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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Aljucar, Anvil-Incus & Company--Reconsideration

File: B-408936.9

Date: September 5, 2014

Rudy Sutherland, Aljucar, Anvil-Incus & Company, for the protester.
John E. Cornell, Esq., General Services Administration, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is dismissed where protester repeats arguments previously made, and expresses disagreement with our previous decision dismissing its protest as untimely; post-award challenge to terms of solicitation properly was dismissed as untimely under our Bid Protest Regulations, which require protests challenging terms of solicitation to be raised before the deadline for submitting offers.

DECISION

Aljucar, Anvil-Incus & Company (AAI), of Washington, D.C., requests reconsideration of our decision in Aljucar, Anvil-Incus & Co., B-408936.3, June 3, 2014, in which we dismissed its protest challenging the award of multiple indefinite-delivery/indefinite-quantity contracts by the General Services Administration (GSA) under request for proposals (RFP) No. GS00Q-13-DR-0001,¹ for the agency's One Acquisition Solution for Integrated Services (OASIS) contracting program.

We dismiss the request for reconsideration.

¹ GSA issued two solicitations: RFP No. GS00Q-13-DR-0002, restricted to small business concerns, and RFP No. GS00Q-13-DR-0001, which was unrestricted.

BACKGROUND

This request for reconsideration is AAI's fourth attempt to challenge GSA's OASIS procurement. A history of this dispute is set forth below.

On August 8, 2013, AAI filed an agency-level protest with GSA challenging the evaluation criteria included in the solicitation for OASIS. After GSA denied its agency-level protest, AAI protested the terms of the solicitation to our Office in a September 21 filing. In its protest to GAO, AAI argued that the RFP was unduly restrictive of competition because its experience evaluation criterion required offerors proposing as a joint venture to demonstrate relevant experience for the joint venture itself--the agency would not consider the experience of the individual business entities forming the joint venture. On January 2, 2014, our Office denied AAI's protest, concluding that the solicitation's evaluation scheme was reasonably necessary to meet the agency's needs. Aljucar, Anvil-Incus & Co., B-408936, Jan. 2, 2014, 2014 CPD ¶ 19 at 4-5. We also denied a subsequent request for reconsideration filed by AAI, concluding that the request did not state a valid basis for reconsideration because it reiterated arguments from AAI's initial protest and raised new untimely arguments. Aljucar, Anvil-Incus & Co.--Recon., B-408936.2, Mar. 20, 2014, 2014 CPD ¶ 102 at 1-2.

On May 19, GSA announced the OASIS awardees for the unrestricted portion of the procurement at issue here. Eight days later, on May 27, AAI filed a protest with our Office, alleging that defects in the solicitation prevented the firm from participating in the competition. Specifically, AAI repeated the arguments from its prior protest and request for reconsideration, *i.e.*, that GSA's evaluation scheme should have allowed for consideration of individual joint venture members' experience. AAI also argued for the first time that the solicitation was defective because GSA should have conducted a "Negative Impact Assessment" and a cost-benefit analysis to address the requirements of 15 U.S.C. § 657q(c)(1) before it consolidated the requirements set forth under the OASIS solicitation.²

On June 3, we dismissed AAI's post-award challenge to the terms of the OASIS solicitation as untimely. Our decision explained that the bulk of AAI's protest was premised on its contention that the solicitation's experience evaluation scheme was improper, which was precisely the matter previously considered, and rejected, by this Office in our decision resolving AAI's initial protest and subsequent request for reconsideration. We further explained that AAI's new arguments could not be raised after the OASIS awards were made.

² This argument refers to the Small Business Jobs Act, Pub. L. No. 111-240, 124 Stat. 2504 (2010) (codified at 15 U.S.C. § 657q). As our decision dismissing AAI's protest noted, the protest incorrectly cited the pertinent statutory provision; 15 U.S.C. § 657q(c)(1) is the correct provision.

This reconsideration request followed.

DISCUSSION

In its request for reconsideration, AAI disagrees with our conclusion that its protest challenging the terms of the OASIS solicitation was untimely. In support of its position, AAI cites to passages from its original, pre-closing, protest to our Office. AAI's primary argument seems to be that its protest should be found timely because the protest was filed within 10 days of AAI learning of the Small Business Administration's (SBA) legal position--taken in a brief filed in response to another entity's bid protest of another solicitation--about the meaning of certain newly-enacted requirements of the Small Business Act.

As set forth below, we disagree with AAI's apparent view that a challenge to the terms of a solicitation filed after award can be rendered timely because AAI only recently learned of views taken by SBA's Office of General Counsel in another protest. While AAI may have only recently learned of SBA's concerns regarding the OASIS solicitation, the time for filing its protest accrued when the agency issued the solicitation, not when AAI became aware of SBA's concerns.

Under our Bid Protest Regulations, we will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration. Bid Protest Regulations, 4 C.F.R. § 21.14(c) (2014). To obtain reconsideration, the requesting party must show either that our prior decision contains an error of fact or law, or present information not previously considered, that warrants the decision's reversal or modification. *Id.* at § 21.14(a); Waterfront Techs., Inc.--Recon., B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. A request for reconsideration that reiterates arguments made previously and merely expresses disagreement with the prior decision does not meet the standard for granting reconsideration. Gordon R.A. Fishman--Recon., B-257634.4, Sept. 9, 1996, 96-2 CPD ¶ 110 at 2-3. Here, we conclude that AAI has not provided a valid basis for reconsideration.

The SBA's legal position relied on by AAI was submitted to our Office in connection with a series of protests resolved in American Toner & Ink; KPaul Props., LLC; Dolphin Blue, Inc.; Capital Shredder Corp., B-409528.7 *et al.*, June 9, 2014, 2014 CPD ¶ 161. The protesters, all small businesses, argued that the solicitation at issue there consolidated numerous existing contracts for office supply items into a smaller pool of multiple-award contracts, and that the agency failed to comply with a statutory requirement of the Small Business Act--set forth in section 657q--to consider the consolidation's potential economic effect on small businesses. As discussed further in the above decision, section 657q requires agencies to consider the effect on small businesses of the consolidation of agency contract requirements over \$2 million. During the course of the protests, the SBA argued that the contracting agency was required to perform "some type of data analysis" of the

potential impact of the procurement on the federal government's small business suppliers and did not do so. Id. at 9. Our Office denied the protests and concluded that the agency met the Small Business Jobs Act requirements.

As we explained in our decision dismissing AAI's protest, the legal requirements of section 657q of the Small Business Act existed prior to the issuance of the OASIS solicitation. Because the meaning and requirements of 15 U.S.C. § 657q(a)(2)(A) were fixed when the statute was enacted, any failure of the solicitation to comply with these provisions should have been readily apparent to AAI at the time the solicitation was issued, just as the matter was apparent to the other small business protesters, which timely raised this issue to our Office.

Having failed to raise the solicitation concern when it should have been apparent to AAI, the challenge was properly dismissed as untimely. In this regard, our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1).

In its request for reconsideration, AAI also argues that its allegation is timely because its original, pre-closing, protest challenged GSA's allegedly improper bundling of contract requirements. See Request (June 3, 2014) at 2. AAI is wrong about this as well.³

First, the passage cited by AAI does not appear in its pre-closing protest but, rather, in an attachment labeled as AAI's comments in response to the contracting officer's declaration made in connection with the firm's agency-level protest. AAI Protest of Sept. 21, 2013, attach. 1. If AAI wanted our Office to consider this issue as a basis of protest, it was required to directly state as much in its protest document, and not in an attachment concerning a different legal proceeding. John J. Moss--Recon., B-201753.2, May 26, 1981, 81-1 CPD ¶ 409 at 4.

Second, and more importantly, even if the cited passage could have been construed as a protest allegation in AAI's original, pre-closing, protest, its inclusion with the original protest would not make AAI's post-award challenge of the same issue, timely--the latter was still filed after the solicitation's closing date and was,

³ To the extent AAI also contends that its initial protest raised this issue in the protest itself, the general references to "the policies of the Small Business Act," and to "Small Business Act analysis" did not specifically raise the issue of GSA's obligations under the provisions of the Small Business Jobs Act cited by the protester in its post award challenge. See Request (June 3, 2014) at 1, citing Protest (Sept. 21, 2013) at 9, 11.

therefore, untimely on its face.⁴ 4 C.F.R. § 21.2(a)(1). Fundamentally, AAI had a full and fair opportunity to pursue this protest allegation during its initial protest and its subsequent request for reconsideration, both of which were denied by our Office. The firm cannot now seek to forestall contract awards or otherwise delay the procurement through the untimely resubmission of its earlier, pre-closing, protest allegation. See Southwest Eng'g Associates; Gutierrez-Palmenberg, Inc., B-276465.6, B-276465.7, July 28, 1997, 97-2 CPD ¶ 31 at 2-3.

The request for reconsideration is dismissed.⁵

Susan A. Poling
General Counsel

⁴ Moreover, to the extent AAI believes its initial protest raised the issue of the Small Business Jobs Act, and our January 2, 2014, decision did not address this issue, the protester failed to seek timely reconsideration of this matter.

⁵ Since our decision properly dismissed AAI's protest as untimely, we need not reach the firm's contentions--in response to a footnote in our decision--that it had standing to bring the protest.