



Decision

Matter of: 22nd Century Technologies, Inc.--Reconsideration

File: B-420510.3

Date: August 10, 2022

Jon D. Levin, Esq., W. Brad English, Esq., and Emily J. Chancey, Esq., Maynard Cooper & Gale PC, for the protester.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where requesting party fails either to show that our original decision contained errors of fact or law, or present new information not previously considered that would warrant reversal or modification of our original decision.

DECISION

22nd Century Technologies, Inc., of Mclean, Virginia, requests reconsideration of our decision in *22nd Century Technologies, Inc.*, B-420510, B-420510.2, May 4, 2022, 2022 CPD ¶ 127, in which we denied its protest against the issuance of a task order to TekSynap Corporation, of Reston, Virginia, by the Defense Logistics Agency under request for quotations (RFQ) No. SP4709-21-Q-0020, issued to acquire information technology support services. 22nd Century argues that we erred in dismissing certain of its allegations.

We deny the request for reconsideration.

BACKGROUND

In its original protest, 22nd Century argued that the agency misevaluated quotations under certain of the solicitation's non-price evaluation factors, specifically key

personnel, past performance and technical approach.¹ We either denied or dismissed all of 22nd Century's allegations, concluding that the agency's evaluation of the quotations was reasonable and in accordance with the terms of the RFQ and applicable statutes and regulations.

22nd Century's request for reconsideration is confined to its allegations relating to the evaluation of quotations under the technical approach evaluation subfactor. In its initial protest challenging the agency's evaluation of quotations under that subfactor, 22nd Century identified over a dozen separate sections of the performance work statement (PWS), and argued that the agency had erred in failing to assign separate strengths to its quotation under each of these PWS elements.²

The agency responded that 22nd Century's protest failed to show that its evaluation was unreasonable or inconsistent with the terms of the RFQ or applicable statutes and regulations, and maintained that the allegations amounted to no more than disagreement with the agency's assignment of strengths to the quotations.

In responding to the agency's report, 22nd Century made no further mention of the overwhelming majority of its allegations. Specifically, 22nd Century's comments included a listing of 11 of the PWS elements that it had referenced in its initial protest, but the firm did not make any substantive argument in connection with eight of these 11 original challenges to the agency's evaluation.³

To the extent that its comments could be described as substantive, they were confined to just three of its original allegations. As to those three allegations, its comments included only a table that paired *verbatim* passages from the PWS with *verbatim* passages from its quotation. In a word, 22nd Century failed to comment at all in connection with most of its allegations, and merely reproduced the contents of its protest--without elaboration--as to its remaining three allegations.⁴

¹ The RFQ included three evaluation factors, one referred to as the "non-price" factor (which included three subfactors: level of effort/labor mix, key personnel, and technical approach), past performance, and price. RFQ at 92-93.

² 22nd Century's original protest referenced 11 different PWS sections, and within one of those sections, PWS section 2.3.5 (which was for site-specific requirements), identified six additional subsections.

³ 22nd Century's comments referenced PWS section 2.3.5--the site-specific requirements--but made no further mention of the six additional subsections under that section to which it had referred in its original protest.

⁴ 22nd Century's original protest was comprised of paraphrased summaries of the enumerated PWS sections, along with either paraphrased summaries or *verbatim* passages from its quotation. The materials quoted in the table in its comments were no more than a repetition of the passages from its quotation that 22nd Century had either

In our decision responding to this aspect of 22nd Century's protest, we dismissed the eight allegations for which the firm provided no substantive response as abandoned. *22nd Century Technologies, Inc, supra.* at 8-9. In addition, we denied 22nd Century's remaining three allegations, concluding that they amounted to no more than disagreement with the agency's evaluation, and finding that the firm had failed to show that the evaluation was unreasonable on inconsistent with the terms of the RFQ. *Id.* at 9. After receiving our decision, 22nd Century filed its request for reconsideration.

DISCUSSION

22nd Century argues that we erred in dismissing as abandoned the eight allegations upon which it failed to comment. 22nd Century argues that because the agency did not provide a point-by-point response to its original, PWS-specific bases for protest, it was under no obligation to provide comments specifically addressing each of its allegations.

We find no merit to 22nd Century's position. In order to obtain reconsideration, the requesting party is required either to show that our previous decision includes errors of fact or law, or present new information not previously considered that would merit reversal or modification of our earlier decision. *Mission1st Group, Inc.--Recon.*, B-419369.3, Apr. 29, 2021, 2021 CPD ¶ 182 at 2. 22nd Century's request fails to meet this standard.

In responding to an agency report, protesters are required to provide a substantive response to the arguments advanced by the agency. *Yang Enterprises, Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109 at 2, *aff'd.*, *Yang Enterprises, Inc.--Recon.*, B-415923.3, Aug. 6, 2018, 2018 (unpublished decision) Where a protester merely references or restates earlier arguments advanced in an initial protest without providing a substantive response to the agency's position, our Office will dismiss the referenced allegations as abandoned. *Yang Enterprises, Inc. supra.* ; see also *Israel Aircraft Industries, Ltd.--TAMAM Division*, B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7.

22nd Century's position is essentially that it was not required to address each of its protest arguments in detail because the agency's response to its challenges did not present a point-by-point response to each of its enumerated challenges. 22nd Century misunderstands the requirements of our Bid Protest Regulations, 4 C.F.R. § 21.3(i)(3), which provide that a protester must respond affirmatively to an agency's arguments advanced in defense of the protest.

Here, while the agency's response to the protest was not formatted in the same way as 22nd Century's protest--in the sense that it did not include a point-by-point rebuttal to each of the allegations--22nd Century was nonetheless required to respond to the substance of the agency's position. In its report, the agency argued--substantively--that

summarized or quoted directly in its original protest. 22nd Century made no attempt to advance any substantive argument with respect to its remaining three allegations.

it had properly evaluated 22nd Century's quotation in accordance with the terms of the RFQ; that the agency reviewed the 22nd Century quotation to ensure that the firm understood the scope and complexity of the work called for, and presented a well-defined technical approach that would meet the agency's needs; that the protester's presentation of *verbatim* passages from its quotation--without more--did not demonstrate that the agency's evaluation was unreasonable or inconsistent with the terms of the RFQ; that the agency's assignment of strengths to the 22nd Century quotation was appropriate, consistent with the terms of the RFQ, and also consistent with its evaluation of all of the other quotations; and that 22nd Century's disagreement with the agency's assignment of strengths did not provide a basis to object to its evaluation conclusions. Agency Report at 44-47; Exh. 7, 22nd Century Final Technical Evaluation Report, at 4-5.

In response, 22nd Century did no more than state conclusively--and without explanation or elaboration--that its initial protest letter somehow *ipso facto* proved that the agency failed to assign an adequate number of strengths to its quotation. 22nd Century then went on to repeat the contents of its protest letter, but only with respect to three of the specific areas where 22nd Century thought it deserved additional strengths. As to 22nd Century's remaining challenges to the agency's evaluation (beyond merely referencing them in a list), 22nd Century's comments were entirely silent.

In the final analysis, it was 22nd Century's failure to adequately present its case that led our Office to dismiss those elements of its protest.

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel