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Decision

Matter of: NLT Management Services, LLC

File: B-415936.14

Date: October 5, 2020

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Angela R. Williams, Esq., Department of Justice, for the agency.

Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of a prior decision is denied where the requesting party has not shown that our decision contains either errors of fact or law or information not previously considered that warrants reversal or modification of the decision.

DECISION

NLT Management Services, LLC, of Ewing Township, New Jersey, requests that we reconsider our decision in *NLT Management Services, LLC*, B-415936.11 *et al.*, June 19, 2020, 2020 CPD ¶ 217, denying its protest challenging the issuance of a task order to MartinFederal Consulting, LLC, of Huntsville, Alabama, under request for proposals (RFP) No. DJA-17-AHDQ-R-0035, issued by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), for forensic and scientific laboratory administrative and technical support services. NLT argues that our decision contained factual and legal errors with regard to our analysis of its challenges to the technical acceptability of MartinFederal's proposal.

We deny the request for reconsideration.

BACKGROUND

As explained in our decision, the RFP, issued on June 19, 2017, sought proposals from Small Business Administration 8(a) business development program participants, for

administrative and technical support services for ATF's laboratories. RFP at 1, 5. The RFP contemplated the award of a fixed-price contract, with a base period and four 1-year option periods. *Id.* at 12. Award was to be on a best-value tradeoff basis, considering the following four factors, which were of descending importance: (1) technical/managerial (including corporate experience); (2) past performance; (3) personnel qualifications; and (4) price. *Id.* at 26. The non-price factors, when combined, were significantly more important than price. *Id.*

ATF received six proposals in response to the final amended solicitation, including proposals from MartinFederal and NLT. The agency ultimately found that only MartinFederal's proposal complied with the RFP's requirements, while the other five proposals--including NLT's proposal--were rated as technically unacceptable for failing to provide all required information or for other deficiencies. ATF elected to make award to MartinFederal, the only technically acceptable proposal, without conducting discussions. Following a debriefing, NLT filed its protest and two supplemental protests with our Office, which were docketed as B-415936.11, B-415936.12, and B-415936.13.¹ *NLT, supra* at 2.

NLT challenged numerous aspects of the agency's evaluation of its proposal and MartinFederal's proposal. Relevant here, NLT argued that the agency unreasonably found NLT's proposal to be technically unacceptable under the personnel qualifications factor for failing to provide a resume and letter of commitment/intent for a required position. *Id.* at 4. Our Office denied this allegation, finding that the agency reasonably concluded that NLT's proposed candidate was not exempt from the solicitation's submission requirements as argued by the protester. *Id.* at 5-6.

NLT also argued that the agency should have assessed numerous deficiencies that would have rendered MartinFederal's proposal technically unacceptable. By way of example, NLT argued that MartinFederal's proposed metrology technician II candidate failed to meet the solicitation's requirement for specific training in calibration or metrology. *Id.* at 7. Our Office found reasonable the agency's conclusion that the candidate's resume, with a bachelor of science degree in chemistry that included course work and labs in instrumental analysis, met the minimum stated qualification of a high school diploma or GED, and specific metrology or calibration training. *Id.*

Finally, NLT argued that ATF engaged in a disparate and unequal evaluation of proposals when it rejected NLT's proposal for failing to provide all required information, while overlooking MartinFederal's various alleged errors. *Id.* at 11. In denying the protest, our Office concluded that NLT failed to establish that the alleged differences in the agency's evaluation were not the result of material differences in the proposals. *Id.*

This request for reconsideration followed on June 29.

¹ This procurement has been the subject of numerous protests and related proceedings before our Office. *NLT, supra* at 2 n.1. The long and contentious history of the procurement is not relevant to this decision.

