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Decision

Matter of: Action Staffing Solutions, Inc.

File: B-420585.2

Date: July 20, 2022

Erik G. Fischer, Esq., and Megan A. McDonald, Esq., Erik G. Fischer, P.C., for the protester.

Timothy M. McLister, Esq., and Dorothy D. Smith, Esq., Department of the Army, for the agency.

Uri R. Yoo, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

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

DECISION

Action Staffing Solutions, Inc., a small business of Loveland, Colorado, requests that we reconsider our dismissal of its protest challenging the award of a contract to 2bFocused, Inc., a small business of Springfield Gardens, New Jersey, under request for proposals (RFP) No. W81K0420R0033, issued by the Department of the Army for general clerks and translation and interpreter support services. *See Action Staffing Solutions, Inc.*, B-420585, May 18, 2022 (unpublished decision). Action Staffing contends that our decision contains an error of fact and that its protest provided a sufficient factual and legal basis.

We dismiss the request for reconsideration.

BACKGROUND

The RFP was issued on March 5, 2021, as a small business set-aside under the Small Business Administration's 8(a) program, for general clerks and translation and interpreter support services at the Brooke Army Medical Center in San Antonio, Texas.

RFP at 1, 67.¹ The RFP provided that award was to be made using a lowest-priced, technically acceptable source selection method. *Id.* at 118. The RFP informed offerors that the agency would first evaluate prices proposed by all offerors and rank them from lowest to highest, then conduct technical evaluations beginning with the lowest-priced proposal. *Id.* If the lowest-priced proposal was found to be technically unacceptable, the agency would conduct a technical evaluation of the next lowest-priced proposal, continuing until the lowest-priced, technically acceptable proposal was identified. *Id.*

On March 4, 2022, the Army notified Action Staffing of its unsuccessful offer. Req. for Dismissal at 2; see Req. for Dismissal, exh. 1, Notice to Unsuccessful Offeror. By this notice, the agency informed Action Staffing that its technical proposal was not evaluated because the awardee's proposed price was lower than that of Action Staffing and the awardee's proposal was found to be technically acceptable. Req. for Dismissal, exh. 1, Notice to Unsuccessful Offeror at 2.

On March 8, 2022, Action Staffing filed a protest with our Office. In that protest, Action Staffing alleged that the solicitation was defective and the solicitation process employed by the agency was improper. Protest at 3-4; Obj. to Req. for Dismissal at 3. The protester also alleged that the award to 2bFocused was the result of a Procurement Integrity Act (PIA) violation. Protest at 4; Obj. to Req. for Dismissal at 4. In this regard, the protester asserted that the president of Action Staffing received a phone call from the owner of 2bFocused, who allegedly claimed that 2bFocused "was winning the bid" before the agency made the award. Protest at 4. Action Staffing represents that it received this phone call on March 8, 2021, only three days after the agency issued the solicitation and more than 10 days before the initial proposal due date of March 19, 2021. *Id.*

Our Office dismissed the protest on May 18, 2022. In that decision, we concluded that the protester's allegations of improprieties in the solicitation and the solicitation process, brought after the closing time for receipt of proposals, was untimely. *Action Staffing Solutions, Inc., supra* at 2. We also dismissed the protester's allegation of a PIA violation, due to the protester's failure to report the potential PIA violation to the agency within 14 days of first discovering the possible violation. *Id.* at 2-3.

On May 27, 2022, Action Staffing requested that we reconsider our decision to dismiss its protest.

¹ References to the RFP are to the conformed copy provided by the protester as an exhibit to its protest.

DISCUSSION

In its request for reconsideration, Action Staffing contends that our dismissal of its allegation of a PIA violation was based on an error of fact.² Req. for Recon. at 1. Specifically, Action Staffing alleges that, because the protester did not know “definitively” that there was a PIA violation when it received the March 8, 2021 call from 2bFocused, it was an error of fact for our Office to find that the protester did not timely report a potential PIA violation to the Army. *Id.* Action Staffing contends that it was “able to determine that 2bFocused must have received source selection information that ultimately led to them winning the bid” only after being notified on March 4, 2022, of the agency’s decision to award the contract to 2bFocused.³ *Id.* at 2.

