



Decision

Matter of: Monbo Group International--Reconsideration

File: B-420387.2

Date: May 17, 2022

Dee Monbo, CPA, Monbo Group International, for the requester.
John G. Terra, Esq., Defense Health Agency, for the agency.
Michael P. Price, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing a protest for failure to timely submit comments on the agency report is dismissed where the requester does not show that our prior decision contains errors of fact or law and does not present any information not previously considered.

DECISION

Monbo Group International (Monbo), a small business of Owings Mills, Maryland, requests that we reconsider our decision dismissing its protest, which alleged that the terms of request for quotations (RFQ) HT001521R0098, issued by the Defense Health Agency for financial, acquisition, and business support services, were unduly restrictive of competition. We dismissed the protest because Monbo failed to timely file comments on the agency report. Monbo primarily argues that we should reconsider our decision because we should have set a supplemental briefing schedule in the underlying protest or, alternatively, for good cause shown.

We dismiss the request.

BACKGROUND

Monbo filed a protest with our Office on December 3, 2021, arguing that the solicitation contained terms and language that unduly restricted competition. Protest at 1. Specifically, Monbo alleged that the RFQ's requirement that each vendor's General Services Administration (GSA) schedule "must contain line items for all services/labor categories" was restrictive of competition, because Monbo and other vendors had GSA

schedules without identical line item job titles, but had employees who performed the exact same duties as those requested by the RFQ. Protest at 1-2.

On December 14, the agency filed a request for dismissal, arguing that Monbo misunderstood the language of the solicitation. The agency argued that the RFQ allowed for GSA schedule holders to identify under the RFQ's "crosswalk" provision any employees who perform similar duties to the positions listed in the solicitation, but who had non-identical job titles.¹ Req. for Dismissal at 2. The agency further argued that pursuant to 4 C.F.R. § 21.5, our Office should dismiss the protest due to the fact that Monbo had misunderstood the terms of the solicitation. *Id.* at 3.

On December 17, Monbo filed its response to the agency's request for dismissal alleging that the agency had revised the solicitation document after the initial protest was filed and also objecting to the agency's new due date for receipt of quotations. Resp. to Req. for Dismissal at 1. Monbo also requested additional time to submit its quotation. *Id.*

After our Office declined to dismiss the protest, the agency timely filed its agency report on January 3, 2022. In its report, the agency renewed its argument that there was no restrictive solicitation language as alleged by Monbo, and that the protest should therefore be dismissed for factual and legal insufficiency under 4 C.F.R. § 21.1(c)(4).² MOL at 2. Further, although our Office did not docket Monbo's complaint about the revised due date as a stand-alone supplemental protest, the agency also addressed in its report Monbo's objection to the new December 21 due date for quotations. In this regard, the agency noted that the company had provided no legal support for its position that it was entitled to more time to submit a quotation, and had not alleged any violation of procurement law related to the setting of the revised due date. *Id.* at 3. Therefore, the agency renewed its contentions that the protest should be dismissed or denied. *Id.* at 3-4.

Monbo filed its comments on the agency report on January 13 at 9:11 p.m. Eastern Time. Electronic Protest Docketing System (EPDS) No. 9. Subsequently, on February 4, our Office dismissed the requester's protest for failure to timely file

¹ The RFQ advised that vendors shall include "a clear crosswalk" identifying the proposed labor category in the RFQ and the corresponding labor category contained in the vendor's GSA schedule contract. Req. for Dismissal at 2; Agency Report (AR), Tab 3, RFQ at 68-69. The RFQ required vendors to submit the crosswalk using the pricing matrix attachment, which included a tab and instructions for providing the GSA crosswalk information. RFQ at 68-69; Req. for Dismissal, attach. 2 Pricing Matrix.

