



Decision

Matter of: Arlluk Technology Solutions, LLC--Reconsideration

File: B-421008.4

Date: February 23, 2023

Devin E. Hewitt, Esq., Potomac Law Group, PLLC, for the requestor.
Scott H. Riback, 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 the request does not show that our earlier decision contained an error of fact or law, or present information not previously considered that would merit modification or reversal of our earlier decision.

DECISION

Arlluk Technology Solutions, LLC, of Chantilly, Virginia, requests reconsideration of our decision in *ASRC Federal Data Solutions, LLC, B-421008, et al.*, Dec. 2, 2022, 2022 CPD ¶ 294, in which we sustained the protest of ASRC challenging the establishment of a blanket purchase agreement (BPA) with Arlluk under request for quotations (RFQ) No. NIEHS-RFQ-22-6223146, issued by the Department of Health and Human Services for information technology services. Arlluk maintains that our prior decision contained errors of fact and law. Alternatively, Arlluk requests that we modify our prior recommendation for corrective action.

We deny the request for reconsideration.

Among other things, ASRC's protest challenged the issuance of the BPA to Arlluk on the grounds that the firm's quotation included a material misrepresentation relating to the availability of two key personnel. We sustained ASRC's protest, finding with respect to one of the two key personnel--identified in our decision as Dr. B--that Arlluk had misrepresented the availability of the individual in question; that the agency had relied on Arlluk's misrepresentation; and that the agency's reliance had a material effect on its evaluation of quotations and eventual source selection decision. In light of our conclusion, we sustained ASRC's protest, and recommended that the agency remove Arlluk from further participation in the competition.

Of paramount concern during the pendency of the earlier protest was the question whether Dr. B had made a commitment to work for Arlluk prior to the time the firm submitted its quotation. Arlluk initially represented that it had made--and that Dr. B had accepted--a contingent offer of employment in June 2021. Notwithstanding Arlluk's initial representation on this question, our decision focused on an e-mail sent by Dr. B to Arlluk in July 2022, when the firm was preparing its quotation. That e-mail advised Arlluk that Dr. B had executed a mandatory agreement to be exclusively committed to working for ASRC. The e-mail provided as follows:

I just signed a mandatory document with ASRC this morning that "I am exclusively committed to this effort with [ASRC] as the Prime Contractor. No other company is authorized to use my resume in their proposal."

Good luck with the proposal[.]

ASRC Supplemental Record Materials, Exh. A, at 1-2. Despite the clear terms of this July 2022 e-mail from Dr. B, Arlluk maintained that, because Dr. B had not expressly repudiated its June 2021 contingent offer, Arlluk had "read between the lines" of this e-mail and concluded that Dr. B had made the commitment to ASRC under duress; in other words, Arlluk took the position that the e-mail did not actually mean what it said. Arlluk Supplemental Filing, Nov. 9, 2022, at 2-3.

We were not persuaded by Arlluk's explanation of events, and concluded that Arlluk did not have a reasonable basis for deciding to include Dr. B's resume in its quotation. In light of our conclusion, we sustained ASRC's protest, finding that Arlluk had made a material misrepresentation in its quotation.

In its request for reconsideration, Arlluk essentially continues to take the position that the e-mail from Dr. B did not actually mean what it said. According to Arlluk:

Stated in another way, the GAO ignored the way in which the email was written which altered the "plain" meaning of the words included in the email. The text of the email is akin to a situation when a person speaking makes a statement and then winks at the same time as making the statement. Adding [a] "wink" to the statement alters the meaning of the statement. Or when a person speaking makes a statement but also makes a gesture known as "air quotes" while speaking. Again, adding the hand gesture alters the meaning of the spoken word in that circumstance.

At best, the meaning of Dr. B's response to Arlluk was ambiguous. The meaning of the email could be as GAO interpreted it--that Dr. B no longer authorized Arlluk to use her name in its proposal submitted in the procurement. Or it could mean that she was forced to sign a statement that she didn't mean, and, subsequently, had misrepresented her true intent to ASRC, not Arlluk.

Request for Reconsideration at 4.

We have no basis to reconsider our earlier decision. In order to obtain reconsideration, a requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that would merit in reversal or modification of our prior decision. *The VISN Group, LLC--Recon.*, B-420916.3, Nov. 23, 2022, 2022 ¶ CPD 293 at 2. Repetition of arguments previously made and considered, or mere disagreement with our prior decision does not meet this standard.

Arlluk's latest argument--that the e-mail was sent by Dr. B with a "wink" or "air quotes" that altered the actual contents of the e-mail--is no more than a repetition of its earlier argument that it "read between the lines" of Dr. B's e-mail.¹ In addition, Arlluk has offered no actual evidence of its claim such as, for example, an affidavit from Dr. B stating that she in fact meant to convey something other than what was conveyed by her e-mail. Under these circumstances, we have no basis to reconsider our earlier decision for this reason.

Arlluk also requests that we modify our earlier recommendation that the firm be excluded from the competition. Arlluk has offered no new evidence, argument, or information in support of its request, but instead attempts to parse the meaning of other decisions of our Office where, although we found that a firm had made a material misrepresentation to an agency, we nonetheless did not recommend that the firm be eliminated from the competition.

Our first decision discussed at length both previous decisions of our Office relating to the disqualification of a firm making a material misrepresentation, as well as the particular basis for our decision to recommend Arlluk's disqualification. Briefly, we found that Arlluk's misrepresentation was not inadvertent or unintentional, and had a significant impact on the agency's ultimate selection decision; we found that the totality of the circumstances merited the firm's elimination from the competition. *ASRC Federal Data Solutions, LLC, supra* at 11-13. Arlluk's request for reconsideration amounts to

¹ As noted, Arlluk originally maintained that the firm had "read between the lines" of Dr. B's e-mail. To the extent that there is some actual difference between Arlluk's earlier argument, and its current "wink-and-air-quote" argument, the "wink-and-air-quote" argument was never made during the pendency of the original protest. Thus, to the extent that it actually differs from Arlluk's earlier argument, it amounts to the untimely piecemeal presentation of an argument that could have been--but was not--made during the original protest, and also is not for our consideration for that reason as well. *People, Technology and Processes, LLC--Recon.*, B-418781.5, Sept. 23, 2021, 2021 CPD ¶ 320 at 5.

no more than disagreement with our earlier, reasoned conclusion. Under the circumstance, we have no basis to modify our earlier recommendation.

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel