



Decision

Matter of: Total Control Training, Inc.--Reconsideration

File: B-414748.4

Date: August 17, 2017

Robert B. Pool, Esq., for the requester.
Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of our decision dismissing the protest for failure to comment is denied where the protester's comments were untimely filed.

DECISION

Total Control Training, Inc., a small business, of Victorville, California, requests reconsideration of our decision, Total Control Training, Inc., B-414748.2, July 11, 2017 (unpublished decision), dismissing its protest challenging the award of a contract to Information Sciences Consulting, Inc., a small business, of Manassas, Virginia, under request for proposals (RFP) No. M95494-17-R-0002, which was issued by the Department of the Navy, United States Marine Corps, for traffic safety training.

We deny the request for reconsideration because it fails to establish any material factual or legal errors with respect to the underlying decision dismissing the requester's protest.

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). 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 Office dismissed Total Control's protest pursuant to 4 C.F.R. § 21.3(i) for failing to timely submit comments in response to the agency's report. To avoid delay in the resolution of protests, section 21.3(i) of our Regulations provides that a protester's failure to file comments within 10 calendar days "shall" result in dismissal of the protest

except where GAO has granted an extension or has established a shorter period. 4 C.F.R. § 21.3(i). As addressed in our prior decision, Total Control's comments were due by the close of business, i.e., 5:30 p.m. Eastern Time, on July 10. Our Office did not receive any comments from the requester prior to the deadline. Total Control, however, submitted comments at 1:43 a.m. Eastern Time on July 11. Total Control styled the July 11 filing as a "resend" of its comments which it represented were originally filed at 5:30 p.m. Eastern Time on July 10. Because we found no evidence that the requester's comments were actually received by our Office by 5:30 p.m. Eastern Time on July 10, we dismissed the protest.

On reconsideration, the requester contends that it in fact timely submitted its comments on July 10. To support its contention, Total Control attached "confirmation of receipt emails," which it represents it received from our Office, specifically, the protests@gao.gov email address, in response to its July 10 and July 11 submissions.¹ For the reasons that follow, we find that the requester has failed to establish a material error of fact in our underlying decision that would warrant dismissal, and therefore deny the request for reconsideration.

Our email system records establish that our Office did not receive the requester's July 10 submission. Specifically, our information technology department reviewed the email logs for the protests@gao.gov inbox and sent mail folders. Their review confirmed that our Office never received Total Control's purported July 10 filing. Similarly, there is no record that an automatic confirmation of receipt email was generated to the requester's counsel on July 10. In contrast, our Office did receive the requester's July 11 filing, and our system generated the automatic confirmation of receipt email. Therefore, our records conclusively establish that our Office never received the requester's purported July 10 submission.

While we find this information to be conclusive in establishing that the requester's comments were untimely filed, we also are compelled to address our material concerns regarding the integrity of the purported confirmation of receipt emails submitted by the protester as evidence in support of its request for reconsideration. First, as set forth above, our records provide no indication that a confirmation receipt was generated on July 10, as Total Control has represented.

Second, the emails have inconsistent time stamps. The requester represents that Total Control's comments were timely transmitted and filed on July 10 at 2:30 p.m. Pacific Time, which would be 5:30 p.m. Eastern Time. The purported confirmation of receipt email for this alleged filing is dated July 10, and reflects a time of 5:30 p.m. Eastern

¹ When an email is received at the protests@gao.gov inbox, the system automatically generates an email to the sender that is styled as "Confirmation of Receipt," and states, in relevant part, that "[w]e have received your protest-related filing." The sent information for the confirmation email, which includes the date and time, reflects when our Office generated the email.

Time. In contrast, the purported confirmation of receipt email for the July 11 filing, which was made at 1:43 a.m. Eastern Time, reflects a confirmation email dated July 10, with a time of 10:43 p.m., which would be Pacific Time. We are unaware of any other instances where our email system generated confirmation of receipt emails utilizing varying time zone information.

Additionally, both of the purported confirmation emails submitted by the requester include only a partial email address for the recipient on the "To" line. A valid email from our Office would include the recipient's complete email address. Finally, the purported receipt for the July 11 filing includes a partial email address for the awardee-intervenor's lead counsel in the body of the email. The text in the body of the confirmation of receipt emails, however, are automatically generated, never change, and would never include a partial email address for one of the parties. Rather, only the sender's email would ever be copied on the email in the email address. It would not be included in the body of the email. In totality, it would appear that the protester may have fabricated the emails it offered as evidence in support of its request for reconsideration, and therefore we find that they provide no credible basis to establish a material error of fact in our prior decision.

The request for reconsideration is denied.

Susan A. Poling
General Counsel