



Decision

Matter of: Office Design Group--Reconsideration

File: B-413166.7

Date: March 9, 2017

Joseph A. Whitcomb, Esq., Whitcomb, Selinsky, McAuliffe PC, for the protester.
Maura C. Brown, Esq., Department of Veterans Affairs, for the agency.
Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision denying request that our Office recommend the reimbursement of the protester's costs of filing and pursuing its protest is denied where the requesting party has not shown that our decision contains either errors of fact or law or information not previously considered that warrant reversal or modification of that decision.

DECISION

Office Design Group, Inc. (ODG), of Irvine, California, requests that we reconsider our decision, Office Design Grp., Inc.--Costs, B-413166.6, Nov. 17, 2016, 2016 CPD ¶ 336, in which we denied ODG's request that the Department of Veterans Affairs (VA) reimburse ODG's costs for filing and pursuing its protest of the award of Federal Supply Schedule blanket purchase agreements (BPA) under request for quotations (RFQ) No. VA119-16-Q-0072.

We deny the request for reconsideration.

Our Office denied ODG's request that we recommend reimbursement of its protest costs, because ODG did not show that any of its initial protest grounds were clearly meritorious. Office Design Grp., Inc.--Costs, *supra*, at 3-4. ODG requests that we reconsider that decision because, according to ODG, it "largely ignored the protracted procedural history of this protest" and the "recalcitrance of the VA" in providing sufficient information for ODG to learn why it was not awarded a BPA and to pursue its protest. See Request for Recon. at 1-4. We omit a general discussion of the procurement, which is largely addressed in our prior decision, and limit our discussion of ODG's procedural posture to those issues relevant here.

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). Here, ODG has not shown that our previous decision was based on errors of law or information not considered. Below we address, and deny, ODG's three primary assertions and related arguments, accordingly.

"Brief Explanation"

ODG asserts that our decision ignored the fact that the VA never offered ODG even a brief explanation for why its quotation was not selected for award. Request for Recon. at 1-2. This assertion essentially repeats ODG's continuing objection to the sufficiency of the VA's award explanation or debriefing, which reflects nothing more than disagreement with our earlier decision. Compare id. with Office Design Grp., Inc.--Costs, supra, at 3 (finding "ODG provides no persuasive arguments about the merits, but instead argues that the VA is at fault for failing to provide detailed, specific reasons for rejecting ODG's quotation in either the unsuccessful offeror letter, or in a debriefing."). The repetition of arguments made during our consideration of the original protest (or, in this case, ODG's request for protest costs) and disagreement with our decision do not meet our standard for reversing or modifying the decision. See Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. We deny this aspect of ODG's request for reconsideration accordingly.

Litigation Effort

Next, ODG asserts that our decision did not account for the VA's submission of a request for dismissal and an inadequate agency report, which, according to ODG, required it to expend additional time and expense litigating its protest and filing supplemental protest grounds. See Request for Recon. at 2-3. We deny ODG's complaint that it had to defend against the VA's request for dismissal, because the allegation fails to set out legal grounds warranting reversal or modification of our earlier decision. An agency's pursuit of a reasonable procedural litigation strategy before our Office does not constitute undue delay in taking corrective action.¹ See

¹ ODG does not argue, nor does anything in the record suggest, that the VA's request for dismissal (challenging the timeliness of ODG's protest and the legal sufficiency of its debriefing challenge, among other things) was unreasonable. See, e.g., Abhe & Svoboda, Inc.--Costs, B-412504.2, Apr. 1, 2016, 2016 CPD ¶ 99 at 3-4 (holding that contrary to protester's allegations, the agency's request for dismissal was not groundless or undertaken in bad faith); see generally Castro & Co., LLC, B-412398, Jan. 29, 2016, 2016 CPD ¶ 52 at 5-6. Moreover, contrary to ODG's suggestion, the fact that our Office did not dismiss ODG's protest in response to the

(continued...)

Livanta, LLC--Costs, B-404215.2, Apr. 5, 2011, 2011 CPD ¶ 82 at 2, citing Carlson Wagonlit Travel--Costs, B-266337.3 et al., July 3, 1996, 96-2 CPD ¶ 99 at 4 (“A contracting agency, in defending protests filed with our Office, should be permitted to vigorously assert procedural and substantive defenses in good faith without having to risk the assessment of costs.”). Moreover, contrary to ODG’s assertion, our prior decision specifically discussed the adequacy of the VA’s agency report and our request that the agency submit a new report.² This assertion not only fails to present information not considered in our previous decision, it also repeats ODG’s earlier complaints.³ Office Design Grp., Inc.--Costs, supra, at 2-3.

Furthermore, we disagree with ODG’s view that it should be reimbursed its protest costs because it did not receive sufficient information from the VA after award, which required ODG to expend additional time and expense pursuing its initial protest grounds and filing supplemental grounds. The record shows that the VA’s award notice informed ODG of the following: (i) the number of Federal Supply Schedule vendors solicited; (ii) the number of quotations received; (iii) the identity and number (five) of awardees; (iv) that ODG was found less qualified; and (v) the total estimated value of the BPAs issued. Notice of Award. However, instead of setting forth a detailed statement of protest based on this information, ODG’s protest filing focused, extensively, on a legally insufficient protest ground (no debriefing provided), speculated that the agency held unequal discussions, and raised an untimely solicitation challenge (RFQ improperly discounted the statutory

(...continued)

VA’s request for dismissal does not indicate that any of ODG’s initial protest grounds were clearly meritorious. See, e.g., Abhe & Svoboda, Inc.--Costs, supra.

² ODG overstates the inadequacy of the agency report, which despite any shortcomings, nevertheless permitted ODG to raise multiple supplemental protest grounds specifically challenging the VA’s evaluation of certain offerors’ contractor teaming arrangements and small business participation plans, as well as the agency’s communications with offerors regarding clerical errors or information missing from their respective quotations. See ODG Email to Parties, July 26-28, 2016 (presenting, in piecemeal fashion, various supplemental protest grounds after reviewing the Consolidated Consensus Rating Document provided in the agency report; disputing arguments in VA’s memorandum of law that the agency engaged in clarifications, not discussions).

³ Although the previous and instant decisions may not discuss each of ODG’s numerous arguments, or address them to the extent that ODG would prefer, we have considered all of the protester’s assertions, but only discuss its primary ones, which is consistent with the statutory mandate that our bid protest forum provide for “the inexpensive and expeditious resolution of protests.” See Competition in Contracting Act of 1984, 31 U.S.C. § 3554(a)(1); Ahtna Facility Servs., Inc.--Recon., B-404913.3, Oct. 6, 2011, 2012 CPD ¶ 270 at 3.

preference for service-disabled veteran-owned small businesses (SDVOSB)).⁴ Compare id. with Protest; see 4 C.F.R. § 21.1(c)(4) (protests filed with GAO shall set forth a detailed statement of the legal and factual grounds of protest), § 21.2(a)(1) (time for filing protest based on alleged solicitation impropriety). Nowhere in its protest pleading did ODG specifically challenge the award of BPAs to any of the five named awardees, even though ODG purported to question their technical qualifications and claimed that “the VA ha[d] not followed its own evaluation criteria.”⁵ Moreover, as we explained in our prior decision, although ODG argued that it lacked information about the VA’s evaluations, it was not apparent that even a detailed debriefing--assuming one was legally required--would have included sufficient information to support the protester’s unequal treatment arguments raised in ODG’s supplemental protest. Office Design Grp., Inc.--Costs, supra, at 3-4, n.2. Here, too, ODG’s request for reconsideration fails to set out factual or legal grounds warranting reversal or modification of our earlier decision.

Practicability of Corrective Action

Finally, we deny ODG’s third assertion--that our Office did not consider that the VA’s proposed corrective action was impracticable, because the VA subsequently cancelled the solicitation. ODG could have, but failed to, raise this argument during our consideration of ODG’s request for costs. We will not reconsider a prior decision based upon new arguments or evidence that could have and should have been raised at the time of our initial consideration of the protest or claim. Berkshire

⁴ Contrary to its repeated assertions, ODG’s initial protest did not challenge the VA’s communications with other offerors, the agency’s evaluation of the other quotations, or its allegedly disparate treatment of offerors. See Request for Recon. at 2. For example, the extent of ODG’s assertion in its initial protest filing regarding communications with offerors was the following sentence: “[t]he agency held discussions with some offerors, but did not hold them with all of the offerors[.]” Protest at 2. In the absence of the documentation provided in the agency report, ODG’s unsubstantiated, one-sentence allegation was speculative, at best. See TRAX Int’l Corp.--Costs, B-410441.5, Aug. 26, 2015, 2016 CPD ¶ 226 at 5; see also GAO Email to Parties, July 22, 2016, 2:04 p.m. (noting that nothing in protest challenges the VA’s technical evaluation of the other proposals or alleges disparate treatment in that respect). Additionally, our Office has advised ODG that defects in a debriefing or related post-award communications are procedural matters that do not involve the validity of an award. Office Design Grp., Inc.--Costs, supra, at 3-4, n.2.

⁵ For example, ODG’s protest pleading asserted--without identifying any of the awardees--that “[o]f the five companies that ODG believes were awarded a BPA, only two are classified as SDVOSBs, none of the rest are veteran-owned enterprises, and one does not even have a GSA schedule of its own.” Protest at 5.

Comput. Prods., Inc.--Recon., B-240327.4, May 9, 1995, 95-1 CPD ¶ 237 at 3 (“Consideration of late submitted evidence or arguments would undermine our ability to fairly and expeditiously decide protests and claims.”).

The record here shows that ODG was informed on October 17--one month before our Office issued our decision denying ODG’s request for costs--that the VA had determined that it was in the best interest of the government to cancel the solicitation and resolicit the requirement.⁶ However, ODG neither raised objections to the cancellation vis-à-vis its pending request for protest costs, nor filed a protest of the cancellation with our Office. In any event, ODG’s argument misconstrues our standard for relief. The VA’s subsequent action is not relevant to our conclusion that ODG failed to show that its initial protest was clearly meritorious.

In short, ODG fails to show that our prior decision was based on errors of law or information not considered, and its enduring objections reflect nothing more than disagreement with our decision not to recommend the reimbursement of ODG’s protest costs, which does not meet our standard for reversing or modifying our decision as discussed above.

The request for reconsideration is denied.

Susan A. Poling
General Counsel

⁶ VA’s Email to Parties, Oct. 17, 2016, 4:31 p.m. (informing parties that the VA had changed its corrective action, decided to cancel the solicitation, and sent notices of cancellation to the awardees and offerors); see ODG Email to Parties, Oct. 17, 2016, 7:12 p.m. (informing parties that ODG had no objection to waiving the 2-day waiting period under paragraph 5 of GAO’s protective order).