DISCUSSION

NLT argues that our decision contained factual and legal errors with respect to the agency's evaluation of MartinFederal's proposal. NLT requests that we reconsider our decision denying the protest for the following three reasons: (1) our decision erroneously failed to consider the specific calibration and metrology work required of a metrology technician II candidate under the RFP; (2) our decision erroneously found reasonable the decisions of the contracting officer who, according to the requester, admittedly did not have technical expertise; and (3) our decision contained legal error by allowing the agency to waive a material solicitation requirement for MartinFederal, and concluding that any evaluation error was minor and could be handled through clarifications.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must set out factual and legal grounds upon which reversal or modification of the decision is warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(a), (c). The repetition of arguments made during our consideration of the original protest and disagreement with our prior decision do not meet this standard. *Wyle Labs., Inc.--Recon.*, B-416528.3, Mar. 6, 2019, 2019 CPD ¶ 102 at 3. Further, a party's assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest also fails to satisfy the standard for granting reconsideration. *Department of the Navy--Recon.*, B-405664.3, May 17, 2012, 2013 CPD ¶ 49 at 2; *Precise Mgmt., LLC--Recon.*, B-410912.2, June 30, 2015, 2015 CPD ¶ 193 at 4. As discussed below, we find that none of the arguments presented by the requester provides a basis to grant the request for reconsideration.

Under the personnel qualifications factor, the RFP required offerors to demonstrate the experience and qualifications of personnel to perform services within the statement of work (SOW). RFP at 25. Relevant here, the RFP's minimum requirements for the metrology technician II candidate were: (1) a high school diploma or GED; and (2) specific calibration and metrology training as provided in a technical school, junior college, or military curriculum. *Id.* at 17.

NLT argues that our decision erred in failing to consider the specific calibration and metrology work required of a metrology technician II candidate under the RFP. According to the requester, because the technician was to be located at the agency's Fire Research Laboratory (FRL), "it is clear that the RFP required a Metrology Technician II candidate's resume . . . to demonstrate institutional calibration and metrology training specific to the type of forensic work conducted by the FRL." Req. at 4. The requester argues that the resume of MartinFederal's proposed candidate did not explicitly set forth any type of institutional calibration or metrology training specific to the type of forensic work conducted by the FRL. *Id.* As such, the requester asserts it was factual and legal error for our decision to ignore the RFP's requirements and conclude that NLT did not "explicitly explain why it believes the candidate has not established at least equivalent educational qualifications." *Id.* (quoting *NLT*, *supra* at 8).

NLT disagrees with our Office's resolution of its arguments, and its request for reconsideration essentially reasserts and reiterates the argument previously raised in its protest. See Comments, May 27, 2020, at 3. Our decision, however, accurately noted that the resume for MartinFederal's proposed candidate reflected that she had a bachelor of science in chemistry, had completed related coursework, and had performed job responsibilities as an engineering lab technician, including maintaining instrumentation, performing calibration, and training of individuals on current instrumentation and methodologies. *NLT, supra* at 7-8.

Our decision also correctly observed that, in light of the content of her resume, NLT did not explain why the candidate's resume did not establish the equivalent educational qualifications in the RFP for calibration or metrology training as provided in a technical school, junior college, or military curriculum. *Id.* at 8. In the request here, NLT merely expands upon its prior-raised disagreement with the agency's technical evaluation. Our Office has already considered and rejected NLT's argument. As we have consistently explained, the repetition of arguments, without more, does not provide a basis to reconsider a decision. 4 C.F.R. § 21.14(c); *Department of Defense--Recon.*, B-416733.2, Mar. 18, 2019, 2019 CPD ¶ 110 at 2-3.

In any event, NLT's argument is based on an unreasonable interpretation of the solicitation's requirements. As discussed above, the solicitation's minimum requirements for the metrology technician II candidate were: (1) a high school diploma or GED; and (2) specific calibration and metrology training as provided in a technical school, junior college, or military curriculum. There is nothing in the plain language of the solicitation that supports NLT's interpretation that the solicitation required that the metrology technician II candidate possess specific calibration and metrology training specific to the type of forensic work conducted by FRL. NLT's reading of the solicitation is not reasonable as it is inconsistent with the plain language of the solicitation, and therefore does not provide a basis to reconsider our decision. See *Constructure-Trison JV, LLC*, B-416741.2, Nov. 21, 2018, 2018 CPD ¶ 397 at 4 (finding protester's interpretation unreasonable where it is inconsistent with the plain language of the solicitation).

NLT next argues that our decision erred when we found unobjectionable the explanations provided by the contracting officer regarding the agency's evaluation of MartinFederal's personnel qualifications during a conference call our Office held with the parties.² Req. at 5-7. NLT primarily argues in its request that it was unreasonable

² NLT also argues that our decision contained a legal and factual error for failing to address one of its arguments challenging the relevancy of one of MartinFederal's references submitted under the corporate experience factor. Req. at 8. Our decision explained that although we did not specifically address all of NLT's numerous allegations, we fully considered them and found that none, except as discussed in the decision, provided a basis to sustain the protest. *NLT, supra* at 3 n.3. While our Office reviews all issues raised by protesters, our decisions may not necessarily address with

for our Office to give any weight to the contracting officer's explanations during the conference call, because (1) the statements were simply *post hoc* rationalizations; and (2) the contracting officer was not capable of making a reasonable determination regarding the qualifications of proposed personnel because she lacked the technical expertise. *Id.* ("It was legal and factual error to find the Contracting Officer's decision reasonable when she admittedly did not have the technical expertise to make the decisions at issue and only based them on assumptions.").

First, to the extent that requester is now challenging GAO's consideration of statements made by the contracting officer in a conference call during the pendency of the protest, this challenge is untimely. The conference call occurred on June 3, 2020. Any allegations regarding the reasonableness of those statements should have been raised within 10 days of when protester knew or should have known the basis of protest. 4 C.F.R. § 21.2(a)(2). Because NLT did not timely challenge this issue during the pendency of the protest, we will not consider such an argument raised here for the first time. *Department of the Navy--Recon.*, *supra* at 3 ("The [requester] raising these arguments for the first time in its reconsideration request cannot provide a basis for us to reconsider our earlier decision.").

In any event, even if this allegation had been timely raised, our conclusion would not have changed. The contemporaneous record provided during the protest included both the technical evaluation team's (TET) consensus evaluation report and the award memorandum. In regards to MartinFederal's evaluation under the personnel qualification, our decision noted that, "notwithstanding the technical evaluation team's consensus rating that the awardee's proposed personnel warranted an overall good rating, NLT points to an individual evaluator's finding that the awardee's metrology technician candidate did not demonstrate the requisite experience and training for the position." *NLT*, *supra* at 8.

Additionally, our decision observed that the contracting officer, acting as the source selection authority (SSA) for this procurement, subsequently reviewed MartinFederal's proposal and determined that all of the submitted resumes were adequate--including that of the metrology technician II candidate--although the contracting officer recognized that the metrology technician's resume did not explicitly state "experience with repairing malfunctioning measuring and test equipment or specific calibration and metrology training." *Id.* Our decision, likewise, summarized the agency's position as essentially arguing "that the candidates bachelor's degree in chemistry, coupled with the specific

specificity every issue raised; this practice is consistent with the statutory mandate that our bid protest forum provide for "the inexpensive and expeditious resolution of protests." See *Research Analysis & Maint., Inc.--Recon.*, B-409024.2, May 12, 2014, 2014 CPD ¶ 151 at 6 (*citing* 31 U.S.C. § 3554(a)(1)). In further keeping with our mandate, our Office does not issue decisions in response to reconsideration requests to address a protester's dissatisfaction that a decision does not address each of its protest issues. *Id.* Accordingly, we find no basis to grant the request for reconsideration simply because our prior decision did not specifically address this argument.

nature and type of courses that she completed that were addressed on her resume, as well as her enumerated job skills and responsibilities in her current position, demonstrate the specific training contemplated by the SOW.” *Id.*

As we have consistently explained, our Office will not limit its review to contemporaneous evidence, but considers all the information provided, including a party’s arguments and explanations. *ERC, Inc.*, B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 9; *Serco, Inc.*, B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 7. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review as long as those explanations are credible and consistent with the contemporaneous record. *NWT, Inc.; PharmChem Labs., Inc.*, B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. As such, we view the contracting officer’s June 3, 2020, statements to be a post-protest explanation of contemporaneous conclusions and not a *post hoc* rationalization, as the requester suggests. *Compare NWT, Inc.; PharmChem Labs., Inc., supra, with Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

