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# Decision

**Matter of:** 4K Global-ACC JV, LLC--Reconsideration

**File:** B-423092.2

**Date:** April 11, 2025

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Joey R. Floyd, Esq., Bruner, Powell, Wall & Mullins, LLC, for the requester.  
Phillip T. Paradise, Esq., Department of the Army, for the agency.  
Uri R. Yoo, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Request for reconsideration is dismissed where the request, which is based on a holding in a U.S. Court of Federal Claims decision issued after our Office's bid protest decision, does not show that the protest decision contains errors of fact or law that would warrant reversal or modification of the decision.

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## DECISION

4K Global-ACC JV, LLC (4K Global), a small business of Augusta, Georgia, requests reconsideration of our decision in *4K Global-ACC JV, LLC*, B-423092, Jan. 15, 2025, 2025 CPD ¶ 31, in which we denied the firm's protest of the award of a contract to Roundhouse PBN-Tepa EC 2 JV, a small business of Warner Robins, Georgia, under request for proposals No. W912HN24R3006 (RFP). The RFP was issued by the Department of the Army, Corps of Engineers (Corps) for building repairs. 4K Global contends, based on its interpretation of the holding in a United States Court of Federal Claims (COFC) decision issued after the issuance of our protest decision, that our decision contains an error of law.

We dismiss the request for reconsideration.

On September 28, 2024, the Corps notified 4K Global that its proposal was not selected for award under the RFP because the firm's project labor agreement (PLA) "did not comply" with the requirements of the Federal Acquisition Regulation (FAR). *4K Global-ACC JV, LLC, supra* at 2. In this regard, the solicitation required offerors to submit a PLA "in accordance with FAR provision 52.222-33 and FAR clause 52.222-34." *Id.* The Corps found that 4K Global's PLA did "not meet the minimum requirements" identified in FAR provision 52.222-33(c) and was therefore ineligible for award. *Id.*

Specifically, the agency found that the PLA “did not meet the basic definition for such an agreement” because it was labeled as an agreement between 4K Global and the Corps, was “not signed by anyone other than the Offeror and ma[de] no representation that any party--let alone a labor organization--has entered into the agreement or is bound by it.” *Id.* at 3 (*quoting* AR, Tab 5, Source Selection Decision Document at 10).

In its protest, 4K Global challenged the agency’s determination that the firm’s PLA did not meet the applicable FAR requirements. *4K Global-ACC JV, LLC, supra*. Specifically, 4K Global argued that its PLA met the applicable requirements because the FAR provision does not require a “signed PLA,” but only a draft PLA that an awardee would later negotiate with an unspecified labor organization or organizations. *Id.* at 4. 4K Global also asserted that an inadequate PLA “cannot be a basis to reject” its proposal because the PLA is an obligation for contract performance that 4K Global needed only to acknowledge and accept through its proposal submission. *Id.* In this regard, our decision noted that 4K Global’s primary complaint appeared to be that it was unreasonable for the agency to include the PLA requirement in the solicitation. See *id.* at 4-5, *citing* Comments at 4 (“To impose this requirement [for a signed PLA] upon 4K (and/or other Contractors) would be improper because 4K would be expected to enter into a PLA prior to being awarded a project contrary to the express requirement of the Solicitation.”).

On January 15, our Office denied 4K Global’s protest. In denying the protest, we noted that the referenced FAR clause defines a PLA as “a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project,” entered into “prior to the award” and maintained “throughout the life of the contract.” FAR 52.222-34(a), (b). We also noted that the FAR provision obligates offerors to “[n]egotiate or become a party to a project labor agreement with one or more labor organizations” and includes a subsection that specifies six requirements for any PLA, including that it “[b]ind the Offeror and subcontractors engaged in construction on the construction project to comply.” FAR 52.222-33(b), (c).

Based on these FAR sections, we concluded that the agency reasonably rejected 4K Global’s proposal based on the submission of a PLA that “neither evidenced that 4K Global had negotiated or become a party to an agreement with any labor organization, nor identified any subcontractors who have agreed to be bound to comply with the PLA.” *Id.* at 4. As relevant here, we also dismissed as untimely 4K Global’s argument that the solicitation’s PLA requirements were unreasonable, finding that the argument constituted an allegation of solicitation improprieties that was required to be raised prior to the proposal due date. *Id.* at 5, *citing* ASRC Fed. Data Sols., LLC, B-417655 *et al.*, Sept. 18, 2019, 2019 CPD ¶ 325 at 6; see 4 C.F.R. § 21.2(a)(1).

