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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Precise Management, LLC--Reconsideration

File: B-410912.2

Date: June 30, 2015

Ronjiel Sharpe, Precise Management, LLC, for the protester.
Harold W. Askins, Esq., Department of Veterans Affairs, for the agency.
Stephanie B. Magnell, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of a prior decision dismissing a protest 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.

DECISION

Precise Management, LLC (Precise), of McCalla, Alabama, requests reconsideration of our decision in Precise Management, LLC, B-410912.1, Jan. 21, 2015, in which we dismissed Precise's protest challenging the award of a contract to Visions, Inc. (Visions), of Brooklyn Park, Minnesota, by the Department of Veterans Affairs (VA) under request for quotations No. VA247-14-Q-1719 (RFQ) for pest control support services at the Ralph H. Johnson VA Medical Center in Charleston, South Carolina; the Myrtle Beach Primary Care Clinic in Myrtle Beach, South Carolina; and the Veterans Affairs Medical Clinic Warehouse in Hanahan, South Carolina.

We deny the request for reconsideration.

BACKGROUND

The VA issued the RFQ on October 20, 2014, as a small business set-aside. The RFQ provided for the award to the vendor that submitted the lowest-priced, technically-acceptable quotation. RFQ at 8. Three vendors submitted timely quotations, including the protester. Agency Report (AR), at 2.

On December 1, 2014, the agency determined that Precise's quotation was not technically acceptable, since it did not include an adequate pest management plan, did not describe its approach to implementing the solicitation's limitation on subcontracting clause, and did not indicate the required three years of satisfactory experience/past performance. AR, Tab 3, Notice of Award and Debriefing (Dec. 1, 2014), at 1-2. The VA found that the other two vendors' quotations were technically acceptable. AR, at 2. The VA made award to Visions, the lowest-priced, technically acceptable vendor. Id. The agency provided a debriefing to Precise and explained the basis for finding the protester's quotation unacceptable. AR, Tab 3, Notice of Award and Debriefing, at 1.

Precise filed its protest on December 8, alleging that the VA had erred by failing to set aside the solicitation for service-disabled veteran-owned small businesses (SDVOSBs). Protest at 1. The protester also challenged agency's determination that Visions was a responsible firm, alleging that the awardee lacked a necessary state pest control license to perform the contract. Id. Precise did not challenge the VA's determination that its own quotation was technically unacceptable. Id.

On December 12, Precise asked the agency to produce copies of Visions' state pest control business license and state pesticide applicator license. Precise email (Dec. 12, 2014), at 1. The protester did not specifically request any other documents. Id.

On January 6, 2015, the agency submitted its report on the protest and requested that we dismiss or deny the protest. AR, at 1. The agency first argued that the protester's objection to the agency's failure to set aside the contract for SDVOSBs was untimely. Id. at 2. The VA also maintained that because Precise's quotation was technically unacceptable and ineligible for award, Precise was not an interested party under our regulations to protest the award to Visions. Id. at 4-5. In addition, the agency also argued that it had evaluated vendors' licenses in accordance with the solicitation. Id. at 3.

On January 8, the protester objected to the scope of the agency's document production and requested a copy of the awardee's quotation, the agency's evaluation of that quotation, and a copy of the awardee's state pest control license. Objection to Document Production (Jan. 8, 2015), at 4. On January 15, the protester filed comments on the agency report, responding to all of the agency's arguments--and including, for the first time, the protester's challenge to the agency's finding that its quote was technically unacceptable.

On January 21, we dismissed Precise's protest. First, we found that Precise's argument that the agency failed to set aside the procurement for SDVOSBs was an untimely challenge to the terms of the solicitation. Precise Mgmt. LLC, supra, at 1. Our Bid Protest Regulations state that challenges to the terms of the solicitation must be filed with our office prior to the due date for quotations. 4 C.F.R.

§ 21.2(a)(1). Because Precise's December 8 protest was filed after the October 27 due date for quotations, we dismissed this protest ground as untimely. Precise Mgmt. LLC, supra, at 1.

We also dismissed Precise's challenge to the agency's determination that Visions was a responsible firm, in which the protester alleged that the awardee did not hold a state license required by the RFQ. Id. at 2. As our decision explained, under our regulations, to have standing, a protester must be an interested party, *i.e.*, an actual or prospective vendor whose direct economic interest would be affected by the award of a contract. Id.; 4 C.F.R. §§ 21.0(a)(1), 21.2(a)(1). In this regard, we noted that the VA had advised Precise that its quotation had been rejected as technically unacceptable. Precise Mgmt. LLC, supra, at 2. See also AR, Tab 3, Notice of Award and Debriefing, at 1. We also noted that the VA had informed Precise that a third vendor had submitted a technically-acceptable quote. Precise Mgmt. LLC, supra, at 2. Although Precise filed its protest on December 8, Precise did not challenge the agency's evaluation of its quotation until its comments on the agency report on January 15. Id. On this basis, we held that the protester was untimely to challenge the agency's determination of technical unacceptability. Id., citing 4 C.F.R. § 21.2(a)(2) (challenges to other than the terms of a solicitation must be filed within 10 days of learning of the ground for protest). Furthermore, because the protester did not challenge the agency's determination that at least one other vendor was technically acceptable, we held that the protester was not an interested party, as Precise would not be in line for award even if its allegations regarding the awardee's quotation had merit. Id. On this record, we dismissed the protest. Id.

