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Decision

Matter of: Sotera Defense Solutions, Inc.

File: B-414056.4

Date: December 4, 2017

Paul A. Debolt, Esq., James Y. Boland, Esq., and Michael T. Francel, Esq., Venable, LLP, for the protester.

Wade L. Brown, Esq., Department of the Army, for the agency.

Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the requesting party has not shown that our decision contains either errors of fact or law that warrant reversal or modification of the decision.

DECISION

Sotera Defense Solutions, Inc., (Sotera), of Herndon, Virginia, requests that we reconsider our decision in Sotera Defense Solutions, Inc., B-414056 et al., Jan. 31, 2017, 2017 CPD ¶ 46, in which we denied Sotera's protest of the issuance of a task order to ManTech Advanced Systems International (ManTech), of Fairfax, Virginia, by the Department of the Army under request for task order proposals (RFTOP) for software and engineering support. Sotera alleges various errors in our decision with regard to our conclusions that the agency's cost realism analysis was reasonable and that Sotera was not an interested party to challenge the agency's evaluation of ManTech's technical proposal.

We deny the request for reconsideration.

BACKGROUND

The RFTOP, issued under Federal Acquisition Regulation (FAR) part 16, contemplated award on a best-value tradeoff basis considering cost and technical factors. As relevant here, the solicitation provided that the proposed cost would be evaluated for price reasonableness and cost realism.

After receiving proposals from five offerors, evaluating initial offers and revised proposals, the Army rated the offers as follows:

OFFEROR	TECHNICAL/ RISK	PROPOSED PRICE	EVALUATED PRICE	COST ADJUSTMENT
ManTech	Outstanding	\$151,887,868	\$157,868,729	\$5,980,861
Offeror A	Outstanding	\$162,759,560	\$162,759,560	\$0
Offeror B	Outstanding	\$190,680,650	\$190,680,650	\$0
Offeror C	Outstanding	\$168,440,158	\$168,440,158	\$0
Sotera	Outstanding	\$207,703,811	\$207,703,811	\$0

The Army selected ManTech’s proposal for award. In making its tradeoff decision, the agency determined that there were no additional perceived benefits in Sotera’s proposal worth its \$44 and \$49 million cost premium over the proposals of Offeror A and ManTech, respectively.

Sotera protested to our Office, challenging the agency’s evaluation of the technical proposals of ManTech, Offeror B, and Offeror C; the cost realism analysis of the four other offers in the competition¹; and the best-value determination. In support of its cost realism challenges to ManTech’s proposal, Sotera asserted, among other things, that: (1) the agency’s use of Bureau of Labor Statistics (BLS) data at the 10th and 25th percentile was flawed and contrary to the FAR’s cost realism requirements (Comments and 2nd Supp. Protest at 5; Protester’s email of January 18, 2017); (2) a forward pricing rate agreement (FPRA) included in ManTech’s proposal was not binding on the awardee or agency (Protester’s email of January 18, 2017); (3) the agency failed to determine whether ManTech’s labor rates were too low to retain qualified staff (Protest at 17); and (4) the agency should have applied to the awardee’s cost certain adjustments calculated by the protester (Comments and 2nd Supp. Protest at 26-27). Sotera also argued that ManTech’s technical proposal took exception to mandatory transition milestones identified in the RFTOP. Comments and 2nd Supp. Protest at 3, 21.

On January 31, 2017, our Office issued a decision denying Sotera’s protest, in which we determined that the agency’s cost realism evaluation was reasonable. Sotera Defense Solutions, Inc., supra. As relevant here, we concluded that Sotera’s disagreement with the agency’s use of BLS data for the 10th and 25th percentiles did not demonstrate that the agency acted unreasonably, and we declined to accept the protester’s proposed adjustment to ManTech’s cost. Id. at 6-8. Our decision also explained that Sotera was

¹ In a supplemental protest, Sotera questioned the adequacy of the agency’s cost realism analysis of Offeror A’s proposal, among other things. The intervenor, with the agency’s concurrence, requested that we dismiss that challenge for failure to state a valid basis. We agreed, and dismissed this argument summarily.

not an interested party to challenge the agency's evaluation of the awardee's technical proposal. In this regard, because the agency had determined that the additional perceived benefits in Sotera's proposal were not worth the \$44 and \$49 million cost premium over the proposals of Offeror A and ManTech, respectively, Offeror A, not Sotera, would be next in line for award if we were to sustain the protest. As a result, Sotera lacked the direct economic interest required to maintain this aspect of its protest. Sotera Defense Solutions, Inc., supra, at 8-9.

On February 10, Sotera submitted a request for reconsideration of our decision.

DISCUSSION

In its request for reconsideration, Sotera contends that our decision contained various errors of fact and law, and that we ignored or failed to consider various challenges raised in the protest. In this regard, the protester contends that we erred in determining that the agency's cost realism evaluation was reasonable, and in finding that Sotera was not an interested party to pursue challenges to ManTech's technical proposal.

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 or information not previously considered. 4 C.F.R. § 21.14(a), (c); URS Fed. Servs., B-410531.3, Aug. 31, 2015, 2015 CPD ¶ 149 at 4. 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. Our reconsideration process does not provide an opportunity to re-litigate matters that were previously decided.