² The agency also argued that Monbo had abandoned this protest ground, because Monbo's response to the agency's request for dismissal failed to address the agency's argument concerning the contested solicitation language. AR, Tab 1, Memorandum of Law (MOL) at 1.

comments, in accordance with the procedures outlined in our Bid Protest Regulations at 4 C.F.R. § 21.3(i). *Monbo Group Int'l*, B-420387.1, Feb. 4, 2022 (unpublished decision).

In our decision, we stated that because the agency submitted its agency report on January 3, Monbo was required to file its comments before the close of business on January 13. *Id.* at 1. The protester missed that deadline, and filed later in the evening (9:11 p.m.) on January 13. Our regulations provide that a document is filed on a particular day when it is received by 5:30 p.m. Eastern Time on that day. 4 C.F.R. § 21.0(g). Since Monbo's comments were filed after 5:30 p.m., they were deemed to be filed on January 14, and our Office dismissed the protest. *Id.* at 2, n.1. Monbo now asks that we reconsider our dismissal decision.

DISCUSSION

Monbo makes two primary arguments in its request for reconsideration: (1) our Office could not properly dismiss the protest without first setting a supplemental briefing schedule in order to allow the agency to substantively respond to Monbo's supplemental protest ground objecting to the new due date for receipt of quotations; and (2) our Office should accept the requester's untimely comments for good cause shown. Req. for Reconsideration at 2-3. For the reasons discussed below, we dismiss Monbo's request.

Under our regulations, to obtain reconsideration the requesting party must state the 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. 4 C.F.R. § 21.14(a), (c). We will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contains a material error of law or fact; that is, but for the error, our Office would have likely reached a different conclusion as to the merits of the protest. *Department of Justice; Hope Village, Inc.--Recon.*, B-414342.5, B-414342.6, May 21, 2019, 2019 CPD ¶ 195 at 4. Here, the requester does not set forth any factual or legal grounds or identify any errors of law or fact upon which reversal or modification of the decision dismissing its protest is warranted.

Monbo's request for reconsideration alleges that our Office should have set a supplemental briefing schedule for the arguments about the new due date for quotation submission, and asks that our Office reconsider the merits of that supplemental protest ground. Req. for Reconsideration at 2. The request, however, fails to identify any errors of law or fact contained within our underlying decision, which dismissed the protest due to Monbo's failure to timely file comments on the agency report. The request thus fails to meet the standard required by our Office to obtain reconsideration.³

³ In any event, Monbo's allegation is not supported by the facts of the underlying record. While our Office did not set a supplemental briefing schedule for the parties to follow, the agency nonetheless addressed Monbo's supplemental complaint about the revised due date in its agency report filed on January 3. See AR, Tab 2, Contracting Officer's Statement at 3; MOL at 2-3. Thus, the requester's argument that the agency failed to substantively respond to its supplemental protest ground is not supported by the record.

Additionally, Monbo does not dispute that it failed to timely file its comments. Rather, the requester asks our Office to reconsider our dismissal decision under the “good cause” exception to our timeliness rules, as outlined at 4 C.F.R. § 21.2(c). That provision states that “GAO, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider an untimely protest.” 4 C.F.R. § 21.2(c). However, the “good cause” exception to our timeliness rules applies to late filings of an initial protest. The timeliness rules for filing comments in response to an agency report are governed by 4 C.F.R. § 21.3(i); *California Env'tl. Eng'g*, B-274807, B-274807.2, Jan. 3, 1997, 97-1 CPD ¶ 99 at 6. The requester has thus failed to state adequate factual or legal grounds upon which reversal of our previous decision would be warranted.⁴

The request is dismissed.

Edda Emmanuelli Perez
General Counsel

⁴ The requester argues its failure to timely file comments on the agency report was justified by good cause. Specifically, the requester argues that it failed to timely file comments due to “excusable neglect.” Req. for Reconsideration at 3. As stated above, the good cause exception applies only to the initial filing of protests, and not the filing of comments on the agency report. Therefore, we need not address the merits of the requester’s argument here.