

Decision

Matter of: Government Contracting Services, LLC--Reconsideration

File: B-419138.2

Date: March 17, 2021

Kevin Ingley for the protester.

John C. Huebl, Esq., Department of Veterans Affairs, for the agency.

John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest as an untimely challenge to the terms of the solicitation is denied where the requesting party has not shown that the decision contains errors of fact or law that warrant reversal or modification.

DECISION

Government Contracting Services, LLC (GCS), a service-disabled veteran-owned small business of Tacoma, Washington, requests reconsideration of our decision, *Government Contracting Servs., LLC*, B-419138, Nov. 2, 2020 (unpublished decision), dismissing as untimely the company's protest challenging numerous aspects of the solicitation under which the Department of Veterans Affairs (VA) made award to Hurtvet Subcontracting LLC, of Mobile, Alabama. The award was made under request for proposals (RFP) No. 36C10F20R0065, issued by the agency for an assessment of the physical access control systems and electronic security systems (PACS/ESS) at the VA's financial services centers in Austin, Texas and Waco, Texas.

We deny the request for reconsideration.

On June 2, 2020, the agency issued the RFP to acquire assessment and evaluation of the PACS/ESS at the Austin and Waco financial service centers. Req. for Dismissal, exh. 1, RFP at 1, 10. The RFP explained that the work would be conducted in two phases. *Id.* at 11. Phase one involved the performance of a site assessment of all PACS/ESS components at the financial services centers, which would include developing remediation options that would be presented to the VA once the assessment was completed. *Id.* Phase two would occur once the site assessment was completed and would involve performing the work outlined in the remediation plans to bring the PACS/ESS systems into compliance with applicable requirements. *Id.* at 12. The RFP

explained that phase two was an option and would occur only if the VA selected the desired remediation option plan and engaged the contractor to perform the work. *Id.* at 11-12.

The RFP provided for award of a fixed-price contract to the offeror whose proposal was most advantageous to the agency considering the following factors: team and management approach, key personnel, past performance, and price/cost. *Id.* at 67. The RFP did not explain how the agency would evaluate proposals under these factors. *See id.* As relevant here, the RFP included a price/cost schedule that contained five contract line item numbers (CLINs). *Id.* at 38-39. The first CLIN was for the phase one site assessment, and the second CLIN was the option for phase two.¹ *Id.* In response to questions about pricing the CLINs, the agency clarified that offerors were required to price only the first CLIN for the phase-one site assessment. Req. for Dismissal, exh. 2, RFP amend. 1, at 3. The agency further explained that the option CLINs, including the CLIN for phase two, would be priced only by the contractor awarded the phase-one work. *Id.* at 3, 4.

On September 4, 2020, the agency notified GCS that it was not the successful offeror and that the agency had selected Hurtvet Subcontracting for award. GCS requested and received a debriefing from the agency, through which GCS learned that the awardee's proposed price for phase one was \$3,100; GCS's proposed price was \$23,489.04. On September 14, GCS filed a protest with our Office alleging the following grounds: (1) given the awardee's proposed low price, the agency should have conducted a price realism analysis; (2) the two-phase structure of the RFP created biased ground rules and impaired objectivity organizational conflicts of interest (OCIs); (3) the two-phase structure will result in a cardinal change to the contract; (4) the RFP will lead to an improper noncompetitive sole source award for the phase two work; and (5) the RFP's pricing structure allows for unbalanced pricing. Protest at 5-6.

On October 7, the agency requested dismissal of the protest under 4 C.F.R. § 21.2(a)(1), arguing that GCS's protest grounds were really challenges to alleged improprieties in the solicitation that should have been protested prior to the initial closing time for submission of proposals. Req. for Dismissal at 4-5.

In response, the protester argued that any improprieties in the solicitation were "latent in nature and non-apparent until information provided at the debrief exposed the improprieties and defects[.]" Resp. to Req. for Dismissal at 2. In this regard, the protester contended that it was not until it learned of the "unrealistic awarded price of a mere \$3,100 for the magnitude and complexity of work associated with [p]hase [o]ne" that the protester "performed a deeper and more sinister analysis of the [s]olicitation that revealed the improprieties." *Id.* GCS alternatively argued that even if the protest was untimely, it raised issues significant to the procurement system and therefore

¹ The three other CLINs were for option periods covering maintenance and enhancement of the security systems. RFP at 38-39.

should be considered under the significant issues exception to GAO's timeliness rules. *Id.* at 3 (citing 4 C.F.R. § 21.2(c)).

On November 2, we dismissed GCS's protest as untimely.² *Government Contracting Servs., LLC, supra* at 2. Our Office determined that each of GCS's allegations concerned the terms of the solicitation, and rejected GCS's claim that it could not have been aware of the RFP's alleged improprieties until it learned the awardee's price. *Id.* We also declined to consider GCS's untimely protest under the significant-issues exception because we concluded that the protest did not raise significant issues that were of interest to the procurement community. *Id.*

In its request for reconsideration, GCS repeats the arguments it raised in response to the agency's request for dismissal, insisting that it was not until information was provided at the debriefing that the alleged improprieties in the solicitation became apparent to the protester, and that the protest grounds GCS raised are significant issues of interest to the procurement community. *Id.* at 2.

Under our Bid Protest Regulations, to prevail on a request for reconsideration, the requesting party must show that our decision contains errors 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), (c); *Analytic Strategies LLC; Gemini Indus., Inc.--Recon.*, B-413758.4, B-413758.5, Mar. 9, 2017, 2017 CPD ¶ 87 at 5. 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); *Walker Dev. & Trading Grp.--Recon.*, B-411246.2, Sept. 14, 2015, 2015 CPD ¶ 284 at 2. On this record, we conclude that GCS's request does not meet this standard.

As explained above, the RFP put offerors on notice that the awardee of phase one would propose, price, and potentially perform (if the option was exercised), the work for phase two. In addition, the solicitation did not provide for a price realism analysis. Thus, the basis for each of GCS's arguments was apparent from the description in the solicitation of the two-phase approach that the agency intended to use. GCS's failure to recognize from the terms of the solicitation the improprieties it alleged in its post-award protest does not demonstrate that the alleged improprieties were not apparent on the face of the RFP. Accordingly, we find no error in this regard in the dismissal of GCS's protest as an untimely challenge to the terms of the solicitation.

² Our Bid Protest Regulations contain strict rules for the timely submission of protests. See 4 C.F.R. § 21.2. Specifically, 4 C.F.R. § 21.2 (a)(1) requires that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. *Id.*

In addition, GCS's argument that the significant-issue exception to our timeliness rules should be invoked here also fails to meet our standard for reconsideration.³ GCS's request in this regard essentially repeats arguments that were raised at length in its response to the agency's request for dismissal of the original protest. See Resp. to Req. for Dismissal at 3-5; Req. for Recon. at 2-3. Again, the repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet the standard for reconsideration. 4 C.F.R. §21.14(c); *Walker Dev. & Trading Grp.--Recon.*, *supra*. Our reconsideration process provides an opportunity to show a material error in our Office's decision; it does not contemplate a *de novo* review of arguments previously made, nor does it give the requester an opportunity to bolster its protest arguments in ways that it could have, but did not, do in its original protest.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel

³ While our Regulations provide that GAO may consider an untimely protest where it raises issues of significant interest to the procurement system, 4 C.F.R. § 21.2, this exception is strictly construed and rarely used. *Vetterra, LLC*, B-417991 *et al.*, Dec. 29, 2019, 2020 CPD ¶ 15 at 3. We generally regard a significant issue as one of widespread interest to the procurement community that has not been considered on the merits in a prior decision. *Id.*; *Baldt Inc.*, B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2-3. Moreover, invoking the significant issue exception "is a matter entirely within [GAO's] discretion." *Capital Brand Group, LLC--Recon.*, B-418656.2, July 9, 2020, 2020 CPD ¶ 231 at 4; see also *The Dep't of the Navy; Fairchild Weston Sys., Inc.--Request for Recon.*, B-230013.2, B-230013.3, July 29, 1988, 88-2 CPD ¶ 100 at 2; *Ensign Aircraft Co.*, B-207898.4, May 17, 1983, 83-1 CPD ¶ 520 at 2.