



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Vinculum Solutions, Inc.--Reconsideration

**File:** B-408337.3

**Date:** December 3, 2013

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Daniel S. Koch, Esq., Miles & Stockbridge PC, for the protester.  
Navid Mehrjou, Esq., Department of the Treasury, Internal Revenue Service, for the agency.  
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### DIGEST

Request for reconsideration of a prior decision denying a protest concerning the cancellation of a solicitation is denied, where the protester does not show that the prior decision contains errors of fact or law that warrant reversal or modification of the decision.

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### DECISION

Vinculum Solutions, Inc. (VSI), of Broomes Island, Maryland, requests reconsideration of our decision in Vinculum Solutions, Inc., B-408337, B-408337.2, Aug. 5, 2013, 2013 CPD ¶ 191, in which we denied VSI's protest of the cancellation of request for technical cost proposals (RFTCP) No. 4094, for support services for the earned income tax credit (EITC) program office by the Department of the Treasury, Internal Revenue Service (IRS).

We deny the request for reconsideration.

The IRS issued the solicitation on August 14, 2012, under the agency's Total Information Processing Support Services (TIPPS)-4 multiple-award, indefinite-delivery/indefinite-quantity contract. At the time the solicitation was issued, Booz Allen Hamilton (BAH), a large business, was performing the services under a task order issued pursuant to its TIPPS-3 contract. The agency received proposals and conducted discussions with vendors, including VSI, and requested the submission of final proposal revisions by March 7, 2013. On April 29, the agency notified VSI and the other vendors that the solicitation would be cancelled, and explained the following day that the cancellation was "[d]ue to budgetary constraints." Contracting

Officer's Statement at 2; Agency Report (AR), Tab 7, Email to Vendors Regarding Cancellation (Apr. 29, 2013).

On April 26, the IRS issued a task order on a sole-source basis to BAH for support services for the EITC program office with a 2-month base period and two 1-month options. Contracting Officer's Statement at 2. The agency posted a notice of the award to BAH on May 7. On May 17, VSI filed a protest in our Office arguing that that the agency's cancellation of the solicitation due to budgetary reasons was simply a pretext, and that the agency cancelled the solicitation to keep this work with the incumbent contractor, BAH.

In our decision, we found that the IRS reasonably cancelled the solicitation based on its conclusion that budget constraints required a less-costly approach to providing the EITC support services. Vinculum Solutions, Inc., supra, at 2. Our decision noted that, prior to the completion of the procurement and selection of an awardee, agency personnel were told to look for ways to reduce costs in light of the budget sequestration,<sup>1</sup> which reduced available funding for the government. In light of the budget concerns, the agency decided to cancel the solicitation and instead perform the services in-house. Id. Because the agency was not prepared to perform the services in-house at the time of cancellation, however, it issued an interim 4-month task order to BAH to perform the services while they were being transitioned. Id. at 2-3. Based on the record, we found no basis to sustain the protester's arguments that the cancellation of the solicitation was improper.

In requesting reconsideration VSI argues that our decision unreasonably accepted the IRS's representation that the agency decided to perform the services in-house due to budget concerns, because the agency's position was not supported by the record. VSI argues, among other things, that the agency did not document the "extent of or duration of [its] budget constraints." Reconsideration Request at 3. For the reasons discussed below, we find no basis to reconsider our decision.

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) (2013). 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>1</sup> As extended by the American Taxpayer Relief Act of 2012, Pub. L. 112-240, § 901, 126 Stat. 2313, a budget sequestration reducing available funds went into effect on March 1, 2013. Office of Management and Budget Report to the Congress, Mar. 1, 2013.

First, VSI contends that although our decision relied upon representations by the contracting officer that the solicitation was cancelled based on budgetary concerns, the decision did not cite any evidence in the record that supported the contracting officer's representations. VSI argues that our decision "uncritically accepted the contentions of the IRS," and was therefore unreasonable. Request for Reconsideration at 2. The relevant section of our decision stated as follows:

Here, the record indicates that before the agency could issue an award under RFTCP 4094, agency personnel were told to look for ways to reduce costs in light of the budget sequestration, effective March 1, 2013, reducing available funding for the government. [Contracting Officer's Statement] at 3. As a result, the agency decided to cancel RFTCP 4094 and instead perform the services in-house. Id. However, since the agency was not yet prepared to perform the services in-house, it issued an interim 4-month task order to BAH to perform the services while they were being transitioned. Id.

Vinculum Solutions, Inc., supra at 2 (footnote omitted).

To the extent VSI argues that our decision should not have relied on the contracting officer's representations, in light of the numerous questions raised by VSI in its protest and comments on the agency report, we conclude that the protester merely repeats arguments raised in its protest.<sup>2</sup> For this reason, we find no basis to reconsider our decision.

