



Decision

Matter of: TMC Global Professional Services--Reconsideration

File: B-414937.2

Date: September 25, 2017

Angeline R. Burke, Esq., Burke Law Office LLC, for the protester.
Debra B. Haworth, Esq., Department of Defense, Defense Threat Reduction Agency, for the agency.

Todd C. Culliton, 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

TMC Global Professional Services, of Albuquerque, New Mexico, requests reconsideration of our decision dismissing its protest regarding request for proposals (RFP) No. HDTRA1-16-R-0027, issued by the Department of Defense, Defense Threat Reduction Agency, for a broad range of services and products to provide sustainable chemical, biological, radiological, nuclear, and explosive threat reduction capabilities to a global list of foreign countries. TMC's protest argued that the terms of the solicitation were unduly restrictive of competition. We dismissed the protest because TMC failed to file comments on the agency report within the time required by our Bid Protest Regulations, 4 C.F.R. § 21.3(i).

We deny the request for reconsideration.

TMC filed its protest with our Office on July 13, 2017. We acknowledged receipt of TMC's protest with a letter that delineated the procedures and deadlines for filing the agency report and the protester's comments. The letter stated that the agency report was due August 14, and that the protester's comments were due 10 calendar days from the protester's receipt of the agency report. The letter explicitly advised TMC that "we will assume that you received the report by the Report Due date unless you notify us otherwise at that time." Protester's Development Letter, July 18, 2017, at 1. Thus,

protester's comments on the agency report were due on August 24, unless protester's counsel advised our Office that it did not receive the agency report by the report due date.

The record shows that the protester was represented by two attorneys. On August 9, protester's primary attorney requested that the agency make electronic copies available and send any hard copies to protester's secondary attorney at a separate address. E-mail from Protester to Agency, Aug. 9, 2017. The agency responded that it would deliver electronic copies of its legal memorandum and the contracting officer's statement of facts to both of protester's attorneys, and deliver the hard copy documents by overnight mail to protester's secondary attorney. E-mail from Agency to Protester, Aug. 9, 2017. GAO was aware of this correspondence because these e-mails were also addressed to our Office.

On August 10, the agency sent an e-mail to protester's attorneys, but did not also address that e-mail to GAO. In the e-mail, the agency explained that it would electronically send copies of the agency legal memorandum and contracting officer's statement of facts. E-mail from Agency to Protester, Aug. 10, 2017. The agency also explained that it would send agency documents for delivery on August 15. Id. TMC filed its comments on August 25.

On August 30, our Office dismissed TMC's protest for failure to timely file its comments on the agency report. While TMC asserted that it had not received the full agency report until August 15 and that therefore its comments were not due until August 25, our Office stated that a protester's failure to receive the report by the report due date does not excuse the obligation to timely file comments within 10 days of the report due date where the protester does not timely advise our Office that it did not receive the report. TMC Global Professional Servs., B-414937.1, Aug. 30, 2017, at 2 (unpublished decision). Because TMC did not notify our Office that it had received the report on August 15 instead of August 14, our Office dismissed the protest for failure to timely file comments.

In its request for reconsideration, TMC asserts that our Office committed factual and legal error in dismissing its protest. TMC argues that the factual error exists because our Office was copied on the August 9 e-mails and, therefore, we had knowledge that the protester received the agency report late. Request for Reconsideration at 5. According to TMC, the legal error is that our Bid Protest Regulations do not require dismissal when the protester files its comments within 10 days of its actual receipt of the agency report. Id. at 4-5. TMC argues that any failure to notify our Office prior to the report due date may be overcome by an affirmative showing that the report was received late. Id. at 5.

Under our Bid Protest Regulations, a party requesting reconsideration must either show that our decision contains an error of fact or law, or present information not previously considered, that warrants the decision's reversal or modification. 4 C.F.R. § 21.14(a); Waterfront Techs., Inc.--Recon., B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. We

have reviewed TMC's request for reconsideration and conclude that it does not meet this standard.

Our decision did not contain a factual error because the protester did not notify our Office that it received the agency report late until it attempted to file its comments on August 25. The agency's August 9 e-mail did not provide a schedule for delivery, and therefore did not reasonably indicate that the agency would send the agency report for delivery on August 15. Accordingly, our decision does not include a factual error because our Office was unaware that TMC received the agency report late.

Our decision also did not contain any legal error. Our cases have explained that a protester's late receipt of an agency report does not alter the period for submitting comments, unless the protester notifies our Office of its late receipt prior to the due date for comments established in the development letter. See Unicorn Servs., Inc.--Recon., B-252429.3, May 28, 1993, 93-1 CPD ¶ 425 at 3 ("As Unicorn did not communicate with our Office until it submitted its late comments, the protest was properly dismissed, and the protester's late receipt of the report is not a basis for reopening the protest.") (internal citation omitted); see also Thiokol Corp.--Recon., B-256162.3, B257058.2, Sept. 20, 1994, 94-2 CPD ¶ 106; Image Contracting--Recon., B-255632.2, Feb. 18, 1994, 94-1 CPD ¶ 126; Sea Sys., Inc.--Recon., B-252908.2, Sept. 16, 1993, 93-2 CPD ¶ 171; R&R Enter.--Recon., B-240926.2, Feb. 12, 1991, 91-1 CPD ¶ 149, IBI Security Serv., Inc., B-233740.2, Mar. 6, 1989, 89-1 CPD ¶ 242. Here, TMC did not notify our Office of its late receipt of the agency report prior to close of business on August 24, and therefore, we were required under our Bid Protest Regulations to dismiss TMC's protest for failure to timely file comments. Accordingly, our Office did not commit legal error when we dismissed TMC's protest for failure to timely file comments.

The request for reconsideration is denied.

Susan Poling
General Counsel