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Decision

Matter of: A-B Computer Solutions, Inc.--Reconsideration

File: B-415819.2

Date: August 27, 2018

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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

A-B Computer Solutions, Inc., a small business of Mandeville, Louisiana, requests that we reconsider our decision in A-B Computer Solutions, Inc., B-415819, Mar. 22, 2018, 2018 CPD ¶ 128, in which we denied A-B's protest challenging the Department of the Army's award of a contract to Advanced Global Resources, Inc., (AGR) of Dallas, Texas, pursuant to request for proposals (RFP) No. W56HZV-16-R-0267, which the Army issued for various information technology support services for the Army's Red River Army Depot (RRAD) in Texarkana, Texas. In its request, A-B maintains that reconsideration is warranted because the decision contains errors of fact and law.

We deny the request for reconsideration.

BACKGROUND

The RFP, issued on July 11, 2017, as a total small business set-aside, contemplated the award of an indefinite-delivery, indefinite-quantity contract for a base year and four

option years. Agency Report (AR), Tab E, RFP, at 1, 4.¹ Pursuant to the RFP's performance work statement (PWS), the contractor was to provide a variety of information technology support services, including repair, maintenance, and administrative support for RRAD-owned automated data processing equipment, land-mobile radios, locally-managed databases, and the RRAD unclassified network. AR, Tab E, PWS, § C2. Among other related security requirements, the PWS contemplated that contractor personnel would possess security clearances at the secret level. Id. §§ C.5.14.7, C.5.19. Award was to be made to the offeror whose proposal was the most advantageous to the Army, based on a consideration of technical, past performance, and price evaluation factors.² RFP at 97.

The Army received offers from five firms, including AGR and A-B, who served as the incumbent contractor. AR, Tab K, Source Selection Decision Document (SSDD), at 3. Of relevance here, the Army assigned the same technical and past performance ratings to the proposals submitted by A-B, AGR, and a third firm. Specifically, the evaluators concluded that the three firms submitted outstanding technical proposals (under both subfactors and overall), and warranted substantial confidence past performance ratings, with "no meaningful distinction" between them.³ Id. at 4. A-B's total evaluated price was \$12,533,249, and AGR's and the third firm's prices were \$8,178,340 and \$8,558,277, respectively. Id. Ultimately, the source selection authority determined that AGR's proposal offered the best value to the agency, and the Army awarded the firm the contract on December 14. Following a debriefing, A-B protested the award to AGR.

In its various protest pleadings, A-B primarily contended that the award to AGR was improper because AGR failed to comply, or would be unable to comply, with RFP security clearance requirements.⁴ Protest at 14-19; Comments at 6-14; Protester's Reply to Agency Resp. at 2-8. At issue here, one of A-B's allegations was that the contracting officer's affirmative responsibility determination was unreasonable because

¹ Citations herein are to filings and documents produced as part of A-B's protest (B-415819).

² The technical factor was comprised of two subfactors: (1) management structure, and (2) staffing plan.

³ The other two proposals were not rated as highly. See AR, Tab K, SSDD, at 4.

⁴ In this respect, A-B's primary basis of protest was that, in A-B's view, the security clearance requirements in the RFP's PWS constituted definitive responsibility criteria, and AGR's failure to meet the criteria at the time of award rendered the proposal ineligible for award. Protest at 15-18. We found no merit to this allegation. In our decision, we explained that while the PWS contained requirements relating to personnel security clearances necessary for contract performance, the solicitation did not mandate that the requirements be met prior to award such that they should be construed as definitive responsibility criteria. A-B Computer Solutions, Inc., supra, at 4-5. A-B does not seek reconsideration of this aspect of our decision. See Req. for Recon. at 4 n.1.

the awardee did not possess a facility clearance and, thus, would be unable to provide cleared personnel for contract performance.⁵ See Comments at 11-14. The protester also challenged limited aspects of the evaluation of AGR's proposal under the technical and past performance factors. Id. at 14-16.

In our March 22, 2018, decision, we found no basis to review the contracting officer's affirmative determination of AGR's responsibility because A-B's allegations did not rise to the level necessary to warrant our Office's review of these matters. A-B Computer Solutions, Inc., supra, at 6. With respect to A-B's technical and past performance challenges, we concluded that the protester was not an interested party to raise the protest grounds because another disappointed offeror would be in line for award were we to sustain A-B's specific allegations. Id. at 3.

DISCUSSION

A-B seeks reconsideration of our decision rejecting its challenge to the contracting officer's affirmative responsibility determination of AGR. Req. for Recon. at 4-9. A-B also requests reconsideration of our conclusion that the protester was not an interested party to raise its technical and past performance objections. Id. at 9-11.

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 A-B's request for reconsideration, and its May 2 supplement thereto, and conclude that A-B has not met this standard.

First, the protester asserts that reconsideration is warranted because our decision "misrepresents the factual basis" for its objection to the agency's responsibility determination. Req. for Recon. at 4-9. Specifically, A-B argues that our Office erred in concluding that the allegations were only a disagreement over the amount of time required to obtain a security clearance, and that we failed to assess whether the responsibility determination was based on "sufficient information." Id. at 5-6. A-B further complains that our decision examines "precisely zero" of the "incorrect and unsupported assumptions" used to support the agency's affirmative responsibility determination. Id. at 8. In this respect, the protester reasserts its position that the responsibility determination was flawed because it was "grounded in a basic misunderstanding of what a [facility clearance] is and how it works." Id. at 7.

⁵ A facility clearance is "an administrative determination that a company is eligible for access to classified information or award of a classified contract." Management & Technical Servs. Alliance Joint Venture, B-416239, June 25, 2018, 2018 CPD ¶ 218 at 3, quoting National Industrial Security Program Operating Manual § 2-100.

Here, A-B has provided no basis for our Office to reconsider our decision. In this regard, the protester's concerns raised in its request for reconsideration reflect a misunderstanding of our decision on this protest ground. More specifically, while the protester continues to challenge the reasonableness of the contracting officer's responsibility determination, our decision expressly does not reach a conclusion on this issue; we do not address whether AGR was properly determined to be a responsible contractor. Rather, as we explain in our decision, our Office will generally not consider a protest challenging a contracting officer's affirmative responsibility determination except in circumstances that were not present in A-B's protest. See 4 C.F.R. § 21.5(c). In this respect, because the determination that a bidder or offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office only considers challenges to affirmative responsibility determinations where it is alleged that definitive responsibility criteria in the solicitation were not met, or protests that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Id.; SumCo Eco-Contracting LLC, B-409434, B-409434.2, Apr. 15, 2014, 2014 CPD ¶ 129 at 3.

More specifically, the allegations that our Office has reviewed in the context of an affirmative determination of responsibility generally pertain to very serious matters such as potential criminal activity. For example, in FCi Fed., Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308, our Office sustained a challenge to an agency's affirmative responsibility determination where the contracting officer did not consider specific allegations of fraud alleged by the Department of Justice against the awardee. In FN Mfg., Inc., B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212, our Office reviewed an allegation that the agency failed to consider an ongoing investigation into whether the awardee defrauded the government on a prior contract for the same requirement. In Southwestern Bell Tel. Co., B-292476, Oct. 1, 2003, 2003 CPD ¶ 177, we reviewed an allegation that the agency failed to consider that the awardee's chief executive officer had been indicted for conspiracy and fraud by the U.S. Attorney for the Southern District of New York. In Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68, we reviewed an allegation that the agency had failed to consider that the awardee was embroiled in a public accounting scandal and had vastly misstated its earnings.

As we articulate in our decision, the protest arguments asserted by A-B, which focused primarily on the need to first obtain a facility clearance to provide cleared personnel during contract performance, failed to meet our threshold for review.⁶ We did not, as

⁶ To be clear, the protester did not assert in its protest (or request for reconsideration) that AGR would be prohibited from obtaining a facility clearance under any circumstance due to, for example, previous security violations or other situations that would preclude the firm's, or its employees', access to classified information. Indeed, the allegations focused on the need to possess a facility clearance and the general
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the request for reconsideration suggests, comprehensively assess the contracting officer's determination and find it unobjectionable, and we decline to do so here. We again explain that the concerns raised by A-B simply do not rise to the level contemplated by our regulations for review of an affirmative responsibility determination.⁷ See, e.g., MicroTechnologies, LLC, B-415214, B-415214.2, Nov. 22, 2017, 2018 CPD ¶ 48 at 7 (dismissing allegation that agency was obligated to consider a Dun & Bradstreet report, among other things, in making an affirmative responsibility determination because it "does not meet our threshold for review in this area").

Regardless, A-B's request for reconsideration is based on a reassertion of many of the same arguments it advanced in its protest pleadings. Such repetition of arguments made during our consideration of the original protest, and disagreement with our decision, do not meet the standard necessary for reconsideration. 4 C.F.R. § 21.14(c); Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Consequently, A-B's repeated instance that AGR should have been disqualified as nonresponsible does not demonstrate an error of fact or law in our prior decision.

Moreover, the protester's additional points, raised in a supplement to A-B's request for reconsideration, also fail to provide a basis to reconsider our decision. In this respect, A-B represents that more than four months after award AGR still had not obtained its facility clearance.⁸ See Supp. Req. for Recon. at 1. According to the protester, we should reconsider our decision because, from this information, it is apparent that AGR cannot obtain the requisite facility clearance. We decline to do so. As noted above, 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). Information not previously considered, however, does not mean information that arises

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process and timeframe to obtain one; the protester's arguments did not uniquely relate to AGR specifically. See Comments at 9-14.

