



## Decision

**Matter of:** Timberline Helicopters, Inc.--Reconsideration

**File:** B-414507.2

**Date:** August 1, 2017

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Alan I. Saltman, Esq., Smith, Currie & Hancock, LLP, for the requester.  
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GAO, participated in the preparation of the decision.

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### DIGEST

Request for reconsideration of a prior decision denying a protest challenging the terms of a solicitation as being impossible to satisfy is denied where the requester seeks to introduce new information that could have been raised previously, or that essentially repeats an argument previously made.

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### DECISION

Timberline Helicopters, Inc., of Sandpoint, Idaho, requests reconsideration of our decision, Timberline Helicopters, Inc., B-414507, June 27, 2017, 2017 CPD ¶ \_\_\_, denying its protest challenging the terms of request for proposals (RFP) No. D17PS00157, issued by the Department of the Interior, Bureau of Land Management (BLM), for an exclusive use heavy size helicopter to transport qualified non-crewmembers and/or cargo in support of the agency's natural resource missions. Timberline argued that the solicitation is defective because no helicopter can meet the solicitation requirements and comply with applicable Federal Aviation Administration (FAA) regulations regarding the transport of qualified non-crewmembers. We denied the protest because the FAA provided BLM with clarification of its regulations confirming that BLM's stated requirements were permissible under the applicable regulations. On reconsideration, the requester argues that the FAA has subsequently made representations calling into question the clarifications previously provided to BLM.

The request for reconsideration is denied because the new information relied upon by the requester fails to demonstrate any material error of fact or law in our prior decision that would warrant our reconsideration.

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, Timberline argues that subsequent events have undermined our conclusion that “the FAA has determined, contrary to the protester’s assertion, that the carriage of firefighters is permitted on restricted category aircraft if the aircraft is certificated with a special purpose of Forest and Wildlife conservation.” Request for Recon. at 3 (quoting Timberline Helicopters, Inc., supra, at 4). Specifically, the requester relies on two exchanges between Timberline and the FAA as constituting new, relevant information to support its request for reconsideration.

First, Timberline’s Chief Operating Officer (COO) submitted a declaration with the request for reconsideration representing that he had a discussion on June 13 with one of the FAA officials that previously provided a clarification to BLM. The requester represents that the FAA official indicated that the FAA had not issued a final determination in response to a May 24 request for legal interpretation on the same issue submitted by an unrelated third party, but that the FAA no longer agreed with the clarifications previously provided to BLM. See Decl. of Timberline COO (July 5, 2017), ¶¶ 5-6. Second, Timberline submitted a July 3 email from a second FAA official stating that the FAA “is still working on resolving the question,” and that “[n]o official FAA policy has been issued on this matter.” Id., exh. 2, Email from FAA to Timberline (July 3, 2017), at 1.

As an initial matter, the information allegedly obtained by Timberline from the FAA on June 13 does not provide a basis for reconsideration because the requester failed to raise the information in the prior protest proceedings, which concluded with the issuance of our decision on June 27. In order to provide a basis for reconsideration, additional information not previously considered must have been unavailable to the requesting party when the initial protest was being considered. Department of Veterans Affairs--Recon., B-405771.2, Feb. 15, 2012, 2012 CPD ¶ 73 at 4. Failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of all parties’ arguments on a fully developed record--and cannot justify reconsideration of our prior decision. Id. Although the period for submitting comments had closed by the time the requester allegedly obtained the information on June 13, Timberline could--and should--have sought leave to present the new information pursuant to 4 C.F.R. § 21.3(j) prior to the issuance of our decision. Thus, the June 13 information relied upon by the requester for the first time on reconsideration provides no basis on which to grant the request.<sup>1</sup>

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<sup>1</sup> In any event, in light of the written representations made by the FAA in response to BLM’s specific inquiries, we also would ascribe little weight to the requester’s representations regarding its interpretation of its after-the-fact ex parte discussion with the FAA.

We also find that FAA's July 3 representation that it had yet to issue an official position interpreting the applicable regulations with respect to BLM's stated requirements fails to provide a basis on which to reconsider our prior decision. First, we expressly recognized the requester's argument that the FAA clarifications provided to BLM were not "formal determination[s]," and nevertheless concluded that BLM could reasonably rely on the FAA's clarifications. See Timberline Helicopters, Inc., supra, at 4 n.5. Repetition of arguments previously made during our earlier consideration of the protest, and disagreement with our prior decision does not provide a basis for our Office to reconsider our earlier decision. B3 Solutions, LLC--Recon., B-408683.5, May 8, 2014, 2014 CPD ¶ 146 at 2. Second, the FAA's representation that it has not made an official determination to date fails to demonstrate that we erred in finding that the agency's requirements are not impossible to meet. At worst, the July 3 email from the FAA confirms that the status quo has not materially changed since we issued our decision. Thus, the fact that FAA confirmed on July 3 that it had yet to issue a final determination on the applicable question fails to state a basis on which to grant reconsideration.

The request for reconsideration is denied.

Susan A. Poling  
General Counsel