reconsider our earlier decision.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel