



Decision

Matter of: Ecology Mir Group--Reconsideration

File: B-418543.2

Date: July 16, 2020

Adham Yusupov, for the protester.
Andrew J. Smith, Esq., Department of the Army, for the agency.
Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of 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

Ecology Mir Group (Ecology), of Fairfax, Virginia, a small business of Fairfax, Virginia, requests reconsideration of our decision in *Ecology Mir Group*, B-418543, Apr. 8, 2020 (unpublished decision), regarding the establishment of a blanket purchase agreement (BPA) with hotel vendors. In its protest, Ecology ostensibly argued that the agency unreasonably rejected its quotation. Our Office dismissed the protest because it was actually an untimely protest of the terms of the solicitation.

We deny the request for reconsideration.

The agency issued the solicitation on January 2, 2020, to establish BPAs for lodging members of the Connecticut Army National Guard while they attend training. Req. for Dismissal, exh. G-1, Request for Quotations (RFQ) at 2. The RFQ provided in relevant part:

The Connecticut National Guard, is seeking to establish multiple Blanket Purchase Agreements (BPA) with hotel vendors that are located within ten (13) miles of the William A. O'Neil State Armory, 360 Broad Street, Hartford, CT 06105 in the Manchester/Vernon area to provide lodging accommodations for eligible [Connecticut National Guard] members attending Unit Training Assembly

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Id. Manchester and Vernon are towns in the state of Connecticut near Hartford. Req. for Dismissal at 2.

The closing date for the receipt of quotations was January 9. RFQ at 1. Ecology was notified that the agency established a BPA with Mother Daughter Contracting Services. On March 5, Ecology filed a protest with our Office after the agency advised the protester during a debriefing that it had rejected the protester's quotation as unacceptable because the hotel space it offered was not in the Manchester/Vernon area.

Ecology's protest principally argued that the agency unreasonably rejected its quotation because, as required by the solicitation, the properties it offered were within 13 miles of the William A. O'Neil State Armory. Protest at 1. The protester acknowledged that the solicitation also indicated that the property was required to be in the Manchester/Vernon area, but argues that this was an alternative location as the two requirements were effectively contradictory. *Id.*; Response to Req. for Dismissal at 1.

Our decision concluded that the solicitation was ambiguous concerning the precise distance a proposed property could be from the armory--the solicitation indicated both 10 and 13 miles as limits. See *Ecology Mir Group, supra* at 2 n.1. We found, however, that the solicitation was unambiguous with respect to the requirement for the property to be in Manchester or Vernon, portions of which are within 13 miles of the armory. *Id.* at 2. Our decision went on to note, in the alternative, that even if the protester were correct that the solicitation was ambiguous with respect to the requirement that Ecology was challenging, such an ambiguity was a patent ambiguity that was apparent on the face of the solicitation. *Id.* at 2-3. That is to say, if, as the protester suggests, the solicitation's requirements were contradictory, that contradiction was obvious from reading the solicitation. *Id.*

Our regulations require that protests of the terms of a solicitation, including protests challenging patent ambiguities, must be filed prior to the time for receipt of proposals. 4 C.F.R. § 21.2(a)(1); *Cleveland Telecomms. Corp.*, B-247964.3, July 23, 1992, 92-2 CPD ¶ 47 at 3-5. Accordingly, we dismissed Ecology's protest as an untimely challenge to the terms of the solicitation.

The protester argues that the decision should be reconsidered because our decision acknowledged that the solicitation contained ambiguities, which constitute "glaring errors," and that those errors should be resolved regardless of the timing of the protest filing. Req. for Reconsideration at 1. Additionally, the protester contends that it could not have recognized the ambiguity until its proposal was rejected. *Id.* Finally, Ecology argues that our decision was flawed for failing to address Ecology's response to the agency's request to dismiss, and email correspondence with the agency that the protester furnished. *Id.*

To prevail on a request for reconsideration, the requesting party either must show that our prior decision contains errors of either fact or law, or must present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a); *Waterfront Techs., Inc.--Recon.*, B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. Our Office will not consider a request based on repetition of arguments previously raised, and disagreement with the prior decision does not meet the standard for granting 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.

First, the protester argues that because our decision concluded that the solicitation contained ambiguities and errors, its protest should be considered timely even when filed after award. Req. for Reconsideration at 1. The protester misreads our decision. Our decision concluded that the solicitation was ambiguous only with respect to the distance from the armory that would be considered acceptable, which was not at issue in the protest. *Ecology Mir Group, supra* at 2 n.1. With respect to the aspect of the solicitation that the protester challenged--the requirement for the hotel to be located in Manchester or Vernon--our decision specifically concluded that “the solicitation is not ambiguous,” and clearly required that the hotel be located in the “Manchester/Vernon area.”¹ *Id.* at 2. Accordingly, we concluded the agency did not err in rejecting the protester’s quotation, and, further, that the protester’s objections amounted to an untimely challenge to the terms of the solicitation because our Regulations require that protests of the terms of a solicitation must be filed before the time for receipt of quotations. *Id.* at 2-3.

Second, the protester’s contention that our decision made no mention of its response to the agency’s request to dismiss is erroneous and, in any case, provides no basis to reconsider our decision. Preliminarily, our decision repeatedly cited to the protester’s response to the agency’s request to dismiss, and specifically addressed the substantive arguments offered in that response. *See Ecology Mir Group, supra* at 2-3.

Moreover, the protester contends that our decision did not directly address certain email correspondence it provided as part of its response to the agency’s request to dismiss, and that the correspondence shows “the contracting officer’s lack of communication with Ecology Mir Group regarding the solicitation.” Req. for Reconsideration at 1. While the protester is correct that our decision did not directly address the attached email correspondence, it provides no basis to reconsider our decision. Specifically, the

¹ While our decision alternatively noted that, even if the solicitation was ambiguous, the protest would also be untimely, this was not the principal basis for our decision. *Ecology Mir Group, supra*. Instead, we simply noted that our decisions have concluded that ambiguities which should be obvious on the face of the solicitation are subject to the same timeliness rules as protests of the terms of the solicitation. *Id.* Our timeliness rules concerning protests of patent ambiguities are also consistent with the views expressed by the courts. *See Blue & Gold, Fleet, L.P. v. United States*, 492 F.3d 1308, 1313-14 (Fed. Cir. 2007).

correspondence appears to consist of the contracting officer explaining to a representative of Ecology why it did not receive the award, followed by Ecology indicating it intended to pursue legal action, followed by a lapse in communication. See Response to Req. for Dismissal, Ecology Email Correspondence with Contracting Officer. It is unclear what violation of procurement law or regulation the protester contends is demonstrated by this correspondence or how it provides a basis to reconsider our decision. On the contrary, the contracting officer's explanations appear entirely consistent with the agency's later request to dismiss the protest, and with our subsequent decision.

In short, the protester has not demonstrated that our prior decision contains errors of either fact or law, nor has the protester presented information not previously considered that warrants reversal or modification of our decision.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel