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## Decision

**Matter of:** NCI Information Systems, Inc.--Reconsideration

**File:** B-419322.3

**Date:** May 3, 2021

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Daniel P. Graham, Esq., Elizabeth K. McIntyre, Esq., Ryan D. Stalnaker, Esq., and Alison S. Harmes, Esq., Vinson & Elkins, for the requester.  
John E. Cornell, Esq., Department of Homeland Security, for the agency.  
Kasia Dourney, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Request for reconsideration of decision finding the protester was not an interested party to challenge the agency's failure to amend the solicitation is denied where the requester is unable to show any error of fact or law warranting reversal or modification of our decision.

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### DECISION

NCI Information Systems, Inc. (NCI), of Reston, Virginia, requests reconsideration of our decision in *NCI Info. Sys., Inc.*, B-419322, B-419322.2, Jan. 12, 2021, 2021 CPD ¶ 23, denying in part and dismissing in part its protest challenging the issuance of a task order to Salient CRGT, under request for proposals (RFP) 70SBUR20R0000001. The Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) issued the task order for information technology (IT) deployment, maintenance, and repair services. NCI contends that our decision materially erred when it concluded that the protester was not an interested party to challenge the agency's failure to amend the solicitation to revise an incorrect independent government cost estimate (IGCE).

We deny the request.

### BACKGROUND

On April 1, 2020, the agency issued the RFP to holders of the General Services Administration's (GSA) Alliant 2 governmentwide acquisition contract, seeking proposals for IT deployment, maintenance, and repair services in support of the USCIS Office of Information Technology. Contracting Officer's Statement and Memorandum of

Law (COS/MOL) at 1; Agency Report (AR)<sup>1</sup>, Exh. 13, Decl. of Contracting Officer at 2. The procurement here was conducted under the provisions of Federal Acquisition Regulation (FAR) subpart 16.5.

The solicitation anticipated the issuance of a hybrid fixed-price and time-and-materials task order, for a 3-month transition period, a 9-month base period, and four 1-year option periods. AR, Exh. 1, RFP at 1-15. Offerors were advised that the task order would be issued on a best-value tradeoff basis, considering the following evaluation factors: oral presentation, management capability, technical capability, past performance, and price. *Id.* at 59-61.

As discussed in detail in our decision, the RFP required offerors to provide in their written proposals “[e]vidence of an adequate accounting system for all prime and subcontractors,” such as “a written opinion or other statement” from a cognizant federal auditor or a federal agency official. *Id.* at 61.

The agency received five written proposals, including from NCI and Salient. AR, Exh. 7, Technical Evaluation Committee (TEC) Report at 3. While evaluating NCI’s proposal, the agency determined that NCI failed to provide the required evidence of an adequate accounting system, resulting in a finding that NCI was ineligible for award. AR, Exh. 6, Business Evaluation Committee Report at 18; see *also* AR, Exh. 11, Source Selection Decision Document (SSDD) at 5, 8. Subsequently, the agency issued the task order to Salient, finding that its proposal, valued at \$174,999,083, provided the best value to the government. AR, Exh. 11, SSDD at 4, 10.

As relevant here, during the evaluation of proposals, the agency discovered a calculation error in the IGCE. Specifically, the IGCE provided in the RFP was 22 percent higher than the intended IGCE of \$217 million. *Id.* at 10. The USCIS decided not to amend the solicitation, however, reasoning that the workload quantities listed in the performance work statement had not changed, and no offeror “had been placed at a disadvantage.” *Id.*; Supp. COS/MOL at 2.

On October 13, NCI filed its protest with our Office challenging the agency’s evaluation of proposals and the best-value determination. NCI also asserted that the agency unreasonably concluded that NCI was ineligible for award for failing to submit evidence of an adequate accounting system. In its supplemental protest, NCI also alleged that the agency “misled the offerors” by providing an inaccurate IGCE and by failing to amend the solicitation to correct the error. Supp. Protest at 1. The protester argued that upon a discovery of a calculation error in the IGCE, the agency was required to amend the solicitation to correct the IGCE, and allow offerors to submit revised proposals. *Id.* at 1-4. In response, the agency maintained that NCI was not prejudiced

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<sup>1</sup> Citations are to the agency report provided in response to NCI’s underlying protest, B-419322.

by the error because its proposed price was already “*significantly lower* than either the original or the revised IGCE amount.”<sup>2</sup> Supp. COS/MOL at 2 (emphasis in original).

On January 12, 2021, our Office issued a decision denying NCI’s protest. We first found that the agency reasonably concluded that NCI failed to comply with the requirement to submit evidence of an adequate accounting system, and therefore reasonably evaluated NCI’s proposal as ineligible for award. *NCI Information Sys., Inc., supra* at 3-4. Because we concluded that NCI’s proposal was reasonably found ineligible for award, and because there were three other intervening offerors in line for award, we determined that NCI was not an interested party to challenge the remaining protest allegations, including the challenge to the agency’s failure to amend the RFP. *Id.* at 4-5. On January 22, NCI filed this request for reconsideration of our decision.<sup>3</sup>

## DISCUSSION

The crux of NCI’s request for reconsideration is that our prior decision included a material error of law in finding that NCI was not an interested party to challenge the agency’s failure to amend the solicitation to revise the overstated IGCE. Req. for Recon. at 2. NCI disagrees with our conclusion, asserting that our finding regarding other intervening offerors in line for award has no impact on its supplemental protest challenge that “USCIS was required to amend the RFP and solicit revised proposals.” *Id.*

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 law made or information not previously considered. 4 C.F.R. § 21.14(a). We will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contains a material error of law or facts. *AeroSage, LLC--Recon.*, B-417529.3, Oct. 4, 2019, 2019 CPD ¶ 351 at 2 n.2; *Department of Justice; Hope Village, Inc.--Recon.*, B-414342.5, B-414342.6, May 21, 2019, 2019 CPD ¶ 195 at 4. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

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<sup>2</sup> Specifically, NCI’s proposed price was \$188 million; the IGCE provided in the RFP was \$278 million and, as noted above, the revised IGCE was \$217 million. *Id.*

<sup>3</sup> As stated in the underlying protest decision, our Office has jurisdiction to consider the protest and subsequent reconsideration request as the task order at issue is valued in excess of \$10 million, and was issued under an indefinite-delivery, indefinite-quantity contract established by GSA. See *NCI Information Sys., Inc., supra* at 3 n.3, citing 41 U.S.C. § 4106(f)(1)(B).