Cost Realism Challenge

In its protest, Sotera argued that the agency failed to perform an adequate cost realism analysis of ManTech's cost proposal, primarily complaining that the agency failed to recognize that the rates ManTech proposed for its labor categories were too low, and that the agency failed to make certain adjustments that Sotera argues should have been made to offerors' most probable costs. In our decision, we discussed in detail the various procedures the agency had followed and the steps it had taken to analyze the proposed rates, and concluded, on the record before us, that Sotera had neither demonstrated that the agency had acted unreasonably nor presented any basis to disturb the award to ManTech. Sotera Defense Solutions, Inc., supra, at 5-7.

In addition, we further noted in our decision that even if we agreed that the agency was required to make the adjustments that Sotera argued had to be made to offerors' most probable costs, adjusting costs in that way did not demonstrate that the manner in which the agency analyzed costs resulted in prejudice to the protester. Relying on figures the protester itself had submitted to demonstrate "a reasonable cost realism analysis," see Protester's Comments and 2nd Supp. Protest at 26-27, we illustrated the

basis for our conclusion by applying the protester's "required adjustments" and calculating the difference between ManTech's cost and Sotera's cost. This calculation showed that using those adjustments did not meaningfully affect the relative standing of the two offerors' cost proposals, and that the protester had therefore not shown any prejudice caused by the agency using different rate data than those the protester preferred.

In its request for reconsideration, Sotera claims that our decision contained "clear factual and mathematical error." In this regard, despite applying the adjustments in the exact manner that Sotera urged in its supplemental protest, *i.e.*, against the parties' proposed costs, Sotera now claims that our application of the adjustments against the parties' proposed costs was improper. See Comments and 2nd Supp. Protest at 26-27. We need not address whether the protester's assertions are correct, because the "error" Sotera alleges would not affect the outcome of our decision or warrant its reversal. In this regard, our decision was not dependent on this no-prejudice analysis, which was intended only to demonstrate a secondary basis for denying Sotera's protest. As described above, the decision first concluded that the agency's cost realism analysis was reasonable, and offered the analysis and calculations at issue only as further support. In short, even if we found accurate the protester's assertions regarding our calculation conclusions, which we do not conclude here, Sotera's arguments would not warrant reversal or modification of the decision.

Interested Party Status

In its protest, Sotera challenged the agency's evaluation of ManTech's technical proposal, and raised a number of challenges to the agency's evaluation of other offerors' proposals and its source selection decision. We concluded that Sotera lacked the requisite legal interest to maintain any of these bases of protest. Sotera Defense Solutions, Inc., *supra*, at 8-9.

In its request for reconsideration, Sotera argues that our determination that Sotera was not an interested party was erroneous because it was based on the decision's allegedly erroneous conclusions regarding the agency's cost realism analysis and best-value determination. Again, as discussed above, we have considered these allegations and find no error in our decision.

The protester also contends that it was "plain legal error" to dismiss its challenges against offerors that were potentially next in line for award, and then deny Sotera's protest because it was not next in line for award. We disagree. A protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 11-12; DMC Int'l, B-409933, Sept. 19, 2014, 2014 CPD ¶ 278 at 6-7.

Having denied Sotera's challenge of the agency's cost realism analysis and its challenge of the source selection authority's best-value tradeoff, our decision concluded that Sotera lacked the requisite legal interest to maintain any of the remaining evaluation challenges. Sotera Defense Solutions, Inc., supra, at 8-9. This conclusion was based on the fact that in these circumstances, even if we sustained Sotera's challenges to the evaluation of ManTech's technical proposal, Offeror A--and not Sotera--would have been next in line for award.² As noted above, the agency determined that the additional perceived benefits in Sotera's proposal were not worth the \$44 and \$49 million cost premium over the proposals of Offeror A and ManTech, respectively. Thus, even if Sotera's allegations had been sustained, Offeror A would have been next in line for award. As a result, Sotera lacked the direct economic interest required to maintain this aspect of its protest. Sotera Defense Solutions, Inc., supra, at 8-9.

With respect to the remainder of Sotera's arguments, we conclude that Sotera is relying on the arguments it previously raised during the underlying protest, and simply disagreeing with our conclusions, without showing error.³ For example, Sotera's contention that the agency's use of, and rationale for relying on, the 10th and 25th percentile for BLS data was flawed, Recon. Request at 6-9, was raised in its initial protest. See Comments and 2nd Supp. Protest at 5; Email from Protester, January 18, 2017, at 2. 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 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., supra. Our reconsideration process does not provide for a de novo review of the protest issues or the relitigation of matters previously decided.

For all the reasons discussed, we find that Sotera has failed to show that our previous decision was based on errors of fact or law, or information not previously considered, and thus fails to meet our standard for reconsideration.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel

² In this regard, Offeror A would have been next in line for award because Sotera failed to challenge Offeror A's technical proposal.

³ Although we do not specifically address all of the protester's arguments, we have considered them, and find no basis on which to grant the requests for reconsideration.