In seeking reconsideration, 4K Global asserts that our prior decision “contains an error of law” because a COFC decision, *MVL USA, Inc., et al. v. United States*, 174 Fed. Cl. 437 (2025), issued on January 21, “struck down the mandate of President Biden’s Executive Order 14063 regarding the [PLA] requirement.” Req. for Recon. at 1-2. Our

Bid Protest Regulations provide that to obtain reconsideration, the requesting party must set forth 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). Our Regulations further provide that we will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration. *Id.* § 21.14(c). For the reasons that follow, 4K Global has not provided a valid basis for reconsideration.

As an initial matter, 4K Global's reliance on the COFC's *MVL USA* decision as the sole basis for its request for reconsideration is misplaced. As our Office has previously explained, while we have traditionally given careful consideration to decisions of the court, we are not bound by them. *See, e.g., Kingdomware Techs.--Recon.*, B-407232.2, Dec. 13, 2012, 2012 CPD ¶ 351 at 3. We note further that 4K Global's request for reconsideration does not elaborate on the nature of the "error of law" alleged in our prior decision or how the holding in *MVL USA* applies to the facts and issues presented in 4K Global's protest. Instead, it simply states that, "[i]n light of the *MVL USA, Inc.* opinion striking down President Biden's Executive Order 14063, Project Labor Agreement Mandate, the GAO's decision contains an error of law." *See* Req. for Recon. at 2.

Moreover, we disagree with 4K Global's assertion that the court's holding in *MVL USA* is relevant or applicable to the matter at hand in 4K Global's protest. First, we note fundamental differences in the procedural posture in the COFC case. Specifically, the pre-award protests filed in the *MVL USA* decision challenged the propriety of including the PLA requirement in different solicitations for different procurements.<sup>1</sup> *See generally, MVL USA, Inc., et al., supra.* The court, considering the timeliness of one of the protests under the Federal Circuit's *Blue & Gold* standard, concluded that the protest was timely filed because it challenged the terms of the solicitation "prior to the close of the bidding process." *See id.* at 471-473 (*citing Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308, 1313 (Fed. Cir. 2007)).

By contrast, 4K Global's protest was filed after award. Indeed, our decision specifically noted that "the protester's true argument appears not to be that the draft PLA it submitted met the solicitation's requirements, but that the solicitation should not have required a specific, definite PLA." *4K Global-ACC JV, LLC, supra* at 4. Because our timeliness rules require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial submissions be filed before that time, *see* 4 C.F.R. § 21.2(a)(1), we found that 4K Global's challenges to the solicitation's PLA requirements were untimely. *Id.* at 5. Given the procedural differences with the protests, 4K Global's reliance on the holding in the pre-award, *MVL*

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<sup>1</sup> To the extent the court's holding, as the protester argues, "struck down the mandate of President Biden's Executive Order 14063 regarding the [PLA] requirement," Req. for Recon. at 1-2, it did so with respect to the agencies' decisions to include the PLA requirement in solicitations without first considering its effect on full and open competition required by the Competition in Contracting Act (CICA). *See MVL USA, Inc., et al., supra* at 448-452.

USA decision to allege an error with our dismissal of 4K Global's post-award challenge to the solicitation's PLA terms is misplaced and we find no error with our decision.

In any event, even if we were to accept that the *MVL USA* court's interpretation of the PLA requirements had any bearing on our Office's review of a protest challenging an agency's PLA evaluation, nothing in the court's decision indicates that its interpretation would apply to the award here. Specifically, the *MVL* court limited its holding to "the functionality of the mandate as applied to the individual contracts in this case" and "the FAR requirements [for PLAs] in the solicitations . . . as applied to the contracts at issue here." *MVL USA, Inc., et al., supra* at 441, 463. Therefore, the court's holding, by its terms, would not apply to our protest decision, which preceded the court's issuance of the *MVL USA* decision. See *Aldevra--Recon.*, B-411752.2, Oct. 5, 2016, 2016 CPD ¶ 284 at 4 (dismissing a request for reconsideration that was based on the holding of a United States Supreme Court decision issued after the protest decision, when the Court's holding was prospective only in effect).

The request for reconsideration is dismissed.

Edda Emmanuelli Perez  
General Counsel