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<sup>2</sup> To the extent that VSI argues that our decision should not have relied on the contracting officer's statement concerning the rationale for cancelling the solicitation, we disagree. While our Office considers the entire record in resolving a protest, including statements and arguments in response to a protest, in determining whether an agency's selection decision is supportable, we accord greater weight to contemporaneous evaluation and source selection materials than to new judgments made in response to protest contentions. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. In this regard, we accord lesser weight to post hoc arguments or analyses because we are concerned that judgments made in the heat of an adversarial process may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. Id. In contrast, 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 of evaluations and award determinations, so long as those explanations are credible and consistent with the contemporaneous record. AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 21 n.14.

Moreover, while our decision cited to the contracting officer's statement for support of the agency's rationale for cancelling the solicitation, the record includes other citations that support the agency's representations. As discussed above, the agency requested final proposal revisions from offerors in March. On April 8, however, a phone conference took place between the program office and the procurement office, during which the acquisition process and the effect of sequestration on the procurement were discussed. Contracting Officer's Statement at 2. The record contains an email from the program office to the contracting officer planning for this teleconference, including discussions regarding the agency's concerns regarding the budget. See Agency Request for Dismissal, Email from Program Office to Contracting Officer (April 3, 2013).

On April 15, another phone conference was held between the program office and the procurement office where the main topic was the program office's decision to cancel this action and the ramifications of such an action. Contracting Officer's Statement at 2. The record also contains a signed statement by the contracting officer that states that the program office and the procurement office, including the contracting officer, "held two long discussions on the pros and cons of cancelling RTCP 4094 prior to making the final determination." Contracting Officer's Statement at 3. Although the agency did not provide a document concerning the details of this meeting, the record contains email confirmations indicating that the April 15 meeting was scheduled, and also contains emails following the meeting confirming that the agency cancelled the solicitation because, "[a] decision was made that the contract is not the best use of resources for this office." See Agency Request for Dismissal, Meeting Confirmations (April 15, 2013); Email from Program Analyst to Contracting Officer (April 22, 2013). On this record, we find no basis to reconsider our decision.

Next, to the extent VSI argues that the IRS's basis for cancelling the procurement was not supported by specific data concerning the agency's budget and internal funding decisions, this matter was also raised in the protester's prior arguments. In any event, our Office generally does not question an agency's representations concerning the availability of funds, or require an agency to provide detailed information concerning its budget. See First Enter., B-292967, Jan. 7, 2004, 2004 CPD ¶ 11 at 3. In this regard, the management of an agency's funds generally depends on the agency's judgement concerning which projects and activities should receive increased or reduced funding and a contracting agency has the right to cancel a solicitation when, as a result of its allocation determinations, sufficient funds are not available. Id.

Finally, the protester argues that the challenged cancellation and subsequent award of a task order to BAH was undertaken in bad faith by the agency to once again have this work be performed by BAH, a large business. Procurement authorities are presumed to act in good faith and in order for our office to conclude otherwise,

the record must show that procuring officials intended to injure the protester. See Cycad Corp., B-255870, Apr. 12, 1994, 94-1 CPD ¶ 253 at 5.

Unlike our decision in Superlative Techs., Inc., B-310489, B-310489.2, Jan. 4, 2008, 2008 CPD ¶ 12, cited by the protester, the record here does not demonstrate that the agency acted in bad faith by attempting to avoid a ruling by our Office. In this regard, our decision in Superlative Techs., Inc. found that a procuring agency did not reasonably cancel a solicitation based on potential procurement integrity and organizational conflict of interest concerns regarding the awardee, where the record shows that the agency subsequently awarded a sole-source contract to a team that included the same awardee and whose proposal was substantially similar to the awardee's under the cancelled solicitation. Id. at 12. In contrast, as stated above, we find that the stated cause of the cancellation, budget concerns, prompted the agency to cancel the solicitation. As there is no evidence of intent here by the agency to injure the protester, the protester's inference of bad faith is insufficient to question the agency's decisions. Quality Support, Inc., B-296716, Sept. 13, 2005, 2005 CPD ¶ 172 at 2.

The request is denied.<sup>3</sup>

Susan A. Poling  
General Counsel

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<sup>3</sup> VSI's request also cites what it contends are new facts that contradict the contracting officer's representations concerning the IRS's rationale for cancelling the solicitation. In this regard, the protester contends that the agency has cancelled furlough days for staff and continues to plan for other awards under the TIPSS-4 contract. While the protester contends that this information casts doubt on the agency's representation that it canceled the solicitation because of budget concerns, we do not think that the information clearly demonstrates that the agency's representations at the time of the cancellation were false, or that the cancellation was motivated by improper pretext.