Similarly, even it had been timely raised, the requester’s allegation that SSA could not make a reasonable determination regarding the qualifications of proposed metrology technician personnel because the SSA lacked the technical expertise, is without merit. First, we are simply not aware of any provision in the solicitation or in any procurement regulation or statute that requires an individual to have a particular technical expertise in order to perform duties as an agency source selection official. Second, we have consistently recognized that agency selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results in making their determination. *See, e.g., U.S. Facilities, Inc.*, B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 15.

Additionally, source selection officials are not bound by the recommendations of lower-level evaluators. *All Points Int’l Distribs., Inc.*, B-402993, B-402993.2, Sept. 3, 2010, 2010 CPD ¶ 209 at 3. Our Office has explained that so long as the ultimate selection decision reflects the selection official’s independent judgment, agency selection officials may rely on reports and analyses prepared by others. *See, e.g., Puglia Eng’g of California, Inc.*, B-297413 *et al.*, Jan. 20, 2006, 2006 CPD ¶ 33 at 8. Moreover, the determination of the technical acceptability of proposals is the responsibility of the contracting agency in the exercise of its discretion. Since it is the contracting agency that must bear the burden of any difficulties incurred because of a defective evaluation, it is not our position to question that determination unless the protester demonstrates that it was clearly unreasonable. *Northern Light Prods.*, B-401182, June 1, 2009, 2009 CPD ¶ 117 at 3. As we explained in our decision, after reviewing the full record:

We find the agency’s evaluation in this regard to be reasonable. As addressed above, the candidate’s resume demonstrates that she has a

bachelor's degree in a scientific discipline that includes specific scientific course and laboratory curriculums, to include course work and labs in instrumental analysis. On this record, we do not find that the agency unreasonably concluded that this disclosed background met the minimum stated qualification of a high school diploma or GED, and specific metrology or calibration training.

NLT, supra at 8. Nothing presented by the requester here leads us to conclude otherwise.

Finally, NLT alleges that our decision contained legal errors in finding that no disparate treatment existed despite the agency waiving the metrology technician II candidate's training requirements, and by concluding that any error regarding the evaluation of MartinFederal's metrology technician II candidate was minor and would only require clarifications. Req. at 8-9. We find no support for the requester's allegations, and also note that the requester mischaracterizes our decision.

Our decision did not find that the agency waived the metrology technician II candidate's training requirements. Rather, in addressing NLT's arguments that MartinFederal's proposal was ambiguous as to whether it was proposing a candidate to fill the metrology technician II position (because its proposal referred to a "metrology technician," instead of specifically identifying a "metrology technician II"), we found that the omission of the "II" designation was a minor clerical error that did not rise to the level of a technical deficiency. *NLT, supra* at 10-11.

Our decision distinguished this omission from NLT's failure "to provide a requisite resume and letter of intent/commitment for a required position (or, alternatively, its failure to provide a candidate for a required position when its proposed candidate withdrew from consideration following proposal submission)." *Id.* at 11. Our decision noted that to remedy the issue related to the missing resume, NLT would have needed "to propose a new metrology technician II candidate and submit the required supporting documentation." *Id.* Our decision explained that had the agency requested NLT provide the missing resume and letter of intent/commitment, that communication clearly would have constituted discussions. *Id.* at 11-12 n.10. In contrast, our decision concluded that the agency merely waived minor clerical errors in MartinFederal's proposal (*i.e.*, omission of the "II" designation), which could have been resolved through clarifications. *Id.* at 11. NLT's arguments in its request for reconsideration in this regard are nothing more than its disagreement with our decision. Repetition of arguments previously made, or disagreement with our prior decision, do not provide a basis for our

Office to reconsider the earlier decision. *Blue Horse Corp.--Recon.*, B-413929.2, B-413929.4, May 16, 2017, 2017 CPD ¶ 149 at 4.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel