



Decision

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Matter of: C3-ai, Inc.--Reconsideration

File: B-421337.3

Date: May 30, 2023

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DIGEST

Request for reconsideration of prior decision is dismissed where the requester fails either to demonstrate that our decision contains errors of fact or law or to present new information not previously considered that would warrant reversal or modification of our prior decision.

DECISION

C3.ai, of Redwood City, California, requests reconsideration of our decision in *C3.ai*, B-421337, B-421337.2, Feb. 16, 2023, 2023 CPD ¶ 57. In that decision, we dismissed the protest because C3.ai was not an interested party to challenge the issuance of a task order under request for task order proposals No. 75D301-22-R-72452, issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) for information technology support services for the CDC's Common Operating Picture Saas (software as a services) solution.

We dismiss the request for reconsideration.

BACKGROUND

In its protest, C3.ai argued that the solicitation was based on an improper brand-name justification for the Palantir Gotham Platform, which is proprietary to Palantir

Technologies Incorporated. Protest at 1.¹ Specifically, C3.ai argued that the “CDC failed to perform sufficient market research to justify its decision that Palantir ‘is the only solution that can meet all of the required capabilities in one single suite’,” and that had the agency “performed sufficient market research, it would have found that C3.ai can provide a full solution for the” solicited requirements. *Id.* at 12. Alternatively, C3.ai contended that if the “CDC did conduct sufficient market research, [CDC’s] conclusion that the ‘market research indicates other companies’ similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency’s needs’ is erroneous because C3.ai’s platform meets the requirements.” *Id.*

Prior to submission of its report responding to the protest, the agency requested dismissal of the protest, arguing, among other things, that C3.ai was not an interested party. Req. for Dismissal at 1. The agency noted that the “procurement was limited to entities holding a National Aeronautics and Space Administration’s (NASA) Solutions for Enterprise-Wide Procurement (SEWP) Government-Wide Acquisition Contract (GWAC),^[2] and within that limited pool, was set aside for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs).” *Id.* The agency contended that because “C3.ai does not hold a SEWP contract, nor is it an SDVOSB,” C3.ai “was not, and could not be, an ‘actual or prospective bidder or offeror’ in the [protested] procurement.” *Id.*

C3.ai maintained “that, notwithstanding that it does not hold the NASA SEWP contract, it is an interested party because its reseller Carahsoft Technology Corporation is a SEWP contract holder.” *C3.ai, supra* at 4 n.3, *citing* Resp. to Req. for Dismissal at 3. As support for its argument C3.ai relied on a prior decision of our Office--*Mythics, Inc.; Oracle America, Inc.*, B-418785, B-418785.2, Sept. 9, 2020, 2020 CPD ¶ 295--in which we found Oracle to be an interested party, even though the solicitation sought proposals from resellers and Oracle is a cloud service provider rather than a reseller. *C3.ai, supra* at 4 n.3, *citing Mythics, Inc.; Oracle America, Inc. supra* at 3. We found that C3.ai’s reliance on our decision in *Mythics, Inc.; Oracle America, Inc.* was misplaced because in that decision, “Oracle was protesting on behalf of itself.” *C3.ai, supra* at 4-5 n.3. In contrast to the situation here, Carahsoft, the SEWP contract holder, was not a party to C3.ai’s protest, nor was there any indication in the record suggesting that C3.ai was acting as Carahsoft’s agent. *Id.* Thus, we concluded our decision in *Mythics, Inc.; Oracle America, Inc.* did not support C3.ai’s contention that it was an interested party, because “C3.ai--not Carahsoft--[was] the protesting party, and C3.ai [was] not a NASA SEWP contract holder.” *Id.* at 5 n.3.

¹ The references throughout this decision to documents other than the request for reconsideration are to the parties’ submissions in the original protest.

² GWACs are pre-competed, multiple-award, indefinite delivery, indefinite quantity (IDIQ) contracts that agencies can use to buy total information technology solutions, including both products and services. <https://www.gsa.gov/small-business/register-your-business/-explore-business-models> (last visited Apr. 26, 2023).

