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Decision

Matter of: American Tech Solutions, LLC--Reconsideration

File: B-421585.5

Date: July 25, 2023

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Colonel Frank Yoon and Major James B. Leighton, Department of the Air Force, for the agency.
Nathaniel S. Canfield, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision dismissing protest as academic is denied where the requesting party has not shown that our decision contains either errors of fact or law or information not previously considered that warrants reversal or modification of the decision.

DECISION

American Tech Solutions, LLC, a small business of Chantilly, Virginia, requests reconsideration of our decision in *American Tech Solutions, LLC*, B-421585.3, B-421585.4, May 31, 2023 (unpublished decision), in which we dismissed the protest as academic. The protester contends that our Office erred in dismissing its protest as academic because the agency's proposed corrective action does not address all of the allegations raised in the underlying protest.

We deny the request for reconsideration.

BACKGROUND

The protester filed initial and supplemental protests with our Office challenging the Department of the Air Force's issuance of a task order to Obsidian Global LLC under fair opportunity proposal request No. FA3002-22-R-0026 for services and equipment to sustain and deploy graduate/training integration management system software and architecture. See *American Tech Solutions, LLC*, B-421585.3, B-421585.4, May 31, 2023 (unpublished decision). The protester challenged the agency's evaluation of

proposals under the technical factor, the evaluation of the awardee's proposal under the past performance factor, and the best-value tradeoff decision. *See id.*

On May 30, 2023, the due date for the supplemental agency report, the agency informed our Office that it had decided to take corrective action, to include reevaluating the offerors' technical proposals and making a new best-value tradeoff decision. *See id.* In response to our subsequent request for clarification, the agency stated that it did not intend to reevaluate the offerors' past performance proposal volumes. *See* Clarification of Notice of Corrective Action. The agency stated that its intention was to reevaluate the offerors' technical proposal volumes and to conduct a new best-value tradeoff using the previous evaluations of price and past performance, as well as the new technical evaluations. *See id.* The agency further stated that it reserved the right to take any other corrective action it deemed appropriate. *See id.* We then dismissed the protest as academic on May 31. *See American Tech Solutions, LLC*, B-421585.3, B-421585.4, May 31, 2023 (unpublished decision).

Later on May 31, the protester filed this request for reconsideration of our decision dismissing its protest as academic.

DISCUSSION

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a); *TEN21 Capital, LLC--Recon.*, B-418906.4, June 23, 2021, 2021 CPD ¶ 235 at 2. Here, the protester's request does not demonstrate that our decision contains an error of fact or law, and does not present new information warranting reversal or modification. For the reasons discussed below, we conclude that the request does not meet our standard for reconsideration.

The protester argues that our dismissal of its protest as academic was based on legal error. In particular, the protester contends that, because the agency has not committed to reevaluating past performance, the proposed corrective action does not moot the protester's challenge to the agency's evaluation of the awardee's proposal under the past performance factor. *Req. for Recon.* at 2. Accordingly, the protester argues, it was error to dismiss the protest as academic. *Id.* at 2-3.

Our office may dismiss protests as academic in any number of circumstances. *The Jones/Hill Joint Venture--Recon.*, B-286194.2, Dec. 8, 2000, 2000 CPD ¶ 203 at 3 (describing various circumstances under which we may dismiss protests as academic). Of relevance here, we may dismiss a protest as academic where the corrective action, while not addressing some or all of the issues raised by the protester, appears appropriate based upon the particular circumstances of the acquisition and protest. *Id.* (citing *Southern Techs., Inc.--Recon. and Costs*, B-278030.3, Apr. 19, 1998, 98-1 CPD ¶ 125); *see also Quotient, Inc.*, B-416473.4, B-416473.5, Mar. 12, 2019, 2019 CPD ¶ 106 at 3 ("An agency's corrective action need not address every protest issue, but

must render the protest academic.”). To that end, where, as here, an agency undertakes corrective action that will supersede and potentially alter prior procurement actions, our Office generally will decline to rule on a protest challenging the agency’s prior actions on the basis that the protest is rendered academic. See, e.g., *Odyssey Sys. Consulting Group, Ltd.*, B-418440.8, B-418440.9, Nov. 24, 2020, 2020 CPD ¶ 385 at 8.

Here, the agency’s proposed corrective action--reevaluating technical proposals and making a new best-value tradeoff decision--will supersede and potentially alter its prior decision to issue a task order to Obsidian. Thus, continuing to resolve the protester’s challenge to the agency’s past performance evaluation serves no purpose; essentially, the decision would be academic where the agency’s reevaluation of technical proposals and preparation of a new award decision may result in the requester being selected for award.¹ In similar circumstances, we have concluded that the agency’s commitment to making a new selection decision rendered academic our continued consideration of the prior award decision.² See, e.g., *TEN21 Capital, supra* at 3-4. Accordingly, the

¹ To the extent a party to an underlying protest objects to the scope of the agency’s corrective action, it must separately file a timely protest in accordance with our Bid Protest Regulations. Our decisions previously have examined the timeliness rules with respect to agency corrective action involving a reevaluation that addresses some, but not all, of the evaluation challenges raised in the underlying protest. See, e.g., *SOS Int’l, Ltd.*, B-407778.2, Jan. 9, 2013, 2013 CPD ¶ 28; *WorldWide Language Resources, Inc.*, B-418767.5, July 12, 2022, 2022 CPD ¶ 180 at 7-8 (discussing *SOS Int’l*).

² The protester contends that our decisions regarding whether a protest is rendered academic by corrective action that addresses some--but not all--of the protest grounds are conflicting, citing our decisions in *Mythics, Inc.*; *Oracle America, Inc.*, B-418785, B-418785.2, Sept. 9, 2020, 2020 CPD ¶ 295 and *TEN21 Capital, supra*. See Req. for Recon. at 2. As we made clear in *TEN21 Capital*, however, the key distinction between those two decisions is that *Mythics* involved a pre-closing challenge to the terms of a solicitation, not a post-award challenge to an agency’s evaluation of proposals and source selection decision as in *TEN21 Capital*. See *TEN21 Capital, supra* at 2.

In *Mythics*, the agency proposed to eliminate certain challenged solicitation requirements but not others. See *id.* at 2-3 n.3. Thus, unlike, for example, a cancellation of the solicitation, the agency’s corrective action did not render academic the unaddressed challenges, as the solicitation remained open, the procurement was ongoing, and there were unresolved issues concerning the terms of the solicitation that precluded offerors from competing intelligently and on a relatively common basis. See *id.* at 3. In *TEN21 Capital*, by contrast, the agency’s commitment to conducting a reevaluation and making a new selection decision--despite not addressing every protest issue--rendered even the unaddressed issues academic because it could result in a different source selection decision. See *id.* at 3. These differing factual scenarios reinforce that whether it is appropriate to dismiss a protest as academic will depend upon the particular circumstances of the acquisition and protest.

protester's request for reconsideration does not demonstrate an error of fact or law in our prior decision dismissing the protest as academic.

The request is denied.

Edda Emmanuelli Perez
General Counsel