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Decision

Matter of: Global Integrated Security (USA) Inc.--Reconsideration

File: B-408916.6

Date: September 30, 2015

David S. Black, Esq., Holland & Knight LLP, for the protester.
Dennis J. Gallagher, Esq., Department of State, for the agency.
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration alleging that prior decision mischaracterized protest allegations or misrepresented the agency's evaluation is denied where the protester's arguments are not supported by the record, repeat arguments previously raised, or do not show an error of fact or law in the decision.

DECISION

Global Integrated Security (USA) Inc. (Global) asks that we reconsider our decision in Global Integrated Security (USA) Inc., B-408916.3 et al., Dec. 18, 2014, 2014 CPD ¶ 375, in which we denied its protest of the issuance of a task order to Triple Canopy, Inc. by the Department of State for security, logistical, and support services in Basrah, Iraq, under task order request for proposals (TORFP) No. 2013-0012. Global argues that our decision contains several errors of fact and law and that our Office did not consider information in the record that warrants reversal of the decision.

We deny the request for reconsideration.

BACKGROUND

The TORFP was issued on April 15, 2013, pursuant to Federal Acquisition Regulation (FAR) Subpart 16.5, to firms that had been awarded the Worldwide Protective Services (WPS) indefinite-delivery, indefinite-quantity contracts. Award was to be made to the offeror whose proposal was found to provide the best value to the government, based upon price and three non-price factors: past performance, transition plan, and technical approach. The TORFP specified that

the non-price evaluation factors, when combined, would be considered significantly more important than price in determining best value.

The services required under this TORFP were provided by Global under a task order it was awarded on March 11, 2011 (hereinafter “the predecessor task order”). Although option periods remained on the predecessor task order, the agency declined to exercise these options because of numerous concerns regarding Global’s performance.

The agency received and evaluated six timely proposals. Global, which was excluded from the competitive range, protested the initial award to Triple Canopy. In response to the protest, the agency took corrective action that included placing Global’s proposal in the competitive range.¹ The agency held discussions and received final proposal revisions from Global, Triple Canopy, and another competitive range offeror. The source selection authority again determined that Triple Canopy’s proposal, which was rated more highly than Global’s under the past performance and transition plan factors, represented the best value to the government notwithstanding its higher price. Global again protested the issuance of the task order to Triple Canopy, challenging the past performance evaluation of its own and Triple Canopy’s proposals, the evaluation of Triple Canopy’s transition plan, and the source selection decision. Global also argued that two members of the Technical Evaluation Panel (TEP) had an improper conflict of interest (OCI) due to their earlier involvement in a decision not to exercise an available option on Global’s predecessor task order.

On October 30, 2014, our Office dismissed Global’s OCI argument for failure to state a valid ground of protest, in accordance with 4 C.F.R. § 21.5(f). On December 18, 2014, we denied the remaining issues in Global’s protest, finding the agency’s evaluation was reasonable. This decision also expanded on the earlier dismissal of the OCI issue.

In its request for reconsideration, Global argues that our Office made several errors of facts and law with regard to two weaknesses assigned to the protester’s proposal under past performance, the agency’s evaluation of Triple Canopy’s past performance, and the evaluators’ alleged conflict of interest.²

¹ Based on the corrective action, our Office dismissed the protest as academic. Global Integrated Security (USA) Inc., B-408916, Oct. 21, 2013.

² We have considered all of these arguments and find that none meets our standard for reconsideration. We limit our discussion here to representative examples.

