U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Chase Supply, Inc., d/b/a Chase Defense Partners--Reconsideration

File: B-420902.2

Date: November 23, 2022

Fred Fielding and David C. Weeda, Chase Supply, Inc., the requester.
Col. Frank Yoon, Maj. Ashley M. Ruhe, Michael J. Farr, Esq., and Maj. Erik T. Fuqua, Department of the Air Force, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where requester has not shown that the original decision contained an error of fact or law that would justify reconsideration.

DECISION

Chase Supply, Inc., of Hampton, Virginia, a small business, doing business as Chase Defense Partners, requests reconsideration of our decision in *Chase Supply, Inc.*, B-420902, Sept. 6, 2022 (unpublished decision), in which we dismissed its protest of the terms of request for proposals (RFP) No. FA8532-22-R-0001, issued by the Department of the Air Force, for a universal loadbank and two ground power units (GPUs). Chase seeks reconsideration of our decision because of what it contends are material factual errors.

We deny the request.

BACKGROUND

Our decision dismissing Chase's protest was based on its failure to show that it was an interested party with respect to the contract at issue, and therefore it was not eligible to file a protest challenging the terms of the RFP. The decision described the protest as challenging a requirement in the RFP that the GPUs include brand name or equal cable assemblies as one of numerous subcomponents. We noted that Chase described itself as a "rep and distributor for Skyko" and the protester contended that the brand-name-or-equal requirement for the cable subcomponent "arbitrarily eliminate[s] Chase's [cable] supplier," Skyko. We also noted that Chase acknowledged that Skyko did not

manufacture complete GPUs, but only the cable subcomponent. *Chase Supply, Inc.*, supra at 2.

Our decision then considered a request for dismissal submitted by the Air Force, which, among other things, argued that Chase was not an interested party because it "appears to be merely a distributor of a subcomponent," rather than a prospective offeror of GPUs. We agreed and dismissed the protest after concluding that "Chase did not, and could not, submit a proposal for the procurement at issue," and that neither it nor Skyko could supply complete GPUs. *Id.* at 1.

After Chase received our decision dismissing its protest, the firm filed this request for reconsideration, which argues that the decision was based on errors of fact and law. We address each of Chase's arguments below.

DISCUSSION

Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of the initial decision is deemed warranted, specifying any errors of law made or information not previously considered by our Office. 4 C.F.R. § 21.14(a). Information not previously considered means information that was not available when the initial protest was filed. *Norfolk Dredging Co.--Recon.*, B-236259.2, Oct. 31, 1989, 89-2 CPD ¶ 405. As discussed below, Chase's request does not meet this standard.

First, Chase argues that our decision failed to recognize that its protest arguments were made on behalf of Skyko and that Chase is "an agent for Skyko." Request for Reconsideration at 1. Chase contends that we should therefore have recognized Skyko's status as an interested party.

We disagree. Even if we consider the protest as being brought by Skyko, and filed by Chase as its agent, dismissal was proper. As noted above, Chase acknowledged during the protest that Skyko did not manufacture complete GPUs, but only the cable subcomponent. Skyko would not have been an interested party for essentially the same reason as Chase; that is, neither Chase nor Skyko is capable of competing for the prime contract being awarded under this RFP.

As noted in our decision, by statute our Office only has statutory jurisdiction to consider a protest by an "interested party." 31 U.S.C. § 3551(1), (2) (definitions of "protest" and "interested party"). To be an interested party, Skyko would have to be an actual or prospective bidder or offeror for the contract to supply completed GPUs (and a loadbank). Only an offeror for the prime contract has the direct economic interest affected by the award of a contract or the failure to award a contract that the statute requires. Skyko seeks to supply the cable subassembly to a contractor so, like Chase, Skyko has an *indirect* economic interest, and thus is not an interested party. Accordingly, Chase has provided no basis to reconsider our decision because Skyko is also not an interested party. *See Team Wendy, LLC*, B-417700.2, Oct. 16, 2019, 2019 CPD ¶ 361 at 7-8 (dismissing a protest filed by a supplier of padding used in helmets

that sought to challenge a change to the contract for complete helmets because the supplier did not manufacture complete helmets and so, was not an interested party).

Next, Chase argues that we should clarify a statement in our decision that Chase was "only a supplier to firms capable of competing for the entire item." Request for Reconsideration at 1. Chase argues that, in fact, neither Chase nor Skyko could be a supplier to firms competing for the contract because of the brand name or equal specification in the RFP.

Here again, Chase's request does not provide a reason to reconsider our decision. We recognize that the theory of Chase's protest was that it was prevented by the terms of the RFP from being a supplier because it does not offer the brand name item or an equal item. The phrase highlighted by Chase shows our Office considering the situation if Chase were to prevail on its claim that the brand-name-or-equal restriction was improper. Even in that case, Chase and Skyko would not be in a position to submit a proposal to perform the Air Force contract; they seek to supply cables to other firms that would use them to produce the GPUs and loadbank. The phrase that Chase questions is a proper analysis of the protester's legal interest in the contract, which is indirect--a supplier rather than the prime contractor--so Chase provides no basis to reconsider our decision dismissing the protest.

Finally, Chase argues that our decision contains a legal error because, even if the protest relates to a subcontract, our Office should have taken jurisdiction because the competition for that subcontract is, effectively, "by the government." Chase reasons that when the Air Force specified the cable subassembly using a brand name or equal specification, the agency was actually taking over a subcontracting process, rendering the subcontract for cables "by the government." As a result, Chase argues that our Office should make an exception to the general rule against considering subcontract protests by developing the protest record and issuing a decision on the merits. Request for Reconsideration at 2.

Generally, we will not consider a protest of the award or proposed award of a subcontract except where the agency awarding the prime contract has filed a request that subcontract protests be decided. 4 C.F.R. §§ 21.5(h), 21.13(a). The Air Force has made no such request; rather, the agency requested dismissal of Chase's protest precisely because the protester was seeking a subcontract rather than the contract to supply complete GPUs. Chase notes that we have made an exception where a subcontract procurement is by the government; specifically, that the agency handled substantially all of the substantive aspects of a procurement and, in effect, took over the procurement, leaving to the prime contractor only the procedural aspects of the procurement, *i.e.*, issuing the subcontract solicitation and receiving proposals. Request for Reconsideration at 2 (citing *Craft Bearing Co.*, B-418685, June 22, 2020, 2020 CPD ¶ 202 at 3).

Chase's argument mischaracterizes the RFP and fails for at least two separate reasons. First, Chase did not raise the argument that its protest allegedly involved a subcontract

by the government during the original protest, so raising the argument now does not provide a basis to reconsider the decision. Such a failure to make all arguments or submit all relevant information 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. The protester's failure cannot justify reconsideration of our prior decision. *Department of the Army--Recon.*, B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. Second, even if Chase had made the argument in the original protest, it fails to show any factual basis to support a claim that the Air Force has taken over the procurement of cables from the contractor; rather the RFP directs the contractor to use either the brand name cable or a functionally equal product in producing GPUs. The contractor retains control to determine what supplier it will use to meet the contract requirement.

The request is denied.

Edda Emmanuelli Perez
General Counsel