



Decision

Matter of: US21, Inc.--Reconsideration

File: B-415045.10

Date: July 16, 2018

Christopher Shiplett, Esq., Randolph Law, PLLC, for the protester.
Ronald S. Perlman, Esq., and Daniel P. Hanlon, Esq., Holland & Knight, LLP, for Blue Force, Inc., the intervenor.

Kathleen D. Martin, Esq., Department of State, 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 GAO did not commit legal or factual error when dismissing protest allegations because the record confirmed that the protester failed to timely file its comments on the agency report.

DECISION

US21, Inc., of Fairfax, Virginia, requests reconsideration of our decision dismissing its protest regarding solicitation No. SAQMMA-17-R-0213, issued by the Department of State for facility support services. US21's protest alleged that the agency unreasonably evaluated its proposal and failed to consider that the awardee had an organizational conflict of interest. We dismissed the protest allegations because US21 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 dismiss the request for reconsideration.

US21 filed its protest and supplemental protest with our Office on May 2, 2018. We acknowledged receipt with a letter that delineated the procedures and deadlines for filing the agency report and the protester's comments. The letter explicitly advised that "[w]ritten comments must be filed within 10 calendar days of the filing of the agency report--otherwise, we will dismiss your protest." Protester's Development Letter, May 10, 2018. The letter established the agency report due date as June 1 and the due date for the protester to submit its comments as June 11.

The record shows that the agency filed its report in GAO's electronic protest docketing system (EPDS) on June 1. The protester attempted to access the agency report on June 4, but was unable to download the file. Request for Extension, June 11, 2018, at 1. Instead of contacting GAO, the protester e-mailed the agency directly and requested a copy of the report. Id. On June 6, the protester was able to download the files through EPDS. Request for Recon. at 6 (unnumbered); but see Request for Extension, June 11, 2018 at 1 (explaining that protester's counsel was first able to access the agency report on June 7 through EPDS).

On June 11, the protester requested that our Office extend the period for filing comments until June 14. Request for Extension, June 11, 2018, at 1. In its request, the protester asserted that an extension was proper because it had not received the report on June 1. Id. at 1-2. In response, our Office extended the period for filing comments to June 12. The protester concedes, however, that it misread the extension grant as June 14 and consequently filed its comments late. Request for Recon. at 5 (unnumbered). Our Office then dismissed the protest, finding that the protester had failed to timely file comments by the extended due date. US21, Inc., B-415045.7, B-415048.8, June 27, 2018, at 1 (unpublished decision).

In its request for reconsideration, US21 alleges that our Office committed legal and factual errors in dismissing its protest. At bottom, US21 argues that the agency report was not filed until June 6 (i.e., the day it could download the agency report) because either GAO failed to provide the protester with access to the report or EPDS malfunctioned. Request for Recon. at 10-11, 13 (unnumbered). To this end, protester argues that its due date for filing comments was automatically extended until June 16. Id. at 13.

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 US21's request for reconsideration and conclude that it does not meet this standard.

The record shows that our decision did not contain any legal or factual errors. Our Regulations provide that a "document is filed on a particular day when it is received in EPDS by 5:30 p.m., Eastern Time." 4 C.F.R. § 21.0(g) (emphasis in original). The record shows that EPDS received the agency report at 12:48 p.m. ET on June 1. Thus, under our Regulations, the report was filed on June 1, and the due date for protester's comments was June 11. 4 C.F.R. § 21.3(i)(1) (stating "[c]omments on the agency report shall be filed within 10 days after the agency has filed the report").

While the protester asserts that a document is not filed until all parties can download the document in EPDS, the regulation does not so define the term "filed." Indeed, protester's expansive interpretation would render the EPDS time stamp nugatory, create confusion as to when documents were actually filed, and allow protesters to idly await

download capability to the detriment of both the procurement process and our ability to expeditiously resolve the protest. See Env'tl. Health Research & Testing, Inc.--Recon., B-248931.3, Nov. 2, 1992, 92-2 CPD ¶ 297 at 2 (deadlines for filing comments are necessary to prevent protesters from awaiting receipt of the agency report indefinitely). Furthermore, our cases have consistently explained that a protester must notify GAO when it fails to receive the report by the due date specified in the development letters and request an extension because late receipt does not alter the period for submitting comments. See e.g., TMC Global Professional Servs.--Recon., B-414937.2, Sept. 25, 2017, 2017 CPD ¶ 295 at 3 (“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.”). Accordingly, the fact that the protester could not download the report until June 6 did not “automatically” extend the due date for filing comments until June 16.

In any event, the record shows that our Office did, in fact, extend the due date for filing comments until June 12 in light of protester’s delayed ability to download the report. The record further shows that the protester did not carefully read the notice, and therefore did not file its comments until June 14. Thus, our Office did not commit legal or factual error when dismissing the protest because US21 failed to file its comments by the extended due date. Cf. Unicorn Servs., Inc.--Recon., B-252429.3, May 28, 1993, 93-1 CPD ¶ 425 at 3 (protest was properly dismissed where the protester failed to file its comments by the due date).

The request for reconsideration is dismissed.

Thomas H. Armstrong
General Counsel