



Decision

Matter of: BAE Systems Technology Solutions & Services, Inc.--Reconsideration

File: B-411810.4

Date: December 26, 2017

Michael R. Charness, Esq., David R. Johnson, Esq., and Tyler E. Robinson, Esq., Vinson & Elkins LLP, for the protester.
Wade L. Brown, Esq., Department of the Army, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's request for reconsideration of a prior decision is denied where protester has not shown that the decision contains errors of fact or law that warrant reversal or modification of the decision.

DECISION

BAE Systems Technology Solutions & Services, Inc., of Rockville, Maryland, requests reconsideration of our decision in BAE Systems Technology Solutions & Services, Inc., B-411810.3, June 24, 2016, 2016 CPD ¶ 174, wherein we denied BAE's protest challenging the Department of the Army's award of a contract to Leidos, Inc., of Reston, Virginia, pursuant to request for proposals (RFP) No. W911QY-14-R-0056, for an automated installation entry (AIE) solution at military installations.¹ BAE asserts that our decision contained errors of fact and law that warrant reconsideration.

We deny the reconsideration request.

BACKGROUND

In February 2013, the agency issued RFP No. W911QY-12-R-0041 (hereinafter referred to as the "initial RFP" or RFP-0041) seeking proposals for an AIE solution. At that time,

¹ The procurement at issue here is a follow-on to a contract that was awarded to BAE in 2010.

the firm known as Science Applications International Corporation (hereinafter “Old SAIC”) was one of two firms providing acquisition support for the Army. The initial solicitation provided that the two acquisition support contractors were precluded from competing under the solicitation and required that the contractors’ employees execute nondisclosure agreements.

In September 2013, Old SAIC went through a reorganization during which some of its assets (including those being used to provide acquisition support under RFP-0041) were spun off to create a separate organization that was also called SAIC (hereinafter “New SAIC”); the remaining corporate entity was renamed Leidos, Inc. Following the reorganization, Old SAIC’s acquisition support contract was novated to New SAIC.²

In April 2014, a contract was awarded to L-3 National Security Solutions pursuant to RFP-0041. Thereafter, BAE filed an agency-level protest challenging that award. Upon considering BAE’s protest, the agency determined that there were ambiguities in the initial solicitation that were prejudicial to BAE, as well as other flaws in the source selection process. Based on those concerns, the agency terminated the award to L-3 and cancelled the initial solicitation.

In November 2014, the agency issued RFP No. W911QY-14-R-0056 (hereinafter the “revised RFP” or RFP-0056), substantially changing the terms of the initial solicitation. As with the initial RFP, the revised RFP identified acquisition support contractors, including New SAIC, that were precluded from competing. The revised RFP made no reference to either Old SAIC or Leidos. Based on the changes in the revised solicitation, Leidos concluded that it was permitted to compete for the contract and, accordingly, submitted a proposal.

In July 2015, the agency awarded the contract to Leidos. In August, BAE filed a protest (B-411810) with our Office challenging that award. In that protest, BAE made various arguments, including assertions that the agency had failed to consider personal conflicts of interest (PCI) and organizational conflicts of interest (OCI); improperly evaluated technical proposals; and improperly evaluated the offerors’ proposed prices.³ In August 2015, the agency advised our Office that it would take corrective action to consider BAE’s PCI and OCI allegations. Accordingly, we dismissed BAE’s August 2015 protest.

Thereafter, the contracting officer reviewed the allegations and conducted an investigation regarding potential conflicts of interest. In a report dated October 22, 2015, the contracting officer concluded there were no conflicts of interest that required

² Contract novation is permissible where there is a “transfer of . . . [t]he entire portion of the assets involved in performing the [novated] contract.” Federal Acquisition Regulation (FAR) § 42.1204.

³ BAE’s proposed price was \$69.9 million; Leidos’ proposed price was \$49.9 million.

disqualification of Leidos or cancellation of the award. Agency Report (AR)⁴, Tab 36, OCI Report. Accordingly, the agency affirmed its award to Leidos.

On November 11, 2015, BAE again filed a protest (B-411810.2) with our Office, challenging the agency's renewed award to Leidos, updating its arguments concerning alleged PCIs and OCIs, and renewing its complaint regarding the agency's evaluation of price and technical proposals. In December, the agency advised our Office that it would take corrective action in response to BAE's price evaluation complaints. Accordingly, we dismissed BAE's November 11 protest.

On March 13, 2016, after completing its reevaluation, the agency concluded that Leidos' technical approach, which reflected a more "open" systems architecture, and its substantially lower price, offered the best value to the government. AR, Tab 31, Source Selection Decision Document, at 11. On March 17, BAE filed a protest (B-411810.3) with our Office challenging virtually every aspect of the agency's evaluation and source selection decision, including assertions that Leidos should have been disqualified on the basis of the alleged PCIs and OCIs.

On June 24, we issued our decision, BAE Systems Technologies Solutions & Services, Inc., supra, denying BAE's protest. With regard to BAE's PCI and OCI allegations, we noted that an agency's identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Id. at 7 (citing Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; see Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009)). In this regard, in reviewing protests that challenge an agency's conflict of interest determinations, our Office reviews the reasonableness of the determinations; where an agency has given meaningful consideration to whether a conflict exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's judgment is unreasonable. DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6.

In this context, we considered all of the contracting officer's determinations regarding BAE's PCI and OCI allegations, and found those determinations to be reasonable. Our decision also found no basis to sustain the protest on the basis of BAE's other complaints challenging the agency's evaluation of proposals.

DISCUSSION

In requesting reconsideration, BAE first asserts that our decision failed to accurately describe the relationship between Old SAIC and Leidos. Specifically, BAE complains that our decision failed to recognize that, after Old SAIC spun off various assets to form

⁴ The AR cited herein refers to the report provided by the Army in response to B-411810.3.

New SAIC, the remaining organization was renamed Leidos. In this regard, BAE asserts that it was inaccurate for GAO's decision to refer to Old SAIC and Leidos as separate organizations. In asserting error, BAE refers to the following three statements in our decision.

[I]n September 2013, the firm known as Science International Corp (SAIC) was reorganized into two separate firms, one called SAIC and the other called Leidos, Inc. For purposes of clarity, this decision refers to the original SAIC entity as "Old SAIC," and the two firms that resulted from its reorganization as "New SAIC" and "Leidos."

GAO Decision at 2.

BAE argues that the Army's award to Leidos was improper based on what the protester argues were disqualifying PCIs and OCIs arising from Leidos' relationship with Old SAIC (its predecessor firm) and New SAIC (the second firm that was created at the same time as Leidos as the result of the reorganization of Old SAIC).

Id. at 5.

BAE argues that the award to Leidos was tainted by PCIs and OCIs that arose from the awardee's corporate history and its relationships with Old SAIC and New SAIC.

Id. at 6.

We reject BAE's assertion that our decision failed to reflect an understanding that, after Old SAIC's reorganization--during which various assets (including those that had previously been used to provide acquisition support for the Army under RFP-0041) were spun off to form New SAIC--the remaining organization was renamed Leidos. None of the statements in our decision, quoted above, are inconsistent with that fact.⁵

Next, BAE asserts that, because the organization that existed after the spin-off of New SAIC was renamed Leidos, the contracting officer was required to bar Leidos from the competition without further analysis or consideration of the specific facts involved. We disagree.

As noted above, an agency's identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion.⁶ Guident Techs., Inc., supra; see

⁵ For example, our decision's reference to "two separate firms" refers to the distinction between New SAIC and Leidos--not Old SAIC and Leidos.

⁶ Although BAE complains that the contracting officer conducted much of its PCI and OCI investigation and analysis following submission of BAE's protest, an agency may
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Axiom Res. Mgmt., Inc., 564 F.3d at 1382. In performing the requisite fact-specific inquiry, an agency is required to consider whether potential conflicts have been, or can be, neutralized or mitigated. See FAR § 9.504(a)(2), (e). As noted above, where an agency has given meaningful consideration to potential conflicts, including determinations regarding neutralization and mitigation, we will not substitute our judgment (or that of the protester) for that of the agency, unless the agency's judgment is clearly unreasonable. DV United, LLC, supra.

Here, the contracting officer considered the specific facts associated with this procurement, including: changes to the RFP; the specific activities performed by various personnel; the time periods involved; and the circumstances of the reorganization of Old SAIC. As discussed in our prior decision, we considered the various aspects of the contracting officer's determinations responding to BAE's PCI and OCI allegations and found the determinations to be reasonable and appropriate. Nothing in BAE's reconsideration request demonstrates that our conclusions in this regard were erroneous.

Finally, BAE's reconsideration request includes arguments that are mere repetition of arguments it made in its prior protest submissions. Among other things, BAE asserts that our decision improperly accepted the contracting officer's failure to apply what would be, in effect, a per se rule disqualifying Leidos because Old SAIC provided acquisition assistance under the initial RFP. BAE also complains that we improperly relied on the contracting officer's consideration of changes to the RFP and the passage of time as mitigating factors. In its prior protest submissions, BAE presented, and GAO considered, all of these arguments.

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), (c). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Id.; Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

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provide information and analysis regarding the existence of a conflict of interest at any time during the course of a protest, and we will consider such information in determining whether the agency's determinations are reasonable. See, e.g., McTech Corp., B-406100, B-406100.2, Feb. 8, 2012, 2012 CPD ¶ 97 at 7; Lucent Techs. World Servs. Inc., B-295462, Mar. 2, 2005, 2005 CPD ¶ 55 at 6 n.3; see also Turner Constr. Co., Inc. v. United States, 645 F.3d at 1377, 1386-87 (stating that an agency's post-protest investigation and analysis of an OCI should be considered in the resolution of protests).

Here, BAE's repetition of arguments that it previously made, and which our Office previously considered, does not constitute a basis for reconsidering our decision.⁷

The reconsideration request is denied.

Thomas H. Armstrong
General Counsel

⁷ In a supplemental reconsideration request, BAE states that, after our decision was issued, the agency awarded a bridge contract to BAE that called for BAE to continue providing some of the AIE services. BAE asserts that award of the bridge contract validates BAE's arguments challenging the evaluation of Leidos' technical proposal. The agency responds that, rather than establishing that its evaluation of Leidos' technical proposal was flawed, the extension of BAE's services was made necessary by BAE's multiple protests. BAE's assertions regarding the agency's action to extend the support it receives from BAE does not provide a basis for reconsidering our decision.