On January 27, Precise filed a request for reconsideration, alleging that our decision contained two errors that warranted reconsideration. Req. for Recon. (Jan. 27, 2015). Specifically, Precise alleges that it was improperly denied a copy of the awardee's quotation and that the agency failed to comply with the performance stay required by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d)(1). Id. at 1, 2. We address these allegations below.¹

¹ After filing its request for reconsideration, Precise sent us multiple emails. In January, of those relevant to the protest, the protester repeatedly requested a copy of the awardee's quotation and challenged the awardee's licensing status. Precise emails (Jan. 27, 6:53 p.m. and 8:21 p.m.; Jan. 29, 2:21 p.m.; Jan. 30, 6:41 p.m.). In addition, although the protester had not challenged the agency's evaluation of the third vendor in its protest, Precise requested a copy of the third vendor's quotation. Precise emails (Jan. 28, 6:47 a.m.; Jan. 29, 9:36 a.m., 3:51 p.m., 4:15 p.m. and 7:23 p.m.; Jan. 30, 1:36 p.m.). Emails not related to the substance of the request for reconsideration were also received. Precise emails (Jan. 28, 2:35 p.m., 2:42 p.m. and 3:30 p.m.; Jan. 30, 8:40 p.m.). In February, Precise continued its pursuit of the other vendors' quotations. Precise email (Feb. 2, 2:03 p.m.). In other emails, Precise raised issues related to the administration of the bid protest. Precise emails (continued...)

DISCUSSION

Precise requests reconsideration of our decision in B-410912 dismissing its protest. The protester first asserts, in essence, that because it did not receive a copy of the awardee's quotation prior to our dismissal of its original protest, our holdings on timeliness and standing are in error. Req. for Recon., at 1. Second, the protester alleges that the agency did not observe the required stay of performance required by CICA and implies that this is new information that similarly warrants reconsideration of our holdings related to timeliness and standing. Id.

Under our Bid Protest Regulations, to prevail on a request for reconsideration, the requesting party must show either 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); Department of the Navy--Recon., B-405664.3, May 17, 2012, 2013 CPD ¶ 49, at 1. 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. Additionally, a party's assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest also fails to satisfy the standard for granting reconsideration. Department of the Navy--Recon., supra. Precise's request does not meet this standard.

In requesting reconsideration, the protester contends that our Bid Protest Regulations, 4 C.F.R. § 21.3(d), required the agency to provide the protester with the awardee's quotation. Req. for Recon., at 1. However, the protester does not explain how our initial decision concerning the timeliness of Precise's protest as to the SDVOSB set-aside issue or the protester's lack of standing to challenge the award represents legal or factual error. Our Bid Protest Regulations require a protester to articulate a valid basis for reconsideration. 4 C.F.R. § 21.14(a). Here, because the protester fails to establish how the awardee's quotation was relevant to the merits of our prior decision, the protester fails to meet the requirements for reconsideration. Id. As a result, the request for reconsideration is denied for failing to state a legal or factual basis for reconsideration. Nonetheless, we provide

(...continued)

(Feb. 3, 10:07 a.m., 10:28 a.m. and 12:40 p.m.; Feb. 4; Feb. 5; Feb. 6, 8:45 a.m., and 11:54 a.m.; Feb. 9, 8:23 a.m. and 8:38 a.m.). The protester also raised challenges to the awardee's licensing status. Precise emails (Feb. 9, 1:59 p.m.; 2:29 p.m.; Feb. 11). Emails not related to the substance of the request for reconsideration were also received. Precise emails (Feb. 2, 2:09 p.m. and 5:46 p.m.; Feb. 3, 2:18 p.m., 2:50 p.m., 3:13 p.m., 3:14 p.m., 3:16 p.m. and 3:24 p.m.; Feb. 6, 8:47 a.m. and 9:05 a.m.).

additional analysis below demonstrating that the request for reconsideration lacks merit.

Failure to Receive Documents in Original Protest

Precise alleges that our original decision was rendered in error because the protester was not provided with a copy of the awardee's quotation.² Req. for Recon., at 1. We have reviewed the record and found that there was no error in the fact that the protester did not receive a copy of the awardee's quotation. As our decision explained, in order for a protester to pursue its protest, the protester must have standing, *i.e.*, it must demonstrate that it is an interested party. Precise Mgmt. LLC, *supra*, at 2. In this respect, the protester failed to demonstrate that it was an interested party, and as a result, had no basis to request documents. *Id.*

First, as our decision explained, under our Bid Protest Regulations, to have standing a protester must be an interested party, *i.e.*, an actual or prospective vendor whose direct economic interest would be affected by the award of a contract. *Id.*; 4 C.F.R. §§ 21.0(a)(1), 21.2(a)(1). Where, as here, a vendor submits a technically unacceptable quotation, the agency may reasonably conclude that the quotation is ineligible for award. Windstream Commc'ns, B-409928, Sept. 9, 2014, 2014 CPD ¶ 271 at 3 (a quotation that fails to conform to a solicitation's material terms is technically unacceptable and may not form the basis for award); BAE Sys. Tech. Solutions & Servs., Inc., B-409914, B-409914.2, Sept. 16, 2014, 2014 CPD ¶ 322 at 9 (where proposal failed to comply with mandatory requirements of the solicitation, agency reasonably concluded that proposal was technically unacceptable and ineligible for award).