⁷ We note, for the record, that the 1983 and 1988 GAO decisions cited by A-B as support for its argument that our Office can "overturn[]" affirmative responsibility determinations that are based on insufficient information reflect an outdated standard for review. See Req. for Recon. at 6. In this respect, the limited circumstances in which our Office has jurisdiction to consider challenges to affirmative responsibility determinations changed in 1995 and again, most recently, in the December 31, 2002, revision to our Bid Protest Regulations. See 60 Fed. Reg. 40741 (permitting reviews of responsibility determinations where bad faith is alleged); 67 Fed. Reg. 79833 (confirming the broad discretion afforded to contracting officer's in making responsibility determinations).

⁸ We note that AGR's delay in obtaining a facility clearance has resulted in the award of a bridge contract to A-B. Supp. Req. for Recon. at 4.

from events that took place after we issued our decision, such as A-B's assertion here.⁹ See InSpace 21 LLC, B-410852.4, Apr. 3, 2015, 2015 CPD ¶ 124 at 5; Epsilon Sys. Solutions, Inc., B-414410.3, Sept. 20, 2017, 2017 CPD ¶ 292 at 5 ("Since this information, even if true, arose from events that took place after our decision was issued, it does not provide a basis for reconsideration.").

Next, A-B asserts that our Office "erroneously" concluded that the firm lacked status as an interested party to raise its technical and past performance challenges.¹⁰ Req. for Recon. at 9. According to A-B, our decision "misstates the plain language allegations" of its protest, which, it asserts, also took issue with the evaluation of its own outstanding technical proposal. Id. In support of reconsideration, A-B stresses that the Army's "evaluation team is incapable of competently evaluating any proposals received in response to this RFP." Id. at 10.

We see no basis to reconsider our conclusion that A-B was not next in line for award, and, consequently, not an interested party to challenge these aspects of the evaluation of AGR's proposal.¹¹ See A-B Computer Solutions, Inc., *supra*, at 3. As an initial point, in its request for reconsideration, A-B merely block quotes verbatim from its protest; it presents no information not previously considered that warrants reversal or modification of the decision. See 4 C.F.R. § 21.14(c). As noted above, the repetition of arguments made during our consideration of the original protest, and disagreement with our decision, do not meet our Office's standard for reconsideration. See, e.g., Veda, Inc.--Recon., *supra*.

Regardless, the specific protest argument A-B now cites to in its request--that the agency altogether failed to evaluate proposals, including its own, under the technical staffing plan subfactor--was abandoned by the protester. In this respect, the agency provided a detailed, substantive answer to A-B's broad protest allegation, see Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 6-10, and the

⁹ Regardless, even if A-B's position with respect to the length of time necessary for AGR to obtain a facility clearance is ultimately validated, it still does not support that A-B's concerns regarding AGR's responsibility fell within the regulatory exceptions necessary to warrant our Office's review of these matters. Moreover, at this juncture, AGR's compliance with the PWS requirements is a matter of contract administration, which is not for our Office's consideration. See 4 C.F.R. § 21.5(a).

¹⁰ The protester does not specifically take issue with our resolution of its past performance challenge. See Req. for Recon. at 9-11.

¹¹ Our decision explains why A-B was an interested party with respect to the allegations surrounding the RFP's security clearance requirements, specifically pointing to the fact that only A-B held a facility security clearance at the time of proposal submissions. See A-B Computer Solutions, Inc., *supra*, at 3-4. Thus, as we explain, to the extent the protester's arguments had merit, A-B apparently would have been the only firm eligible for award.

protester did not offer any response to this aspect of the record in its comments. See Engineering Design Techs., Inc., B-413281, Sept. 21, 2016, 2016 CPD ¶ 265 at 6 (protest grounds abandoned where protester did not take issue with or seek to rebut an agency response in its comments on an agency report). Rather, A-B's staffing plan argument morphed into a specific objection to the outstanding rating assigned only to AGR's proposal, notwithstanding A-B's attempt to now characterize the protest ground differently. See Comments at 15. As we explain in our decision, even if we found this aspect of A-B's comments meritorious, an equally rated offeror--with "no meaningful distinction" from A-B--proposed a lower price, and, thus, would have been next in line for award. See AR, Tab K, SSDD, at 4. As such, we stand by our conclusion that the protester was not an interested party to challenge the evaluation of AGR's proposal. See 4 C.F.R. § 21.0(a)(1).

Lastly, we emphasize, for the record, that the Army expressly stated its position that the protester was not an interested party to raise these allegations, see COS/MOL at 5-6, and A-B wholly failed to offer any rebuttal in its comments. See A-B Comments at 1-17. To the extent any of A-B's arguments here have merit--they do not--our Office would consider the arguments untimely raised given that the firm's interested party status was squarely at issue during the pendency of the protest, and the firm did not address the issue in its protest pleadings. 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. E.g., The Dep't of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546 at 4.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel