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Decision

Matter of: Alphaport Inc.--Reconsideration

File: B-414086.3

Date: May 23, 2017

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Richard J. McCarthy, Esq., Macallister A. West, Esq., and Oliver J. Dunford, Esq., National Aeronautics and Space Administration, for the agency.
Nora K. Adkins, Esq., and Tania Calhoun, 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

Alphaport, Inc., of Cleveland, Ohio, requests that we reconsider our decision in [Alphaport, Inc.](#), B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69, in which we denied Alphaport's protest challenging the National Aeronautics and Space Administration's (NASA) award of a contract to Banner Quality Management, Inc. (Banner), of Ellicott City, Maryland pursuant to request for proposals (RFP) No. NNC16ZNA009R for technical support services. Alphaport argues that our decision contained errors of law that warrant reconsideration of our decision.

We deny the request for reconsideration.

BACKGROUND

The RFP was issued on March 24, 2016, under Federal Acquisition Regulation (FAR) part 15 and set aside for woman-owned small businesses. RFP at 00423, 00645. The solicitation contemplated the award of a single cost-plus-fixed-fee contract, with a

2-year base and three 1-year option periods, for technical support services for the NASA Safety Center at the Glenn Research Center. Id. at 00425, 00428, 00446, 00494. Award was to be made on a best-value basis considering three evaluation factors: technical capability, cost/price, and relevant experience and past performance. Id. at 00525. Technical capability was more important than past performance, which was approximately equal in importance to cost/price. Id. at 00531. The technical factors, when combined, were significantly more important than price. Id.

For the cost factor, the solicitation stated that a cost realism analysis would be conducted to assess the reasonableness and realism of the proposed costs. Id. at 00528. The solicitation also advised that the status of an offeror's accounting system and audits of such systems would be considered as part of the cost evaluation. Id. at 00529. The solicitation stated that evidence of an approved accounting system would be required for award of the contract. Id.

The agency received three timely responses, including those from Alphaport and Banner. The agency evaluated the offers and selected Banner for award. Agency Report (AR), Tab 19, Source Selection Decision, at 01706. On November 2, after receiving a debriefing, Alphaport filed a protest with our Office challenging the agency's evaluation of the offerors' proposals and the selection decision.

As relevant to the request for reconsideration, Alphaport's protest specifically challenged the agency's evaluation of Banner's cost proposal. Alphaport alleged that the solicitation contained a material requirement to submit certain documentation to be used by the contracting officer for determining the acceptability of the offeror's accounting system. Alphaport argued that the agency improperly waived this material requirement because it found Banner's accounting system acceptable even though Banner failed to submit three of the four required documents. Alphaport also alleged that the agency failed to conduct a cost realism analysis of Banner's proposed overhead and general & administrative (G&A) costs. In our decision, we denied Alphaport's protest because the record demonstrated that the agency's evaluation and selection decision were reasonable and consistent with the terms of the solicitation.

DISCUSSION

Alphaport argues that our decision contained errors of law concerning the agency's evaluation of Banner's cost proposal. Alphaport requests that we reconsider our decision denying the protest for two primary reasons: (1) our decision erroneously concluded that the agency's evaluation of Banner's accounting system was reasonable because the adequacy of an offeror's accounting system is generally a matter of responsibility, and (2) our Office failed to determine whether NASA conducted a reasonable cost realism evaluation. For the reasons discussed below, we find no basis to reconsider our decision.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out factual and legal grounds upon which reversal or modification of the decision is

warranted, specifying any errors of law made or information not previously considered. Bid Protest Regulations, 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.

Alphaport's first primary argument for reconsideration contends that our decision erroneously concluded that the agency's evaluation of Banner's accounting system was reasonable because the adequacy of an offeror's accounting system is generally a matter of responsibility. We find no basis to reconsider our decision in this regard.

As stated above, Alphaport's protest argued that the solicitation contained a material requirement to submit certain documentation to assist the contracting officer in determining whether an offeror had an acceptable accounting system. In this regard and as discussed in our decision, the RFP permitted offerors to submit documentation from either a cognizant government agency showing that its accounting system is approved for tracking and separating costs for cost-reimbursement contracts, or, from a certified public accountant (CPA) "who is in good standing . . . [who] shall prepare and execute an audit program designed for the evaluation of the [o]fferor's accounting system pursuant to FAR 52.232-20 and 21, and FAR 52.216-16, Generally Accepted Accounting Principles and the requirements identified on Standard Form 1408."¹ RFP at 00509. The solicitation stated that for the latter method (*i.e.*, a submission from a CPA) "[a] copy of the audit program, engagement letter, final review and executed SF 1408 signed in block 3 by the auditor shall be provided" with the cost proposal. Id.

Banner elected the second option in its proposal, engaged an independent accountant to review its system and express an opinion about its adequacy, and submitted as part of its cost proposal a completed SF 1408 prepared by its CPA that indicated that Banner's accounting system was acceptable for award of the contract. See AR, Tab 15.2, Banner Cost Proposal, at 01082-01084. Banner's SF 1408 also indicated that the CPA concluded that Banner's accounting system satisfied the requirements listed in the form's evaluation checklist. Id. at 01083-1084. Banner's cost proposal did not, however, include a copy of the audit program, an engagement letter, or a final review of the CPA. Id. at 01050-01164.