If a protester is not eligible for award because its quotation was technically unacceptable, it lacks the requisite economic interest to maintain standing unless it argues that it is, in fact, eligible for award. In this regard, we noted that the VA advised Precise that its quotation had been rejected as technically unacceptable.

² Furthermore, the protester insisted on receiving unredacted documents. *See, e.g.*, Precise emails (Jan. 27, 6:53 p.m. and 8:21 p.m.; Jan 29, 2:21 p.m.; Jan. 30, 6:41 p.m.). Regardless of whether the protester received a copy of the awardee's quotation, because Precise was proceeding without counsel, it could not have received an unredacted copy of any competitors' quotations, as it requested. Our regulations provide that "[w]here a protester does not have counsel admitted to a protective order and documents are withheld from the protester in accordance with this part, the agency shall provide documents adequate to inform the protester of the basis of the agency's position." 4 C.F.R. § 21.3(e). Because Precise does not have counsel, no protective order was issued, and any quotation documentation the protester received was, or would have been, substantially redacted.

Precise Mgmt. LLC, supra, at 2, citing AR, Tab 3, Notice of Award and Debriefing, at 1-2.

Second, as also explained in our prior decision, a protester is not an interested party to challenge an agency's evaluation of the awardee where there is another intervening offeror that would be in line for award if the protest allegations were correct. Precise Mgmt. LLC, supra, at 2. See also Morpho Detection, Inc., B-410876, Mar. 3, 2015, 2015 CPD ¶ 85; CACI Dynamic Sys., Inc., B-406130, Feb. 28, 2012, 2012 CPD ¶ 77 at 7-8. Here, in order to have the direct economic interest to challenge Visions' eligibility, Precise must first have shown that there were no intervening vendors who would be next in line if it successfully challenged the award to Visions.³ Thus, Precise was required to challenge both the agency's evaluation of its own quotation and that of the third vendor, because even if the protester were correct that the awardee's quotation was unacceptable, the other vendor, and not Precise, would have been next in line for award. The record shows that Precise not only failed to challenge the agency's evaluation of its own quotation, but it failed to challenge the evaluation of the intervening vendor as well.⁴ Precise Mgmt. LLC, supra, at 2. Since Precise was properly dismissed on a threshold procedural issue--its standing to pursue this protest--it was not eligible for the procedural benefits of our Bid Protest forum, including the right to review relevant documents.

Alleged Failure to Stay Performance

Next, Precise alleges that the agency improperly failed to stay performance of the contract notwithstanding the protest, as required by CICA. Req. for Recon., at 2. The protester contends that the agency's alleged failure to suspend contract performance demonstrates that our dismissal of its protest was in error.⁵

Under CICA and our Bid Protest Regulations, a contracting agency is required to suspend contract performance if it receives notice of a protest from our Office within 10 calendar days of the date of contract award. 31 U.S.C. § 3553(d)(1); 4 C.F.R. § 21.4(b). However, an agency's failure to adhere to the stay requirement in

³ In addition, as discussed above, Precise would have had to pursue a timely challenge to the agency's evaluation finding Precise's quotation to be technically unacceptable.

⁴ The protester's current efforts to challenge the third vendor are untimely. 4 C.F.R. § 21.2(a)(2).

⁵ To the extent Precise's argument concerning the suspension of performance is considered a new protest ground, rather than a basis for reconsidering our prior decision, we note that, for the reasons discussed herein, this argument is not a valid basis of protest.

31 U.S.C. § 3553(d)(3)(A)(ii) is neither a valid basis of protest nor a basis to reconsider our prior decision. 4 C.F.R. § 21.6 (“GAO does not administer the requirements to stay award or suspend contract performance under CICA”); Serco Inc., B-410676.2, Dec. 12, 2014, 2014 CPD ¶ 371 at 2 (whether the agency failed to comply with the stay of performance is not a matter for consideration by GAO).

In any event, the record does not support the protester’s argument that the agency failed to stay performance of the contract. The protester’s allegation that the agency failed to observe the required stay in performance is based on an email in which a South Carolina university employee confirms the licensing status of an entity that did not submit a quotation in this procurement. Req. for Recon. at 2; Req. for Recon., exh. F, Clemson email (Jan. 7, 2015). Setting aside the fact that this is not a matter for our Office to review, the protester failed to allege a connection between the licensure status of this company and a failure to stay performance in the instant procurement.

The request for reconsideration is denied.

Susan A. Poling
General Counsel