



Decision

Matter of: Minburn Technology Group, LLC--Reconsideration

File: B-422027.2

Date: February 22, 2024

G. Matthew Koehl, Esq., Minburn Technology Group, LLC, for the requester. Kasia Dourney, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the requester has not shown that our prior decision contained an error of fact or law warranting reversal or modification.

DECISION

Minburn Technology Group, LLC, of Great Falls, Virginia, requests reconsideration of our decision in *Minburn Tech. Grp., LLC*, B-422027, Oct. 10, 2023 (unpublished decision), dismissing its protest challenging the award of a sole-source contract to Echelon Services, LLC, a small business of Manassas, Virginia. The sole-source contract was awarded by the Department of the Treasury under the Small Business Administration's (SBA) 8(a) small disadvantaged business contracting program, for an enterprise agreement for Microsoft brand software products and maintenance and cloud computing services. Minburn argues that our Office erred in dismissing its protest based on the unsupported representations of the agency.

We deny the request for reconsideration.

BACKGROUND

The agency elected to procure the requirement under the SBA's 8(a) small disadvantaged business contracting program.¹ To that end, the agency's Office of

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts through subcontracts with socially and economically disadvantaged small business concerns.

Small and Disadvantaged Business Utilization (OSDBU) identified three 8(a) small business concerns, including Echelon, that could perform the requirement. Req. for Dismissal at 1. Minburn--the incumbent on the current Microsoft requirement--was not among those identified firms. *Id.*

Subsequently, the agency requested quotations from the three identified 8(a) firms and determined that two of them were not eligible for award, as they were not registered for the North American Industry Classification code used for the requirement. *Id.* at 2. Echelon was the only firm with a valid registration. *Id.*

On September 14, 2023, the agency submitted an 8(a) direct award offer letter request to the SBA, for a sole-source award to Echelon. *Id.*; see Federal Acquisition Regulation (FAR) 19.804-3. On September 20, the SBA notified the agency it would conduct an adverse impact analysis for the incumbent Minburn, in accordance with 13 C.F.R. § 124.504(c).² Req. for Dismissal at 2.

Notwithstanding the direct award request, on September 21, as an alternative procurement strategy for the requirement,³ the agency issued request for quotations (RFQ) No. 1661400 on an unrestricted basis via the General Services Administration's e-Buy system. *Id.* Subsequently, Minburn submitted its quotation in response to the RFQ. Protest at 2.

While the agency awaited the SBA's approval, the Treasury OSDBU advised that it concurred with the agency's determination that an adverse impact analysis was not necessary, and recommended the agency proceed with the sole-source award. Req. for Dismissal at 2. Ultimately, on September 25, the agency awarded the sole-source contract to Echelon. *Id.*

On September 26, the agency cancelled the RFQ. Protest at 1. On September 28, the SBA issued its acceptance letter. Req. for Dismissal at 2.

On September 29, Minburn filed its protest with our Office challenging the agency's sole-source award to Echelon. Specifically, the protester alleged that the agency awarded the contract at a price exceeding the fair market price, in violation of FAR sections 19.806(b) and 19.807(b). Protest at 3-5.

² The agency maintains that the protester had five days to respond to the SBA's adverse impact analysis but, "[u]pon information and belief," did not provide a response. Req. for Dismissal at 2. The SBA acceptance letter does not reference any adverse impact information provided by Minburn. Req. for Dismissal, exh. C, SBA Acceptance Letter.

³ The agency explains that the RFQ was issued in case the SBA found an adverse impact to Minburn, which "might [have] affect[ed] contract award processing" to Echelon. Req. for Dismissal at 2.

The agency asked our Office to dismiss the protest, arguing that Minburn was not an interested party to maintain its protest because the firm was not a small business and as such, the protester would not be able to compete for the requirement even if its protest was sustained. Req. for Dismissal at 3. The agency also maintained that Minburn's quoted price in response to the RFQ did not include "true-up costs" and additional supplies, hence, its quotation was "largely nonresponsive even in the event the matter had not been set aside for small business." *Id.* The agency further noted that the "contracting officer's estimate of fair market value for the actual contract requirements, including the true-up costs and supplies omitted by protester, was . . . significantly higher than Minburn's basic offering." *Id.*

We agreed with the agency and, on October 10, dismissed Minburn's protest. *Minburn Tech. Grp., LLC, supra* at 1. Our Office found that the protester failed to provide a valid factual basis to challenge the agency's assessment of the fair market price, and "outside of such a violation of regulation our Office generally has no jurisdiction to review the SBA's stewardship of the section 8(a) program." *Id.*