For the reasons that follow, even assuming the requester is correct in its contention that its interested party status here was not related to a challenge to the intervening proposals, there is no basis to grant reconsideration because our Office correctly concluded that NCI was not an interested party to challenge the agency's decision not to correct the error in its solicitation.<sup>4</sup>

As an initial matter, the requester acknowledges that based on our finding that it was ineligible for award, NCI was not an interested party to challenge "any aspect of the *evaluation*" of proposals. Req. for Recon. at 2 (emphasis in original). NCI contends, however, that our finding does not affect its interested party status with respect to a challenge to the agency's failure to amend the RFP. In this regard, NCI asserts that if we were to sustain that protest ground, USCIS would be required to amend the solicitation and solicit revised proposals, giving NCI an opportunity to submit a revised proposal, including written evidence of an adequate accounting system. *Id.* Accordingly, the requester asserts that it "unquestionably is an interested party with a direct economic interest in this procurement." *Id.*, citing *McRae Indus., Inc.*, B-287609.2, July 20, 2001, 2001 CPD ¶ 127 (for the proposition, according to NCI, that a protester is an interested party where, if the protest were sustained, agency would be required to solicit revised proposals under an amended solicitation.).

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. 31 U.S.C. §§ 3551, 3553. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. *Courtney Contracting Corp.*, B-242945, June 24, 1991, 91-1 CPD ¶ 593 at 4.

In order to be found an interested party, a protester has to establish a reasonable possibility of competitive prejudice. See, e.g., *Fluor Fed. Solutions, LLC*, B-414223, Mar. 29, 2017, 2017 CPD ¶ 109 at 7-8; see also *Technology Concepts & Design, Inc.*, B-403949.2; B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 7-8. As discussed below, NCI failed to meet this standard.

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<sup>4</sup> As set forth above, the relevant standard for granting reconsideration before our Office is whether our decision contains a material error of fact or law; that is, but for the error, our Office would have likely reached a different conclusion as to the merits of the protest. See 4 C.F.R. § 21.14(a). Thus, even if the requester's assertion that a different legal analysis was required here to determine whether NCI was an interested party was correct, such a matter would not have impacted our overall conclusion, as discussed below, that NCI was not an interested party to challenge the agency's failure to amend the RFP.

At the outset, we note that NCI's argument appears to be based on a misunderstanding of our standard for finding a protester an interested party. According to NCI, it is an interested party to challenge the agency's failure to amend the RFP because, were we to sustain that protest ground, USCIS would have to amend the solicitation and solicit revised proposals, and NCI would be able to submit a revised proposal, and correct any deficiencies, such as providing evidence of an adequate accounting system. Req. for Recon. at 2. But the requester fails to advance any argument as to why the solicitation's incorrect IGCE precluded NCI from meeting the RFP's cost accounting system requirement, or in any way affected NCI's ability to compete in this procurement. In essence, NCI does not assert that a revised IGCE would change the outcome of the agency's evaluation of its proposal, and the resulting finding that NCI was ineligible for award.<sup>5</sup>

We have no basis to conclude that a successful challenge to the agency's decision not to amend the solicitation here to correct the erroneous IGCE would have any impact on the outcome of the agency's evaluation of NCI's proposal. NCI is not an interested party to challenge the incorrect IGCE because it has failed to establish a possibility of competitive prejudice with regard to the overstated estimate. *See Delta Chem. Corp.*, B-255543, Mar. 4, 1994, 94-1 CPD ¶ 175 at 4 (protester was not prejudiced by a solicitation defect unrelated to the basis upon which the protester's offer was found ineligible for award); *see also Information Ventures, Inc.*, B-297225, Dec. 1, 2005, 2005 CPD ¶ 216 at 5 (no competitive prejudice where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award). As a result, because the requester has not demonstrated that it was competitively prejudiced by the agency's failure to amend the RFP, NCI was not an interested party to raise that challenge.

Based upon our review of the record, we find that our Office correctly concluded that the requester was not an interested party to pursue the challenge to the agency's decision not to correct the error in its solicitation. NCI advances no meaningful argument and cites no relevant authority to refute this conclusion. Accordingly, we do not find that our

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<sup>5</sup> We find the requester's reliance on *McRae Indus., Inc.*, B-287609.2, July 20, 2001, 2001 CPD ¶ 127 in support of its reconsideration request to be unavailing. In *McRae*, our Office found the protester an interested party to challenge the agency's waiver of the RFP's strict testing requirements, despite the protester not having submitted a proposal, based on its allegations that those requirements deterred it from submitting a proposal. *Id.* at 3. In contrast, here, even if we accept NCI's argument that the agency should have amended the solicitation, NCI cannot establish prejudice given its submission of a proposal that was ineligible for award because it failed to meet a material requirement of the RFP, *i.e.*, evidence of an adequate accounting system.

underlying decision contained a material error of law or fact that would warrant reversal of our denial of NCI's protest.

The request for reconsideration is denied.

Thomas H. Armstrong  
General Counsel