DISCUSSION

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. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Global's arguments essentially repeat arguments raised during the protest, disagree with our conclusions, and fail to demonstrate error in our decision. For example, our December 18, 2014 decision concluded that the agency's evaluation of Triple Canopy's past performance was not unreasonable. In its request for reconsideration, Global argues that our Office erred in "allowing an undeniable mistake in the Agency's evaluation of [Triple Canopy's] past performance to pass." In support of this assertion, Global repeats the arguments that it made previously, expressing its disagreement with the TEP's conclusion that certain False Claims Act allegations lodged against Triple Canopy (but subsequently dismissed) did not constitute adverse past performance information. While our decision did not directly address the issue, our Office considered it, along with many other facts and arguments submitted by the parties, in concluding that Global had not shown the agency's past performance assessment was unreasonable. See Global Integrated Security (USA) Inc., B-408916.3 et al., supra, at 7-10. The protester's repetition of this argument, and speculation that our Office simply "allowed it to pass" does not meet our standard for reconsideration.

Similarly, Global claims our Office erred in accepting a post-protest explanation by the agency concerning whether it had considered Triple Canopy's performance in 2010 of a Baghdad Embassy Security Force (BESF) contract in its evaluation. Global alleges factual error in our Office's conclusion that the agency's post-protest explanation was consistent with the evaluation record, and therefore could be given appropriate weight in our consideration of this issue. However, the facts that Global relies on in its request for reconsideration were all previously raised and considered in our decision.

Global also asserts that our Office mischaracterized or misstated the agency's evaluation or Global's protest arguments in a variety of ways; these assertions are not supported by the record. For example, Global argues that our Office misstated the agency's evaluation with regard to a weakness the agency assessed for Global's performance under the predecessor task order, regarding Global's inability to effectively manage its explosive detection dog (EDD) subcontractor. In this regard, Global argues that the weakness "was based explicitly on the TEP's allegation that 'Global dramatically failed to follow through in implementing corrective action' after a dog died from ingesting a tennis ball," and insists that it

was not assessed, “as GAO mistakenly found, on the mere fact that the dogs sustained injuries, but rather on the alleged failure to implement corrective action.” Recon. Request at 10.

It is Global’s characterization of how this issue was addressed in our decision that is inaccurate. Our decision, in fact, describes this issue by quoting Global’s own statement concerning the protester’s failure to follow through in implementing corrective action, as quoted from Global’s reconsideration argument, above. Global Integrated Security (USA) Inc., B-408916.3 et al., supra, at 6. Global’s protest arguments in this regard described the agency’s issuance of a cure notice and a deficiency notice that Global believes it had effectively rebutted, and Global’s insistence that the TEP had ignored Global’s response to these notices. The agency responded in its report that it had considered these responses, but had not found them persuasive. In our decision, our conclusion that the agency’s assessment of a weakness in this area was reasonable reflects our consideration of all of the underlying facts in the record, which were undisputed, and Global’s failure to show that the agency’s evaluation judgment was unreasonable. The protester’s characterization of the basis of our decision and its repetition of its earlier arguments do not meet our standard for reconsideration.

Similarly, Global disagrees with our decision’s characterization of the role of two agency employees who had participated in the decision to not exercise an available option under Global’s predecessor task order. Global alleged in its protest that these employees’ participation in that determination created an impermissible conflict of interest that should have precluded their later appointment to the TEP and participation in the evaluation of proposals under the new competition. We referred to their earlier participation as “administration of the predecessor task order.” Global argues that this mischaracterized its protest basis, and that we failed to address Global’s actual protest ground. Our decision concluded that Global had not demonstrated how the evaluators’ involvement in the determination not to exercise Global’s option--i.e., their participation in the administration of the predecessor contract--constituted an impermissible conflict of interest.³ While Global would prefer to describe the evaluators’ participation as a decision to

³ It is beyond dispute that a decision as to whether an option on a contract is to be exercised (or not) is a matter of contract administration. Indeed, because it involves contract administration, our Office will not consider an incumbent’s objection to an agency’s decision not to exercise an option. See, e.g., Jones, Russotto & Walker, B-283288, Dec. 17, 1999, 99-2 CPD ¶ 111 at 4.

“remove [Global] from the predecessor task order,” this description simply does not show error in our decision.

The request for reconsideration is denied.

Susan A. Poling
General Counsel