



GAO

Accountability \* Integrity \* Reliability

Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Goldbelt Glacier Health Services, LLC--Reconsideration

**File:** B-410378.3

**Date:** February 6, 2015

---

Robert K. Tompkins, Esq., Megan M. Jeschke, Esq., Elizabeth M. Gill, Esq., and Elizabeth N. Jochum, Esq., Holland & Knight, LLP, for the protester.  
Kyle E. Chadwick, Esq., and Scott N. Flesch, Esq., Department of the Army, for the agency.  
Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Request for reconsideration of a prior decision dismissing a protest concerning the issuance of a task order under an indefinite-delivery, indefinite-quantity contract is denied, where the protester does not show that the prior decision contains errors of fact or law that warrant reversal or modification of the decision.

---

### DECISION

Goldbelt Glacier Health Services, LLC, of Alexandria, Virginia, requests reconsideration of our decision in Goldbelt Glacier Health Servs., LLC, B-410378, B-410378.2, Sept. 25, 2014, 2014 CPD ¶ 281, in which we dismissed Goldbelt's protest of the Department of the Army's issuance of a task order to National Sourcing, Inc. (NSI), of Tampa, Florida, pursuant to task order request No. 0002-05 for psychological health services. Goldbelt asserts that our Office erred in finding that the value of the awarded task order was not in excess of \$10,000,000, and that our Office therefore did not have jurisdiction to hear the protest under the terms of the Federal Acquisition Streamlining Act, as amended by the National Defense Authorization Act of Fiscal Year 2012 (FASA).

We deny the request for reconsideration.

### BACKGROUND

The Army awarded the task order to NSI in the amount of \$9,620,556.42, inclusive of three fixed-price contract line item numbers (CLIN) and a maximum of \$500,000

in travel costs under the single cost-type CLIN. Goldbelt Glacier Health Servs., LLC, supra, at 2. Goldbelt, the incumbent, protested the award arguing, among other grounds, that the agency had failed to conduct a proper price realism evaluation of NSI's proposed price. See Protest (Sept. 12, 2014) at 3, 14-16. The agency requested that we dismiss the protest because, pursuant to FASA, a protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for "a protest of an order valued in excess of \$10,000,000," or where the protest alleges that the order exceeds the scope, term, or maximum value of the underlying task or delivery order contract. 10 U.S.C. § 2304c(e)(1).

Although the total amount of the order as awarded by the Army to NSI was \$9.6 million, Goldbelt's protest asserted that FASA's jurisdictional threshold of \$10 million was nonetheless satisfied because the protester challenged the agency's price realism evaluation of NSI's proposal. Specifically, the protester argued that, based on Goldbelt's proposed price of \$11,431,544 and its prior experience as the incumbent, the agency should have considered the actual value of the task order to have been in excess of \$10 million. See, e.g., Protest at 2; Protester's Response to Agency's Request for Dismissal (Sept. 18, 2014) at 2-3. Based on these arguments, Goldbelt argued that our Office should adjudicate the merits of its price realism protest before determining the "value" of the order for jurisdictional purposes. Protester's Response to Agency's Request for Dismissal (Sept. 18, 2014) at 5.

Our Office dismissed the protest, finding that "where an order has in fact been issued by the government, we view the jurisdictional limit to turn on the value of the disputed order, which is reflected in the terms of the order itself since the order defines the scope and terms of the contractual commitment between the selected contractor and the government." Goldbelt Glacier Health Servs., LLC, supra, at 2. As we explained, the focus of our inquiry is:

[O]n the total anticipated funds (or other economic value) to be received as compensation for the goods and services to be provided under the order as reflected in the contractual agreement between the government and contractor, not the value of the work separate and apart from the terms of the underlying contractual agreement, or the value of a different order issued to a different firm.

Id. at 3.

#### REQUEST FOR RECONSIDERATION

Goldbelt contends that our Office's prior decision contains two material errors of law and an "apparent" factual error. We find that none of the protester's alleged errors provides a basis for reconsideration of our decision.

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) (2014). 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. Furthermore, we have held that information not previously considered means information that was not available when the initial protest was filed. Norfolk Dredging Co.--Recon., B-236259.2, Oct. 31, 1989, 89-2 CPD ¶ 405.

First, Goldbelt argues that our prior decision did not consider its protest grounds and interrelated jurisdictional arguments that had the Navy conducted a proper price realism analysis, NSI's proposal should have been rejected as unrealistically low, and therefore "the true value of the task order was the \$11.[4] million price as proposed by [Goldbelt]." Request for Reconsideration (Oct. 6, 2014) at 1-2. Goldbelt argues that dismissal of its protest was improper because "GAO cannot properly reach the question of whether it has jurisdiction until it resolves the disputed question of the real value of the task order in question." Id. at 2.

As a threshold matter, most, if not all, of the arguments raised in the request for reconsideration mirror the arguments that were previously raised and considered by our Office in the earlier protest. As addressed above, Goldbelt was previously afforded a full opportunity to present these arguments. The same arguments raised again fail to state an adequate basis for reconsideration of our decision.

In any event, we reject Goldbelt's argument that our Office was required to adjudicate the merits of its price realism protest allegations in order to determine the "value" of the order for jurisdictional purposes because it would effectively require our Office to resolve the merits of the protest before addressing the antecedent question of whether we have jurisdiction. For the reasons discussed below, we find that this argument would improperly make jurisdiction dependent on the outcome of the substantive merits of the protest.

In support of its argument, Goldbelt cites our decision in Assisted Housing Servs. Corp. et al., B-406738 et al., Aug. 15, 2012, 2012 CPD ¶ 236, in which we answered a mixed question of jurisdiction and merits. See Request for Reconsideration at 2.<sup>1</sup> We find that the protester's arguments concerning Assisted

---

<sup>1</sup> See also CMS Contract Mgmt. Servs. v. Mass. Housing Fin. Agency, 745 F.3d 1379 (Fed. Cir. 2014), petition for cert. filed, (U.S. Jan. 5, 2015) (Nos. 14-781, 14A444).

Housing are misplaced, as our decision there is clearly distinguishable from the circumstances here.

In Assisted Housing, several entities protested the Department of Housing and Urban Development's (HUD) use of a notice of funding availability (NOFA) that would result in the issuance of cooperative agreements for the administration of Project-Based Section 8 Housing Assistance Payment contracts. Assisted Housing Servs. Corp. et al., supra, at 2. The protesters alleged that HUD's use of a NOFA was improper because HUD was seeking contract administration services that were required to be solicited through a procurement instrument that would result in the award of contracts. Id. at 8. The protesters also argued that certain terms of the NOFA were inconsistent with applicable procurement law and otherwise improper. Id. at 14.

As we discussed in Assisted Housing, although our Office does not have jurisdiction to review protests of the award, or protests of solicitations for award, of non-procurement instruments, we do have jurisdiction over a protest challenging whether an agency is improperly using a non-procurement instrument in lieu of a required procurement contract. Assisted Housing Servs. Corp. et al., supra, at 9. Thus, the question as to whether our Office could proceed to the second inquiry regarding the terms of the NOFA, and whether they were in accordance with applicable procurement laws, was dependent on the resolution of the predicate issue of whether the proposed use of non-procurement instruments was appropriate. As we explained, if HUD had appropriately proposed to use non-procurement instruments, our Office would lack jurisdiction over the protesters' challenges to the terms of the NOFA; if, however, the use of a procurement instrument was required, our Office would have jurisdiction over the protests of the terms of the NOFA. Id. at 8-9. Thus, in Assisted Housing, our Office concluded that the predicate issue of whether HUD had properly proposed to utilize non-procurement instruments--a matter over which we unquestionably had jurisdiction--had to be developed and resolved before we could determine whether we had jurisdiction over the protesters' substantive challenges to the terms of the NOFA.

Here, in contrast, there is no predicate matter that must be resolved before ascertaining whether we have jurisdiction over Goldbelt's substantive challenges to the agency's evaluation. Instead, as discussed in our decision dismissing Goldbelt's protest, our inquiry regarding jurisdiction was complete based on our finding that the value of the task order did not exceed \$10 million.

Second, Goldbelt argues that our decision here is "directly at odds" with our decision in ICI Services, Inc., B-409231.2, Apr. 23, 2014, 2014 CPD ¶ 132. Protest at 3. Specifically, Goldbelt argues that our decision here is inconsistent with ICI because that decision allegedly stands for the proposition that our Office will consider the "value" of a task order based on "the existence of proposals (not awards) in excess of \$10 million to establish jurisdiction." See Request for

Reconsideration at 3 (emphasis in original). Goldbelt also contends that our Office in ICI found that we had jurisdiction over a protest “from a party who, but for the protested action, would be awarded a task order below the \$10 million jurisdictional threshold,” but here improperly dismissed a protest from a party “who, but for the protested action, would have been awarded [an order] above the \$10 million threshold.” Id. (emphasis in original).

Our Office, however, has explained that the jurisdictional holding in ICI applies to pre-award protests, and does not apply in post-award protests--as is the case here. See Basic Eng'g Concepts & Techs., Inc., B-409231.3, Oct. 2, 2014, at 4 n.4, recon. denied, B-409231.4, February 6, 2015, 2015 CPD ¶ \_\_.

In ICI, our Office found that we had jurisdiction over ICI's pre-award protest challenging the Navy's rejection of its proposal as late. See ICI Servs., Inc., supra, at 3. Although no party disputed our jurisdiction, we noted that although the protester's proposed task order cost was less than \$10 million, the proposed costs of all the remaining offers exceeded \$10 million. Id. at n.3. Therefore, we found that the procurement was within our protest jurisdiction under FASA because the value of the yet-to-be awarded task order, but for the protest, would have been in excess of \$10 million. Id.

After the issuance of our decision in ICI, the Navy selected ICI's proposal of \$8,428,911.94 for award. Basic Eng'g Concepts & Techs., Inc., supra at 2. Another offeror, Basic Engineering Concepts & Technologies, Inc. (BecTech), protested the award and asserted that FASA's \$10 million jurisdictional threshold was met because, had the agency conducted a proper cost realism analysis of ICI's proposal and addressed other alleged errors, the agency would have found that the value of the awarded order was in excess of \$10 million. Id. at 3. BecTech also asserted that because we exercised jurisdiction over ICI's pre-award protest of the same procurement, we should also exercise jurisdiction over BecTech's post-award protest. Id. at 4 n.4.

As we explained, however, our Office viewed the pre-award and post-award challenges to require different analyses of the value of the task order. With regard to the pre-award challenge, “ICI challenged the elimination of its proposal from a competition in which the agency had not yet issued a task order following its corrective action, and in which each of the proposals remaining in the competition were valued over \$10 million”; for this reason, “any task order that would have been awarded in the absence of the protest would have been valued over \$10 million.” Id. In contrast, where an award has been made, our Office will look to the terms of the award to determine the total anticipated funds to be received by the awardee in order to determine the value of the award. Id. at 3-4.

Here, as in BecTech, the agency has already made an award of less than \$10 million. Thus, even in the absence of the protest, the award is below the FASA

jurisdictional threshold. Further, the value of the task order is determined by the awarded amount of the order, which is below the \$10 million threshold.

Therefore, because the protester has failed to demonstrate that our Office made any prejudicial errors of law in our prior decision, we find no basis for granting reconsideration.

Goldbelt also asserts that our prior decision contains an “apparent error of fact,” specifically that our Office’s decision did not analyze whether the awardee’s \$9.6 million proposed price included the potential six-month option contemplated by the solicitation. Request for Reconsideration at 3-5. Goldbelt, however, points to no new evidence that was not previously available during the prior protest as forming the basis for this argument raised for the first time on reconsideration. Rather, Goldbelt suggests that its argument is based on “further consideration and review.” Id. at 4. This argument is untimely. A party’s failure to make all arguments or submit all information available during the course of the initial protest undermines the goal of our bid protest forum--to produce fair and equitable decisions based on consideration of the parties’ arguments on a fully-developed record--and cannot justify reconsideration of our prior decision. See, e.g., Dept. of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. Therefore, this argument provides no basis for granting reconsideration.

The request for reconsideration is denied.

Susan A. Poling  
General Counsel