Under our Bid Protest Regulations, to obtain 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); see also *The i4 Group Consulting, LLC--Recon.*, B-418842.2, Oct. 8, 2020, 2020 CPD ¶ 326 at 3. The repetition of arguments made during our consideration of the original protest and disagreement with our prior decision do not meet this standard. *Gunnison Consulting Grp., Inc.--Recon.*, B-418876.5, Feb. 4, 2021, 2021 CPD ¶ 101 at 3. Our Office will summarily dismiss a request for reconsideration that does not meet this standard. 4 C.F.R. § 21.14(c); see, e.g., *AeroSage, LLC--Recon.*, B-417247.4, July 9, 2019, 2019 CPD ¶ 251 at 3.

Here, Action Staffing’s request for reconsideration repeats arguments made during our consideration of its protest and disagrees with our decision. In its response to the agency’s request for dismissal of the protest, Action Staffing argued that its allegation of PIA violations was timely because the protester “did not know . . . there were violations of the Procurement Integrity Act until the actual [a]ward of the contract was given to 2bFocused.” Resp. to Req. for Dismissal at 3. The protester contended that the

² Action Staffing does not request that we reconsider the dismissal of its untimely allegations of defective solicitation terms and a defective solicitation process. See *generally*, Req. for Recon.

³ Action Staffing further argues that our decision erred by noting that the allegations of PIA violations also warranted dismissal for failure to state a valid basis of protest. Req. for Recon. at 2-4. In this regard, our decision found that Action Staffing “failed to allege with any particularity a PIA violation,” and failed to adequately allege that Action Staffing was an interested party due to 11 intervening offerors whose standings were not challenged. *Action Staffing Solutions, Inc., supra* at 3 n.2. We do not specifically address Action Staffing’s additional arguments here because, as discussed below, we find that the protester has not shown that our basis for dismissing its allegation of PIA violations--failure to timely report the potential PIA violation to the Army prior to filing its protest--contained any errors of fact or law.

March 8, 2021, phone call “regarding 2bFocused winning the contract before it had been awarded” was “not enough to put together that information regarding the solicitation was being shared to potential bidders . . . or that potential solicitation defects were in fact being used to handpick[] for the contract” until the actual award was made to 2bFocused.⁴ *Id.*

Our underlying decision already considered these same arguments, ultimately concluding that “the record indicates that the protester allegedly learned of a possible Procurement Integrity Act violation on March 8, 2021,” but “did not report this potential violation to the agency prior to filing this basis of protest with our Office.” *Action Staffing Solutions, Inc., supra* at 3. Action Staffing’s request for reconsideration, which repeats its arguments made during our consideration of the underlying protest, and disagrees with our decision, does not meet our standards for granting its request. See *Gunnison Consulting Grp., Inc.--Recon., supra*.

The Procurement Integrity Act, 41 U.S.C. §§ 2101-07, prohibits our Office from considering allegations of a PIA violation in deciding a protest “unless the person, no later than 14 days after the person first discovered the possible violation, reported to the Federal agency responsible for the procurement the information that the person believed constitutes evidence of the offense.” 41 U.S.C. § 2106. As noted in our decision, our Bid Protest Regulations state that we will dismiss any protest alleging a PIA violation where the protester “failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation.” 4 C.F.R. § 21.5(d); see *Action Staffing Solutions, Inc., supra* at 2-3.

Accordingly, we dismiss Action Staffing’s request for reconsideration because it fails to specify any errors of fact or law made or information not previously considered. Instead, Action Staffing repeats the arguments it made during our consideration of the underlying protest, and disagrees with our decision. This does not meet our standards for granting a request for reconsideration. See *The i4 Group Consulting, LLC--Recon., supra*.

The request for reconsideration is dismissed.

Edda Emmanuelli Perez
General Counsel

⁴ We note that, in its request for reconsideration, Action Staffing does not contend that it reported the potential PIA violation to the Army at any time after receiving the notice of award but prior to filing its protest. See *generally*, Req. for Recon.