Additionally, we found that C3.ai was not an interested party to challenge the agency's brand-name justification because C3.ai was not a SEWP GWAC holder nor had it identified any procurement law or regulation the agency violated in choosing to use the NASA SEWP GWAC. *C3.ai, supra* at 5. As relevant here, during the protest we asked the parties to submit filings addressing the following question: "What is the procurement law or regulation that the agency violated by its choice of contract vehicle?" Notice of Questions for the Parties at 2. In our decision, we noted that we asked the parties this question and that "[t]he protester identified none"--*i.e.*, C3.ai did not identify any procurement law or regulation that the agency violated in selecting the NASA SEWP GWAC as its procurement vehicle. *C3.ai, supra* at 5. We concluded that "[t]he record provide[d] no basis to find that the contracting officer's (CO's) selection of the NASA SEWP was an abuse of discretion, or to find any impropriety in the agency's choice of contract vehicle." *Id.* As the agency had "exercised reasonable discretion in selecting the NASA SEWP as the contract vehicle," and as C3.ai "does not hold a NASA SEWP contract," we found that "C3.ai would not be eligible for award even if its challenge to the brand-name justification was sustained." Accordingly, we dismissed the protest because C3.ai was not an interested party.³

DISCUSSION

In its request for reconsideration, C3.ai contends that our decision contains "two clear errors of law." Req. for Recon. at 1. First, C3.ai argues that our decision was contrary to our decision in *Mythics, Inc.; Oracle America, Inc. Id.* Second, C3.ai maintains that our decision was erroneous because it "does not address C3.ai's explanation" pertaining to what procurement law or regulation the agency violated in selecting the NASA SEWP GWAC as the vehicle for the protested procurement. *Id.* at 2.

³ The SEWP solicitation at issue in the underlying protest was issued by the CDC, which is a civilian rather than a defense agency. The CDC issued the SEWP solicitation under a NASA IDIQ, however, and NASA, although a civilian agency, is subject to the procurement provisions found in title 10 of the United States Code, rather than those found in title 41, to which other civilian agencies are subject. 10 U.S.C. § 3004; *Analytic Strategies LLC; Gemini Indus., Inc.*, B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 2 n.2. For purposes of determining the applicable dollar value threshold for our Office's jurisdiction to hear protests in connection with the issuance or proposed issuance of a task or delivery order, we look at under what authority (*i.e.*, title 10 or title 41) the IDIQ contract was issued, rather than to the agency that issues the task or delivery order. *Analytic Strategies LLC; Gemini Indus., Inc., supra* at 5, *recon. denied*, B-413758.4, B-413758.5, Mar. 9, 2017, 2017 CPD ¶ 87. The IDIQ contracts here were established under the authority of title 10, and thus the applicable jurisdictional dollar threshold is \$25 million. 10 U.S.C. § 3406(f)(1)(B). The value of the task order at issue in the underlying protest exceeded this amount, and, as such, the protest, and this request for reconsideration, are within our jurisdiction to hear protests of task orders placed under defense agency IDIQ contracts. *Id.*; see *C3.ai, supra* at 2 n.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). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. *Desktop Alert, Inc.--Recon.*, B-417170.2, Apr. 8, 2019, 2019 CPD ¶ 141 at 2.

With respect to its first allegation, C3.ai contends that our decision erroneously asserted that the facts of C3.ai's protest were distinguishable from our decision in *Mythics, Inc.; Oracle America, Inc.* Req. for Recon at 1. Specifically, C3.ai argues:

[T]he solicitation at issue in *Mythics, Inc.; Oracle America, Inc.* was limited to resellers, and Oracle was not a reseller. This is identical to C3.ai's position here with respect to Carahsoft. Carahsoft (not C3.ai) is the reseller that holds a SEWP contract, and so C3.ai is in the same position as Oracle was in *Mythics, Inc.; Oracle America, Inc.* Thus, like Oracle, C3.ai is "protesting on behalf of itself."

