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Decision

Matter of: Think Tank, Inc.

File: B-423427.2

Date: July 25, 2025

Wanda Sanchez Day, Esq., Wanda Sanchez Day Attorney At Law, for the requester.
Jillian Stern, Esq., Department of Commerce, for the agency.
Michael P. Price, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Request for reconsideration of our decision dismissing underlying protest for protester's failure to timely file comments is denied where the requester does not demonstrate our decision contained a material error of fact or law and otherwise does not present new information not previously considered by our Office that would warrant reversing the decision.

DECISION

Think Tank, Inc., of Silver Spring, Maryland, requests reconsideration of our decision dismissing its protest concerning request for quotations No. 1305M425Q0029, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for information technology support services. Think Tank's protest challenged various aspects of the agency's evaluation of Think Tank's and the awardee's quotations. We dismissed the protest because Think Tank failed to file comments on the agency report within the time period required by our Bid Protest Regulations, 4 C.F.R. § 21.3(i).

We deny the request for reconsideration in part and dismiss it in part.

Think Tank filed its protest with our Office on March 29, 2025. *Think Tank, Inc.*, B-423427, May 23, 2025 (unpublished decision). At the time it filed its protest, Think Tank was not represented by counsel; however, the record demonstrates that our Office subsequently issued a protective order, and the protester retained counsel who was admitted to the protective order on April 18. *Id.*; Electronic Protest Docketing System (EPDS) (Dkt.) Nos. 12, 21.

In accordance with our regulations and as conveyed in our April 1 acknowledgment letter to the parties, NOAA was required to submit an agency report no later than April 30. 4 C.F.R. § 21.3(c). The agency timely filed its report on April 30--protester's counsel, who was admitted to the protective order, thus had access to the complete agency report including exhibits as of this date. Dkt. Nos. 33, 34. Therefore, at that time, protester's comments on the agency report were due 10 days after April 30 absent an extension granted by our Office. 4 C.F.R. § 21.3(i)(1).

After the filing of the agency report, counsel for Think Tank made multiple requests to release outside the protective order certain documents from the agency report. Think Tank's counsel wanted to share these documents with Think Tank's chief executive officer to facilitate the protester's response to the agency's arguments. *Think Tank, Inc.*, *supra* at 2. By May 8, our Office responded to those requests, and, in a posting to EPDS, advised the protester that the deadline for the filing of comments on the agency report was extended to May 16.¹ Dkt. No. 47. This extension gave the protester an additional 8 days to respond to the agency report, for a total of 16 days from the date which the agency report was filed and when protester's counsel first had access to it.²

Think Tank's comments on the agency report were posted to EPDS after 5:30 p.m. Eastern Time on May 16. Dkt. No. 52. Our Office subsequently dismissed Think Tank's protest. *See Think Tank, Inc.*, *supra* at 3. In the decision, we explained that the filing deadlines established by our regulations enable us to comply with the Competition in Contracting Act of 1984 (CICA)'s mandate that we resolve protests expeditiously. *See id.* at 2. In this regard, we explained that in accordance with our regulations, a protester is required to file comments on the agency's report responding to the protest, and that in order to avoid delay in the resolution of protests, a protester's failure to file comments within 10 calendar days "shall" result in dismissal of the protest except where GAO has granted an extension or established a shorter period. *Id.*; 4 C.F.R. § 21.3(i). The decision further explained that our Office "extended the original deadline for the protester's submission of comments from 5:30 p.m. on May 12, to 5:30 p.m. on May 16[.]" and that Think Tank failed to meet that deadline, warranting dismissal of the protest. *Id.* at 3.

In its request for reconsideration, Think Tank alleges various "[e]rror[s] of [f]act" with our underlying decision. Specifically, the requester argues that its "comments were in fact received by [EPDS] prior to the 5:30 p.m. deadline, satisfying the timeliness requirements under GAO's rules." Req. for Recon. at 1. The requester contends that "any subsequent delay was due to the EPDS return of [its] timely submission[.]" *Id.* at 3.

¹ Our Office initially denied the protester's request, however, after further consideration, we granted the request. *See* Dkt. Nos. 35, 36.

² Think Tank requested two additional extensions of the deadline to file comments on the agency report; our Office denied both requests. *See* Dkt. Nos. 48, 49.