We specifically noted that Minburn's opposition to the dismissal request did not address the agency's contention that the protester's "benchmark" price, submitted in response to the RFQ, omitted material elements of the requirement, *i.e.*, "true-up costs" and additional supplies. *Id.* at 2. Our Office then concluded that because the protest failed to provide a valid factual basis to challenge the fair market price assessment, the protest did not state a valid contention that Treasury had violated law or regulation or engaged in bad faith or fraud. *Id.* As a result, we dismissed the protester's challenge to Treasury's decision to proceed with an award to Echelon under the SBA's 8(a) program as being outside of our jurisdiction. *Id.*

On October 18, Minburn filed this request for reconsideration of our decision.

DISCUSSION

The crux of the request for reconsideration is that our prior decision improperly concluded that Minburn's protest failed to provide a valid factual basis to challenge the agency's fair market price determination for the sole-source requirement. Req. for Recon. at 5-6. Specifically, Minburn faults our Office's reliance on the agency's unsupported arguments to dismiss its protest. Minburn notes that the agency's dismissal request asserted that Minburn's price did not provide a valid benchmark to assess the fair market price for the sole-source requirements because the price lacked items that were included in the price for the sole-source contract, *i.e.*, "true-up costs" and additional supplies. *Id.* at 5. Minburn now contends that the agency's assertions about the items missing from its quoted price, but included in the sole-source requirement, were unsupported. Because its own arguments and evidence remained uncontradicted, Minburn argues that our Office improperly disregarded Minburn's allegation that Echelon's price exceeded the fair market price. *Id.* (*citing* 4 C.F.R. § 21.1(c)(4) and (f) which "contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the

protester will prevail in its claim of improper agency action.”). Accordingly, Minburn argues our decision was based on an error of law. *Id.* at 2, 5-6.

Under our 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). We will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contains a material error of law or facts. *AeroSage, LLC--Recon.*, B-417529.3, Oct. 4, 2019, 2019 CPD ¶ 351 at 2 n.2; *Department of Justice; Hope Village, Inc.--Recon.*, B-414342.5, B-414342.6, May 21, 2019, 2019 CPD ¶ 195 at 4. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Moreover, a party’s assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest fails to satisfy the standard for granting reconsideration. *AeroSage, LLC--Recon.*, B-419113.6, B-419113.7, Mar. 15, 2021, 2021 CPD ¶ 120 at 4.

For the reasons that follow, we deny the reconsideration request.

The requester asserts that the agency failed to provide any documentary support to demonstrate that the sole-source requirement included additional items not included in Minburn’s price. The requester contends that the agency instead relied on “legal argument presented by [a]gency counsel” to assert that the Echelon contract contained such additional items. Req. for Recon. at 5. Minburn also argues that the agency failed to assign any value to the additional scope items or explain why that meant Echelon’s price was not comparable to Minburn’s. *Id.* However, Minburn had an opportunity to raise these points in the underlying protest yet failed to do so. In fact, Minburn’s opposition to the agency’s dismissal request did not attempt to rebut, or in any way address the difference in scope between the requirements, despite Minburn’s argument about Echelon’s price exceeding the fair market price being at the core of the underlying protest.

To provide a basis for reconsideration, additional information not previously considered must have been unavailable to the requesting party when the initial protest was being considered. *Department of Commerce--Recon.*, B-417084.2, Mar. 21, 2019, 2019 CPD ¶ 112 at 2. Failure to make all arguments or submit all information available during 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--and cannot justify reconsideration of our prior decision. *Department of Veterans Affairs--Recon.*, B-405771.2, Feb. 15, 2012, 2012 CPD ¶ 73 at 4. We have repeatedly warned that parties that withhold or fail to submit all relevant evidence, information, or analyses for our consideration do so at their own peril. *Department of the Army--Recon. & Clarification of Remedy*, B-419150.2, Mar. 30, 2021, 2021 CPD ¶ 133 at 4.

Minburn's newly presented arguments supporting its challenge were available to Minburn during the initial protest. While Minburn contends that the agency's scope representations lacked sufficient detail for Minburn to respond to, this alleged lack of detail could also have been raised by the protester in response to the dismissal request. Accordingly, these arguments--offered for the first time in the request for reconsideration--do not provide a basis on which to grant a request for reconsideration.

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel