



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Procinctu Group, Inc.--Reconsideration

File: B-416247.5

Date: March 15, 2019

Albert B. Krachman, Esq., and Michael J. Slattery, Esq., Blank Rome LLP, for the protester.

Heather M. Mandelkehr, Esq., and Alexis J. Bernstein, Esq., Department of the Air Force, for the agency.

Evan C. Williams., Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision denying request that our Office recommend the reimbursement of the protester's costs of filing and pursuing its protest 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 warrant reversal or modification of the decision.

DECISION

Procinctu Group, Inc. (Procinctu), a service-disabled veteran-owned small business of Waxhaw, North Carolina, requests that we reconsider our decision, Procinctu Group, Inc.--Costs, B-416247.4, Sept. 21, 2018, 2019 CPD ¶ 36, in which we denied Procinctu's request for a recommendation that the Department of the Navy, Naval Special Warfare Command (NSWC) reimburse Procinctu's costs for filing and pursuing its protest of the award of a contract under request for quotations (RFQ) No. H92240-18-Q-2007 for tactical training support services. Procinctu argues that our decision contained errors of law that warrant reconsideration of our decision.

We deny the request for reconsideration.

BACKGROUND

The RFQ was issued on December 22, 2017, and was set aside for small businesses under Federal Acquisition Regulation subpart 12.6 and part 13. Agency Report (AR), Tab 15, RFQ at 1.¹ The RFQ contemplated the award of a single fixed-price indefinite-delivery, indefinite-quantity contract with a performance period of up to 5 years with a \$3 million ceiling for the provision of tactical training support services. Id. at 1, 3; AR, Tab 14, Performance Work Statement (PWS). The RFQ provided for award on a best-value tradeoff basis among the following factors listed in descending order of importance: technical capability, past performance, and price. RFQ at 4.

Under the technical capability factor, the agency was to evaluate quotations based upon their demonstrated ability to meet or exceed the government's requirements. Id. As relevant to the request for reconsideration, the RFQ also stated that "[r]esumes will be evaluated on how well they demonstrate that the personnel proposed possess the relevant knowledge and experience to perform the tasks detailed in the PWS." Id. The PWS required vendors to provide a minimum of five instructors per class, including at least two lead instructors, and required that all instructors must possess an understanding of combat support personnel. PWS §§ 4.2, 4.5.2-3. Additionally, the PWS provided that lead instructors must have at least 5 years of relevant experience in special operations, and all other instructors must have at least 3 years of relevant experience in special operations. Id. §§ 4.5.2-3.

The agency received several quotations, including those from Procinctu and Big Lake 2 LLC (BL2). AR, Tab 27, Source Selection Decision, at 8. The agency evaluated the quotations and selected BL2 for award. Id. at 9.

On April 10, 2018, after being advised of the agency's award decision, Procinctu filed a protest with our Office, challenging the agency's technical, past performance, and price evaluations, as well as the agency's best-value determination. Protest B-416247, Apr. 10, 2018. On May 9, the Air Force filed an AR on behalf of NSWC, responding to the protest grounds, and defending the agency's evaluations and award decision.²

On May 21, Procinctu filed comments on the AR, which raised several supplemental protest grounds. Supp. Protest B-416247.2, May 21, 2018. As relevant here, Procinctu's supplemental protest challenged the agency's evaluation of two of BL2's proposed instructors under the technical capability factor. Specifically, Procinctu argued that because the resumes provided for BL2's proposed lead and general instructors did not identify dates or time periods for the instructors' claimed experience, its proposal should have been deemed ineligible for award.

¹ Citations are to the AR provided in response to Procinctu's initial protest, B-416247.

² The Department of the Air Force has represented NSWC throughout these proceedings.

On May 31, prior to filing a supplemental agency report, the agency notified our Office of its intent to take corrective action. In this regard, the agency stated that NSWC would reevaluate quotations previously found technically acceptable to ensure that the proffered resumes met the RFQ requirements, and make a new best-value determination. Notice of Corrective Action, B-416247, B-416247.2, May 31, 2018, at 1. On June 6, our Office dismissed the protests as academic. Procinctu Group., Inc., B-416247, B-416247.2, June 6, 2018 (unpublished decision).

In response, Procinctu filed a protest challenging the agency's proposed corrective action. Protest B-416247.3, June 19, 2018. Finding that the protest merely anticipated improper action on behalf of the agency, we dismissed Procinctu's protest as premature. Procinctu Group., Inc., B-416247.3, July 20, 2018 (unpublished decision).

Procinctu subsequently requested that our Office recommend that it be reimbursed the costs associated with filing and pursuing both its initial and supplemental protests. Request for Reimbursement, B-415427.4, June 19, 2018. Our Office denied Procinctu's request finding that Procinctu had not shown that any of its initial protest grounds were clearly meritorious, and because the agency took prompt corrective action in response to the supplemental protest. Procinctu Group, Inc.--Costs, *supra*, at 8. On October 1, Procinctu filed this request for reconsideration of our decision in B-415427.4.

DISCUSSION

Procinctu requests that we reconsider our decision on its request that we recommend reimbursement of its protest costs for two reasons. First, the protester contends that our decision is legally flawed because it failed to find that Procinctu's initial protest was clearly meritorious. Specifically, Procinctu asserts that our Office erred by not finding that a reasonable agency inquiry into its original protest grounds would have shown facts disclosing the absence of a defensible legal position. Second, Procinctu contends that because its supplemental protest grounds are factually and legally intertwined with its initial protest grounds, our decision should have recommended reimbursement of its costs of filing and pursuing its supplemental protest. For the reasons discussed below, we find no basis to reconsider our decision.³

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 fact or 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 decision do not meet this standard. 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.

³ Procinctu has made arguments that are in addition to, or variations of, those discussed below. We have considered all of Procinctu's assertions and find no basis to reconsider our decision.

Our Office may recommend reimbursement of protest costs, including reasonable attorneys' fees, if, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1)(A); 4 C.F.R. § 21.8(e).

Procinctu first contends that its initial protest should have been found clearly meritorious. In this regard, Procinctu argues that our decision contained an error of law by misapplying the standard that a protest is clearly meritorious where a reasonable agency inquiry into the original protest allegations would have shown facts disclosing the absence of a defensible legal position. In essence, Procinctu contends that we should have found that any reasonable inquiry on behalf of the agency in response to the initial protest would have concluded that BL2's proposal was technically unacceptable for failing to provide complete resumes.⁴

Procinctu raised these precise arguments regarding a reasonable inquiry in its request for reimbursement of costs. Request for Reimbursement, B-416247.4, June 19, 2018, at 1, 15. As noted above, the repetition of arguments made during our consideration of the original request for reimbursement, and disagreement with our decision does not meet our Office's standard for reconsideration. Office Design Group--Recon., B-413166.7, Mar. 9, 2017, 2017 CPD ¶ 89 at 2.

In any case, we have again reviewed the reasonable inquiry argument referenced by the protester in its reconsideration request and find no merit to its contention. As the protester correctly points out, a protest is clearly meritorious where a reasonable agency inquiry into the protest allegations would have shown facts disclosing the absence of a defensible legal position. First Fed. Corp.--Costs, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 at 2. As quoted above, the agency's announced corrective action stated that its reevaluation would ensure that vendors' proposed resumes met the RFQ's requirements. Notice of Corrective Action, B-416247, B-416247.2, May 31,

⁴ With respect to its request for reimbursement related to the initial protest, Proncinctu also argues that our prior decision failed to consider all of the protester's arguments. Specifically, the protester asserts that our decision erred because it did not discuss the allegedly deficient resumes submitted by BL2. Contrary to the Procinctu's arguments and as we stated in our prior decision, we considered all of the protester's arguments, but only discussed its more salient ones, in resolving the request for reimbursement. Although our Office reviews all issues raised by protesters, our decisions may not necessarily address with 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 31 U.S.C. § 3554(a)(1); Ahtna Facility Servs., Inc.--Recon., B-404913.3, Oct. 6, 2011, 2012 CPD ¶ 270 at 3. Accordingly, we deny this aspect of Procinctu's request for reconsideration as it fails to present information not considered in our previous decision.

2018, at 1. Procinctu's initial protest, however, did not allege that the agency misevaluated vendors' resumes, or otherwise argue that BL2's quotation should have been found technically unacceptable based upon the resumes provided. Instead, Procinctu's challenges related to BL2's resumes were raised for the first time as supplemental protest grounds after reviewing the AR. Supp. Protest B-416247.2, May 21, 2018, at 13, 18. Thus, the protester has failed to show that a reasonable inquiry into the initial protest grounds would have shown facts disclosing the absence of a defensible legal position to the initial protest grounds.