Id. This contention, however, echoes the same argument C3.ai made previously in opposing the agency's dismissal request, in which C3.ai cited *Mythics, Inc.; Oracle America, Inc.* for the proposition that Oracle was found "to be an interested party with a direct economic interest, even though it was a cloud service provider and not a reseller, and the agency was soliciting the services at issue through resellers." Resp. to Req. for Dismissal at 3. As noted above, our decision considered this exact proposition and found the facts of C3.ai's circumstance to be distinguishable from our decision in *Mythics, Inc.; Oracle America, Inc.*⁴ Neither C3.ai's repetition of its previous argument regarding the applicability of *Mythics, Inc.; Oracle America, Inc.* nor its disagreement with our conclusions satisfy our standard for reconsideration. *Desktop Alert, Inc.--Recon.*, *supra* at 4.⁵

⁴ Though we do not address this argument further, it is apparent that C3.ai still fails to grasp that its reliance on *Mythics, Inc.; Oracle America, Inc.* is misplaced, because the procurement in *Mythics, Inc.; Oracle America, Inc.* involved a solicitation for the award of an IDIQ contract, from which orders could be issued to the IDIQ contract holder. In contrast, the solicitation here is to compete a requirement among vendors who already hold--*i.e.*, have been awarded--a NASA SEWP GWAC IDIQ contract. A protester is not an interested party to challenge a task order solicitation where it does not possess the IDIQ contract under which the protested order will be or has been issued. *Latvian Connection LLC*, B-413442, Aug. 18, 2016, 2016 CPD ¶ 194 at 5.

⁵ To the extent that C3.ai's contentions in its request for reconsideration present additional support for the argument it previously raised regarding the applicability of our decision in *Mythics, Inc.; Oracle America, Inc.*, such new contentions are untimely. In our notice requesting the parties respond to the above-discussed question regarding any potentially violated procurement laws or regulations, we also noted C3.ai's reliance on our decision in *Mythics, Inc.; Oracle America, Inc.* and asked the parties to address

For its second argument, C3.ai maintains that, contrary to the statement in our decision that “[t]he protester identified none,” C3.ai did identify applicable provisions of the Federal Acquisition Regulation (FAR) the agency violated. Req. for Recon. at 2. Specifically, C3.ai represents that its response to our question “explained how the agency’s choice of NASA SEWP violated FAR 16.505 and FAR Parts 10 and 7 because those provisions make clear that the choice of procurement vehicle cannot be based upon (as here) an improper and inaccurate determination of the agency’s needs.” *Id.*, citing Resp. to GAO Questions at 5-6. C3.ai claims that “[i]n the Decision, GAO does not address C3.ai’s explanation at all.” Req. for Recon. at 2.

C3.ai is incorrect in its implication--that because our decision stated that the protester had not identified any procurement law or regulation violated by the agency--that we ignored or otherwise failed to consider the arguments presented by C3.ai in its response to our question. In the sentence immediately following our statement that “[t]he protester identified none,” our decision noted that the intervenor argued “that ‘no law or regulation prevented CDC from using the SEWP vehicle to meets its needs in this procurement’,” and “[w]e agree[d] with the intervenor.” *C3.ai, supra* at 5. Contrary to the protester’s contention, our statement that “[t]he protester identified none” when read together with our discussion of the intervenor’s argument, clearly indicates that we considered C3.ai’s argument that the agency violated section 16.505 and parts 7 and 10 of the FAR, but found this argument to be without merit. The fact that our decision did

the following question: “Why, in this instance, is the posture of the protester’s reseller relevant or irrelevant to the protester’s standing as an interested party?” Notice of Questions for the Parties at 2. We required the parties to respond to our questions by January 30, 2023. *Id.* In its response, C3.ai provided that it had “noted Carahsoft’s status as a NASA SEWP holder only as an alternative to its principal argument,” so that if our Office were to decide “that the use of [the] NASA SEWP (in and of itself) was somehow proper, then C3.ai would still have standing under GAO’s decision in *Mythics, Inc.; Oracle America, Inc.*” Resp. to GAO Questions at 6-7. C3.ai did not further elaborate on how the facts of its situation were analogous to the facts of our decision in *Mythics, Inc.; Oracle America, Inc.* *Id.* To the extent C3.ai’s February 24 request for reconsideration provides such additional explanation now, it constitutes the unwarranted piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier filings, which is not contemplated under our regulations. *Desktop Alert, Inc.--Recon, supra* at 3 (denying request for reconsideration that presented new arguments not raised during the underlying protest because “[o]ur Office will dismiss a protester’s piecemeal presentation of arguments that could have been raised earlier in the protest process”).

not address the argument in detail does not provide a basis to reconsider our decision.
Gulf Civilization General Trading & Contracting Co.--Recon., B-416140.3, Nov. 20,
2019, 2019 CPD ¶ 391 at 6-7 n.3.

The request for reconsideration is dismissed.

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