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Decision

Matter of: J&J Worldwide Services--Reconsideration

File: B-418148.4

Date: October 7, 2020

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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

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

DECISION

J&J Worldwide Services, of Austin, Texas, requests that we reconsider our decision in *J&J Worldwide Services*, B-418148.3, June 30, 2020, 2020 CPD ¶ __, where we denied J&J's protest challenging the issuance of a task order to Valiant Government Services, LLC, under request for proposals (RFP) No. MRR-2019-008108. The RFP was issued by the Department of the Army, Army Corps of Engineers (Corps), for the repair and renewal of the radiology department at the Madigan Army Medical Center, Joint Base Lewis McChord, Washington. J&J argues that our decision failed to address, or inadequately resolves, protest grounds raised by J&J in its prior protest.

We deny the request for reconsideration.

BACKGROUND

The Army issued the RFP on March 18, 2019, under the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, to contractors holding a Corps multiple-award task order contract. The solicitation anticipated the issuance of a fixed-price task order, for the repair and renewal of the radiology department at the Madigan Army Medical Center. Agency Report (AR), Tab 1, RFP, at 1.¹ The solicitation provided that award would be made on a best-value tradeoff basis

¹ Citations are to the AR provided in response to J&J's initial protest, B-418148.3.

considering three evaluation factors: technical approach, past performance, and price. RFP at 26. The technical approach factor was comprised of three subfactors: technical approach summary, key personnel resumes, and management approach. *Id.*

As relevant to this request for reconsideration, the RFP contained a requirement that the contractor remove the existing heating, ventilation, and air conditioning (HVAC) system and replace it with a new, complete HVAC system. AR, Tab 5, RFP amend. 3, Amended Statement of Work, at 9-10. The solicitation defined a rating of unacceptable as “[p]roposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable,” and “[p]roposal is unawardable.”² RFP at 27. The solicitation also warned offerors that award would not be made to a contractor whose proposal received a final technical rating of marginal or unacceptable. *Id.* at 26.

The agency received proposals from four offerors, including J&J and Valiant. Contracting Officer Statement and Memorandum of Law (COS/MOL) at 1. The agency evaluated the proposals and selected Valiant for award. *Id.* On November 1, 2019, J&J filed a protest with our Office challenging the agency’s award decision. In response, the agency advised that it would take corrective action by reevaluating proposals and issuing a new award decision. Req. for Dismissal, B-418148.2, Nov. 13, 2019. Accordingly, our Office dismissed the protest as academic. *J&J Worldwide Servs.*, B-418148.2, Nov. 19, 2019 (unpublished decision).

As a part of its corrective action, the agency reevaluated proposals. COS/MOL at 2, 9, (citing AR, Tab 8, Board Consensus Eval. at 7-12). The agency determined that J&J’s proposal was technically unacceptable after assigning J&J’s proposal five deficiencies and two significant weaknesses. COS/MOL at 2, 9. Based upon the rating of unacceptable, J&J’s proposal was deemed unawardable and not considered for award. AR, Tab 10, Unsuccessful Offeror Letter (Feb. 27, 2020) at 1. On February 27, 2020, at the conclusion of its corrective action, the agency again selected Valiant for award. *Id.*

On March 23, J&J filed a protest with our Office challenging the award to Valiant. Protest (B-418148.3). J&J argued that the agency unreasonably found its proposal unacceptable and challenged each weakness, significant weakness, and deficiency assigned to its proposal under the technical approach factor. Protest at 16-33; Comments at 12-30. The protester also alleged that the agency failed to credit its proposal for “betterments” offered in support of its technical approach. Protest at 34. Additionally, the protester challenged the agency’s evaluation of its past performance, and argued that the agency engaged in unequal treatment among the offerors. *Id.* at 42. In response, the Army filed an agency report on April 22, responding to the protest grounds and defending the agency’s evaluation and award decision. On May 1, J&J filed comments on the agency report. In its comments, the protester argued that the record was insufficient to show that the contracting officer, acting as the source

² The RFP defined deficiency as a “material failure of a proposal to meet a [g]overnment requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.” *Id.* at 28.

selection authority (SSA), exercised his independent discretion with respect to the award decision. Comments at 4-9. J&J's comments also argued that the record contained inadequate documentation to show that the agency actually conducted a reevaluation of proposals during its corrective action. *Id.*