The requester also asserts that our Office should reconsider the previous decision on the basis of “[g]ood [c]ause [d]elay,” maintaining that because “the dockets were not available to the protester until May 8, 2025,” it was not properly afforded “the benefit of [CICA’s] 10-day period” in which a protester is required to file comments, because GAO established a deadline of May 16 for the protester to submit comments. *Id.* at 5. Lastly, the requester argues that its initial protest raised several “[m]eritorious [c]laims” that “provide a compelling basis for reversal of the [contract] award.” *Id.*

To obtain reconsideration under our regulations, 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 fact; that is, but for the error, our Office would have likely reached a different conclusion as to the merits of the protest. *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.

Here, Think Tank’s request does not provide a basis for us to reverse our underlying decision dismissing the protest. In this regard, the request does not demonstrate any factual error with our underlying decision. While Think Tank argues that its comments “were in fact received” prior to the 5:30 p.m. deadline established by our Office, the record does not support this contention. *Req. for Recon.* at 1.

Think Tank attempts to justify its late submission by arguing that EPDS rejected its initial filing because of an error in the file name, and that its delay in filing was also the result of a system requirement for the requester to reset its password to access EPDS.³ *Id.* at 3. Neither of these arguments establish that our underlying decision contained a factual error.⁴ Accordingly, this aspect of the request for reconsideration is denied.

³ In support of its argument that its comments “were initially uploaded at approximately 5:28 p.m.,” Think Tank provides a computer screenshot of the properties of its Adobe Acrobat PDF submission showing that the document was “modified” at 5:28 p.m. *Req. for Recon.* at 3, 11. This screenshot does not establish that Think Tank uploaded its comments to EPDS at this time, or any time thereafter for that matter; rather, it merely provides the last time the document was modified.

⁴ Furthermore, our Office verified the EPDS records for the time period when Think Tank was attempting to file its comments, and the records do not identify any problems with EPDS at that time. In fact, the system records provide that Think Tank did not attempt to upload its comments on the agency report until after 5:30 p.m. Eastern Time. The requester itself concedes that it did not attempt to log into EPDS until 5:23 p.m. on the day its comments were due; we have previously explained that a protester’s failure to timely file comments due to “counsel’s imprudent decision to log in to the system only
(continued...)

Think Tank's additional arguments are also without merit or otherwise fail to meet the reconsideration standard required by our Office. The requester argues that because our Office did not permit release of some of the agency report documents outside the protective order until May 8, and then set a deadline for the protester to submit comments of May 16, the protester was not given 10 days to respond to the agency report as required by statute and regulation. Req. for Recon. at 5.

Think Tank's argument is meritless. Protester's counsel had access to the protected versions of the agency report documents when they were filed on April 30; with the revised deadline for receipt of comments of May 16, protester's counsel thus had 16 days to respond to the agency's report.⁵ It does not matter that our Office did not grant permission for Think Tank's counsel to release from the protective order certain agency report documents to Think Tank's chief executive officer until May 8; our Office typically does not permit "single party" release of filings. Think Tank chose to retain counsel to represent it during protest proceedings, and protester's counsel was given more than a sufficient amount of time--16 days--to respond to the arguments contained in the agency report.

Think Tank additionally argues that the meritorious claims associated with its underlying protest provide a basis for reconsideration. As stated above, the underlying protest was dismissed because the protester failed to timely file comments on the agency report, consistent with our regulations. Our decision never reached the question of whether the protester's arguments had merit and resolution of this question is not relevant to our analysis here, which concerns whether our underlying decision contained material errors of fact or law or whether the requester has presented new information not previously considered.⁶ We conclude, as explained above, that our underlying decision did not contain such error. Accordingly, this aspect of the request is dismissed.

The request for reconsideration is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel

(...continued)

a few minutes before the filing deadline" were insufficient grounds to reverse an underlying decision on a request for reconsideration where we also found no problems with EPDS at the time in question. See *Optimo Info. Tech., LLC--Recon.*, B-419956.351, July 24, 2023, 2023 CPD ¶ 178 at 4.

⁵ We also note that our regulations do not impose a requirement that protesters be given 10 days to respond to the agency report in every circumstance, specifically where "GAO has established a shorter period for filing of comments." 4 C.F.R. § 21.3(i)(1).

⁶ In any event, we note that repetition of arguments made in the underlying protest and mere disagreement with our underlying decision do not meet the standard required for our Office to reconsider its previous decision. *Veda, Inc.--Recon.*, *supra*.