We are unpersuaded by Procinctu's argument that a reasonable inquiry by the agency into one of its initial protest grounds--that Procinctu's and BL2's quotations could not have been rated technically equal--should have led the agency to discover the issue ultimately leading to corrective action. Specifically, we reject Procinctu's apparent view that its very general challenge to the agency's technical evaluation in its initial protest should be deemed clearly meritorious merely because the agency later took corrective action in response to a specific supplemental protest ground that Procinctu argues could have been discovered earlier. While the filing of a protest should trigger an agency's review of the procurement, we believe that a general protest ground should not be found clearly meritorious where that protest ground did not raise the issue that eventually led to the corrective action. See Intercontinental Constr. Contracting, Inc.--Costs, B-400729.3, Mar. 4, 2009, 2009 CPD ¶ 44 at 3 (finding general allegation in protester's initial protest not to be clearly meritorious where allegation failed to present a case that on its face, without more, demonstrated a valid basis of protest). Consequently, we find no basis to grant this aspect of the protester's request for reconsideration.

Procinctu next challenges our finding that reimbursement of protests costs related to filing and pursuing the supplemental protest was not appropriate. In this regard, Procinctu contends that our decision should have recommended costs because its supplemental protest grounds are factually and legally intertwined with what it posits are its initial clearly meritorious protest grounds.

Here, Procinctu again repeats an argument it made in its request for reimbursement. Request for Reimbursement, B-416247.4, June 19, 2018, at 17. That is, our Office previously considered and rejected Procinctu's argument that it should be reimbursed its protest costs because all of its supplemental challenges to the technical evaluation derive from the same core fact--i.e., that the agency failed to apply the RFQ's evaluation criteria. Procinctu Group, Inc.--Costs, supra, at 8. Although Procinctu may disagree with our determination, we find no basis to conclude that our decision contained the error it alleges.

Procinctu repeats its argument that our Office erred by not recommending reimbursement of the costs of filing and pursuing its supplemental protest on the basis that the initial and supplemental protest grounds are factually and legally intertwined, and therefore are not severable. As stated in our decision, the concept of severability has no application in a situation like the instant case, where none of Procinctu's initial

protest grounds were clearly meritorious. In other words, severability cannot be used to establish the clearly meritorious nature of a particular protest ground, or to demonstrate undue delay on behalf of the agency. Rather, the severability of successful and unsuccessful protest grounds is only to be examined by our Office after making a finding that the agency unduly delayed taking corrective action in response to a clearly meritorious protest ground. See STG, Inc., B-415580.3, Mar. 27, 2018, 2018 CPD ¶ 221 at 6. Consequently, we see no basis to grant this aspect of the protester's request for reconsideration.

As further discussed in our decision, the record demonstrates that the agency did not unduly delay taking corrective action in response to Procinctu's supplemental protest. The agency notified our Office that it intended to take corrective action related to the resumes submitted by the vendors--an issue raised for the first time in Procinctu's supplemental protest--prior to the due date for filing a supplemental AR responding to the new allegation. Accordingly, the agency's conduct constitutes the prompt action that our protest procedures contemplate with respect to the supplemental protest grounds. Imagine One Tech. & Mgmt., Ltd.--Costs, B-412860.3, Dec. 9, 2016, 2018 CPD ¶ 80 at 6. Although we recognize that Procinctu may not have been able to raise its protest ground related to BL2's submitted resumes until it reviewed the AR, the fact remains that the agency took corrective action before the agency's supplemental report was due.⁵

Therefore, because the protester's initial protest grounds were not clearly meritorious and the agency took prompt corrective action with respect to Procinctu's supplemental protest, reimbursement is not appropriate in this case. While it is clear that Procinctu disagrees with the outcome of our previous decision, our Office will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contained a material error of law or fact, or identifies material information that was not previously considered. Veda, Inc.--Recon., supra, at 4. Thus, Procinctu's effort to reargue the merits of the underlying request for reimbursement does not demonstrate an error of fact or law that warrants reversing or modifying our decision.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel

⁵ To the extent Procinctu argues that the agency's corrective action was unduly delayed in response to its initial protest, this contention likewise fails. As discussed above, there is no basis in the record here to conclude that the initial protest generally challenging the agency's technical capability evaluation identified the issue on which the corrective action was based, such that it would be appropriate to measure the promptness of the agency's corrective action from the filing date of the initial protest. See Intercontinental Constr. Contracting, Inc.--Costs, supra, at 3; Office Depot, Inc.--Costs, B-408850.2, Feb. 25, 2014, 2014 CPD ¶ 85 at 5.