Alphaport argued that that agency's acceptance of Banner's accounting system constituted an improper waiver of a material requirement--to submit certain documentation--because Banner failed to submit three of the four required documents.

¹ Standard Form (SF) 1408, Preaward Survey of Prospective Contractor--Accounting System, allows for three recommendations or conclusions: the prospective contractor's accounting system is acceptable for award of the prospective contract; it is acceptable with a recommendation that a follow-on accounting system review be performed after contract award; or it is unacceptable. See FAR § 53.301-1408. The form also includes an evaluation checklist with multiple questions. Id.

Based on our review of the record, our Office found that there was “no basis to conclude that the agency improperly relaxed the requirement for an acceptable accounting system.” Alphaport, supra at 10.

In its request for reconsideration, Alphaport argues that we erroneously concluded that the agency’s evaluation was reasonable because the adequacy of an accounting system is generally a matter of responsibility. We find no support for the protester’s allegation, which mischaracterizes the content of our decision.

Our decision addressed the protester’s allegation that the agency waived a material requirement of the solicitation. We concluded that NASA had not waived a material requirement because we determined that the solicitation’s material requirement was not, as the protester alleged, the submission of the four specific documents, but rather, for an acceptable accounting system. See id. (finding “no basis to conclude that the agency improperly relaxed the requirement for an acceptable accounting system.”). In reaching this decision, our Office did not consider whether the agency properly evaluated the adequacy of Banner’s accounting system. Indeed, our decision made clear that this issue was not raised by the protester: “Alphaport has not challenged the actual adequacy of [Banner’s] accounting system. Alphaport has asserted only that Banner failed to comply with a material RFP requirement by not providing the documentation required to support an adequacy determination and that NASA inappropriately waived this omission.” Id. Thus, while Alphaport may disagree with our determination of what constituted a material solicitation requirement, we find no basis to conclude that our decision contained the error of law it alleges.² HK Sys., Inc.--Protest and Recon., B-291647.6, B-291647.7, Aug. 29, 2003, 2003 CPD ¶ 159 at 6.

Alphaport’s second primary argument for reconsideration of our decision contends that our decision failed to determine whether the agency conducted an adequate cost realism evaluation. We find no basis to reconsider our decision in this regard. Contrary to Alphaport’s argument, and as stated in our prior decision, we considered all of the protester’s arguments in resolving the protest, and found no merit to Alphaport’s contentions. See Alphaport, supra at 6 (“We have considered all of Alphaport’s arguments, and we conclude, based on the record, that none furnishes a basis on which to sustain the protest.”); at 9 (“Alphaport raises several arguments related to the evaluation of the costs of its and Banner’s proposals. As with Alphaport’s other arguments, these contentions provide no basis to sustain its protest.”). Thus, while we may not have addressed this argument with the specificity Alphaport would prefer, the argument was not overlooked.

² Alphaport also alleges that our decision applied the incorrect standard of prejudice with respect to whether the agency relaxed a material requirement of the RFP. Because we find no basis to reconsider our conclusion that the agency did not improperly relax a material solicitation requirement, we need not address whether our decision contained errors of law or fact with respect to the protester’s prejudice.

Although our Office reviews all issues raised by protesters, our decisions may not necessarily address with specificity every issue raised; this practice is consistent with the statutory mandate that our bid protest forum provide for “the inexpensive and expeditious resolution of protests.” See Research Analysis & Maint., Inc.--Recon., B-409024.2, May 12, 2014, 2014 CPD ¶ 151 at 6, citing 31 U.S.C. § 3554(a)(1). In further keeping with our statutory mandate, our Office does not issue decisions in response to reconsideration requests to address a protester’s dissatisfaction that a decision does not address each of its protest issues. See Ahtna Facility Servs., Inc.--Recon., B-404913.3, Oct. 6, 2011, 2012 CPD ¶ 270 at 3. Here, we conclude that the standard for reconsideration has not been satisfied.

In any event, we have again reviewed the cost realism argument referenced by the protester in its reconsideration request and find no merit to the allegation. For example, Alphaport’s protest argued that the agency’s cost realism evaluation failed to assess whether Banner’s overhead and G&A costs were realistic. As we stated in our decision, an agency’s cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the proposed costs are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. An agency’s cost realism analysis requires the exercise of informed judgment, and we review an agency’s judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. Information Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 7. We find no basis to grant the protester’s request for reconsideration because the record demonstrates that the agency reasonably concluded that Banner’s costs were realistic after a detailed review of Banner’s cost proposal, which included an assessment of Banner’s overhead and G&A rates. See AR, Tab 18.1, Source Selection Authority Briefing, at 01621, 01627-8, 01676; Tab 27.4, NASA Estimated Pricing Model of Banner’s Costs, at 02206-02240.

In sum, Alphaport fails to show that our prior decision was based on errors of law or information not considered, and its ongoing objections reflect nothing more than disagreement with our decision denying the protest, 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