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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Department of the Navy--Reconsideration

File: B-405664.3

Date: May 17, 2012

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Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's request to reconsider our decision sustaining a protest is denied where agency's request either reiterates arguments made previously and merely expresses disagreement with the prior decision, or advances new arguments that could have been, but were not, advanced during the initial protest.

DECISION

The Department of the Navy requests reconsideration of our decision BAE Systems Technology Solutions and Services, Inc., B-405664; B-405664.2, Dec. 12, 2011, 2013 CPD ¶ ___, in which we sustained BAE's protest against the award of a contract to L-3 Communications Vertex Aerospace, LLC, under request for proposals (RFP) No. N00019-10-R-0069, issued by the Department of the Navy for contractor logistics support services of certain trainer aircraft at multiple locations. The Navy contends that our earlier decision contains errors of law that warrant reversal of that decision.

We deny the request for reconsideration.

In our initial decision, we found that the agency misevaluated both BAE's and L-3's proposals. With respect to BAE's proposal, we concluded that the agency

improperly failed to give consideration to the experience of BAE's personnel in the area of Naval Aviation Maintenance Program processes when evaluating BAE's proposal under the solicitation's experience evaluation factor. With respect to L-3, we found that the agency failed to consider, in evaluating its proposal under the management and maintenance approach factor, the uncertainty introduced by the terms of a clause in the L-3 proposal relating to the firm's offer of an approach it termed the [DELETED]. We sustained BAE's protest because the record showed that L-3's proposed [DELETED] and BAE's perceived lack of experience were identified as discriminators in the agency's decision to award the contract to L-3 at a cost premium. In its request for reconsideration, the Navy challenges both of our conclusions relating to its evaluation.

To prevail on a request for reconsideration, the requesting party either must show that our decision contains errors of fact or law, or present information not previously considered that warrants the decision's reversal or modification. 4 C.F.R. § 21.14(a) (2011); Department of Veterans Affairs--Reconsideration, B-405771.2, Feb. 15, 2012, 2012 CPD ¶ 73 at 3. A request that reiterates arguments made previously and merely expresses disagreement with the prior decision does not meet the standard for granting reconsideration. Id. at 4. Additionally, a party's assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest also does not meet the standard for granting reconsideration; a party's failure to make all arguments or submit all information available 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. Id. We have reviewed the Navy's request and conclude that it does not provide a basis for us to reconsider our earlier decision.

With respect to the agency's evaluation of the BAE proposal under the solicitation's experience factor, the Navy essentially reiterates an argument made during the initial protest, namely, that the RFP contemplated evaluation of experience at the corporate level rather than at the personnel level. The Navy maintains that, because the RFP did not contemplate the evaluation of experience at the personnel level, it would have been inappropriate for it to have considered the experience of BAE's personnel as opposed to its corporate or organizational level experience. This is no more than a restatement of the same argument that we considered--and rejected--during our original consideration of the protest. Agency Supplemental Report at 16-18. The Navy's repetition of this argument does not provide a basis for our Office to reconsider our earlier decision.

The Navy also asserts that our decision effectively requires it to evaluate proposals using an unstated evaluation factor--personnel experience--that was not expressly included in the solicitation. The Navy maintains that this will result in the disparate treatment of the offerors because they were not all afforded an opportunity to provide personnel experience information. In a related assertion, the Navy

maintains that our recommendation that the agency evaluate BAE's (and, presumably, the other offerors') personnel experience effectively substitutes our judgment for that of the agency on the question of what evaluation criteria to use in its acquisition.

These contentions were not raised during the original protest, and the agency has not explained why it could not, or did not, raise these arguments earlier. The Navy's raising these arguments for the first time in its reconsideration request cannot provide a basis for us to reconsider our earlier decision. Department of Veterans Affairs--Reconsideration, supra. at 4. Moreover, inasmuch as our previous decision recommended that the agency reopen discussions with the offerors, any possible disparate treatment of the offerors stemming from this issue may be avoided by the agency affording all offerors an express opportunity to present personnel experience information.

With respect to the evaluation of the L-3 [DELETED] clause included in L-3's proposal, as noted in our earlier decision, the record showed that the Navy failed to consider the risk introduced by the clause. Specifically, the record showed that the clause appeared to permit L-3 unilaterally to determine when the [DELETED] objective had been accomplished and, therefore, how much effort would be required from the awardee. BAE Systems Technology Solutions and Services, Inc., supra., at 7-8.

In its request for reconsideration, the Navy asserts that we did not consider the fact that L-3's proposal was comprised of several submissions relating to the [DELETED], one of which did not include the language that appeared to permit L-3 unilaterally to determine when the [DELETED] objective had been accomplished. According to the Navy, the several submissions were complementary in nature, and effectively bound L-3. The Navy also asserts that our decision ignored the interrelationship of the [DELETED] clause and another clause incorporated into the contract relating to the payment of performance incentives.

As with the Navy's new arguments relating to the evaluation of the BAE proposal discussed above, these contentions were never raised by the Navy during the initial protest, and the Navy has offered no explanation regarding why it was not able to make these arguments earlier. As such, these assertions cannot provide a basis for our Office to reconsider our earlier decision. Department of Veterans Affairs--Reconsideration, supra. at 4.

The Navy also argues that the enforcement of the [DELETED] clause is a matter of contract administration that is beyond our jurisdiction, and that our earlier decision failed to consider the [DELETED] clause in its entirety, specifically the second paragraph of the clause. These arguments were previously raised by the Navy and considered by our Office. Supplemental Agency Report at 1-6. The Navy's

repetition of these contentions does not provide a basis for our Office to reconsider our earlier decision.

The request for reconsideration is denied.

Lynn H. Gibson
General Counsel