Our Office issued a decision denying the protest on June 30, 2020. We found reasonable the agency's determination that J&J's proposal was technically unacceptable, and thus ineligible for award.³ *Id.* at 5-6. We concluded that the agency reasonably found the protester's proposal to be unacceptable because J&J proposed a limited reuse of some HVAC components, which failed to meet the solicitation's requirement that the contractor replace the existing HVAC system with a new HVAC system. *Id.* at 5. Because we found that the agency reasonably rejected the protester's proposal as unacceptable under this requirement, we did not need to address the agency's assessment of any other deficiencies or significant weaknesses. *Id.* We also found that the record demonstrated that the SSA conducted an independent assessment when making his award decision, and that the record contained adequate documentation to show that the agency conducted a reevaluation of proposals during its corrective action. *Id.* at 6-7. We further concluded that because the agency reasonably found J&J's proposal unacceptable and ineligible for award, J&J was not an interested party to maintain its protest allegations challenging the adequacy of the agency's best-value decision. *Id.* at 7. We explained that, "because its proposal is ineligible for award," J&J "cannot establish that it is an actual or prospective bidder or offeror whose direct economic interest would be affected by the agency's best-value decision." *Id.*

After issuance of our decision, J&J filed this timely request for reconsideration.

DISCUSSION

J&J requests that we reconsider our decision due to factual and legal errors. The protester complains that our decision--in stating that the agency reevaluated proposals as part of its corrective action--contains a factual error because the record contained inadequate documentation to show that the agency actually conducted a reevaluation of proposals during its corrective action. J&J further argues that our decision is legally flawed because it fails to address, or inadequately resolves, protest grounds raised by J&J in its prior protest.

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. Here, J&J's request does not demonstrate that our decision

³ As stated above, the solicitation warned offerors that no award would be made to a contractor whose proposal received a final technical rating of marginal or unacceptable. RFP at 26.

contained an error of fact or law, and does not present new information warranting reversal or modification. We therefore conclude that the request does not meet our standard for reconsideration.

In requesting reconsideration, the protester first contends that our decision was based on “factual error in the assertion that the [a]gency reevaluated proposals” and “legal error in concluding that corrective action was taken.” Req. for Reconsideration at 2. The protester argues that “[t]here is nowhere in the AR where there is any reference to, much less contemporaneous documentation of, a reevaluation of proposals.” *Id.* The protester acknowledges that it raised these arguments in responding to the agency report, but maintains that our decision failed to specifically address this basis for protest. *Id.* The protester contends that, instead, our decision “summarily asserts as a fact that the proposals were ‘reevaluated.’” *Id.*

J&J is incorrect that our decision did not address this allegation. In considering this issue, our decision noted that J&J “contends that the record contains inadequate documentation to show that the agency actually conducted a reevaluation of proposals during its corrective action.” *J&J Worldwide Servs.*, B-418148.3, *supra* at 6 n.6. Ultimately, however, based on our review of the record, we found no merit to this argument. *Id.* We explained that the agency notified our Office on November 14, 2019, that it would take corrective action by reevaluating proposals and issuing a source selection decision. *Id.* (citing Req. for Dismissal, B-418148.2, Nov. 14, 2019). We also explained that the agency provided a document, dated February 14, 2020, in response to the protest, which the agency advised was the document containing its reevaluation of proposals. *Id.* (citing COS/MOL at 2, citing AR, Tab 8, Board Consensus Evaluation). Additionally, we noted that the contracting officer explained that he relied upon the reevaluation of proposals when making his award decision. *Id.* (citing COS/MOL at 2). J&J’s repetition of arguments it made during our consideration of its prior protest falls short of our standard for reversing or modifying our earlier decision. See *Veda, Inc.--Recon.*, *supra*, at 4.

Next, J&J requests that we reconsider our decision because it did not specifically address all of the arguments raised in its protest. For example, the protester contends that our decision did not address its protest ground asserting that the agency violated the law when it subjected offerors, including the protester, to disparate treatment. Req. for Reconsideration at 2; Protest at 42; Comments at 10-11. The protester contends that “[b]y failing to address this protest ground and issuing a decision on the merits of the technical evaluation, [our] decision is based on an error in law as it is predicated on the assumption that there was no disparate treatment.” *Id.* Similarly, the protester asserts that our decision did not address its protest ground alleging that “had [J&J’s] past performance evaluation been conducted properly,” the agency “would have more thoughtfully considered” whether the “assignment of the significant weaknesses and deficiencies was appropriate” in light of the “broad finding that ‘[b]ased on the contractor’s recent/relevant performance record, the Government has a reasonable expectation that the contractor will successfully perform the required effort.’” Comments at 34; Req. for Reconsideration at 3. The protester also asserts that our decision failed to address its protest ground alleging that the agency did not assess risk for any of the

technical deficiencies or significant weaknesses identified, as required by the RFP. Req. for Reconsideration at 3.

We recognize that our prior decision did not specifically discuss all of the protester's arguments, including the protester's concerns regarding disparate treatment, its past performance evaluation, or risk. Our decision explained, however, that although we did not address all of J&J's arguments, we fully considered all of them and found that none afforded a basis on which to sustain the protest. *J&J Worldwide Servs.*, B-418148.3, *supra*, at 4. 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.*

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel