



Decision

Matter of: Manhattan Strategy Group, LLC--Reconsideration

File: B-420021.4

Date: January 11, 2022

Antonio R. Franco, Esq., Patrick T. Rothwell, Esq., Eric A. Valle, Esq., and Christine C. Fries, Esq., Piliero Mazza PLLC, for the protester.

Adam K. Lasky, Esq., Edward V. Arnold, Esq., and Bret C. Marfut, Esq., Seyfarth Shaw LLP, for Safal Partners, Inc., the intervenor.

Virginia Ackerman, Esq., Jose Otero, Esq., and Joshua L. Caplan, Esq., Department of Labor, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision denying a protest is denied where the requester does not show that the prior decision contains material errors of fact or law that warrant reversal of the decision.

DECISION

Manhattan Strategy Group, LLC (MSG), a small business of Bethesda, Maryland, requests reconsideration of our decision in *Manhattan Strategy Group, LLC*, B-420021 *et al.*, Oct. 26, 2021, 2021 CPD ¶ 351, denying its protest challenging the issuance of a federal supply schedule order to Safal Partners, LLC, a small business of Houston, Texas, under request for quotations No. 1605C5-21-Q-00034, which was issued by the Department of Labor, for operation of the National Veterans' Technical Assistance Center. In its protest and supplemental protests, MSG challenged the agency's evaluation of its quotation and Safal's quotation, and the resulting award decision. MSG alleges that our prior decision materially erred when, after denying its challenges to the evaluation of its own quotation, we determined that the protester was not an interested party to pursue its objections to the evaluation of Safal's quotation or the resulting award decision.

For the reasons that follow, we deny the request for reconsideration because it fails to demonstrate that our prior decision contained material errors of fact or law.

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). We will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contains a material error of fact or law. *AeroSage, LLC--Recon.*, B-417529.3, Oct. 4, 2019, 2019 CPD ¶ 351 at 2 n.2.; *Department of Justice; Hope Village, Inc.--Recon.*, B-414342.5, B-414342.6, May 21, 2019, 2019 CPD ¶ 195 at 4.

Relevant here, the agency received and evaluated the three final quotations as follows:

	MSG	Safal	Offeror A
Technical Capability	Acceptable	Exceeds	Acceptable
Key Personnel	Exceeds	Exceeds	Exceeds
Past Performance	Low Risk	Low Risk	Low Risk
Proposed Price	\$7,186,561	\$5,823,034	\$5,775,072

AR, Tab 12, Source Selection Decision, at 4 (prices rounded to nearest whole dollar).

The source selection official determined that the quotation submitted by MSG was the “least competitive among the three offerors” because:

With a total price of \$7,186,561.18, MSG'[s] quote is about 24.4 percent and 23.4 percent higher than that of [Offeror A's] and Safal's quotes, respectively. Despite the higher price, MSG has the same ratings for Technical Capability, Key Personnel, and Past Performance as [Offeror A] and a lower rating in Technical Capability compared to Safal.

Id. at 5.

The source selection official then compared the quotations submitted by Safal and Offeror A, and determined that certain unique evaluated strengths associated with Safal's technical approach presented benefits to the government that outweighed Safal's less than 1 percent price premium over Offeror A's quotation. Therefore, the source selection official selected Safal's quotation for award. *Id.*

In its prior protest, MSG advanced three primary grounds of protest. First, the protester alleged that the agency unreasonably evaluated its quotation and, relatedly, conducted an unequal evaluation as between the protester's and Safal's respective proposals. Our prior decision addressed these arguments on the merits, ultimately denying these protest grounds. See *Manhattan Strategy Grp., LLC, supra*, at 3-6. MSG's request for reconsideration does not seek reconsideration of our decision in this respect.

Second, the protester challenged the agency's evaluation of Safal's quotation. Third, the protester challenged the adequacy of the agency's source selection decision,

arguing that had the agency conducted a reasonable tradeoff decision looking beyond the assigned adjectival ratings and but for the alleged evaluation errors, the agency reasonably would have selected MSG's quotation for award based on its relative technical merit and notwithstanding its significant associated price premium.

Our prior decision declined to develop these remaining issues because we found that, once MSG's challenges to the evaluation of its own quotation were found without merit, it was not interested to challenge the evaluation of Safal's quotation or the agency's best-value decision. Specifically, we found that, in light of its failure to meaningfully challenge the evaluation of Offeror A--which received comparable non-price ratings and proposed a price more than 24 percent cheaper than MSG's proposed price, the protester failed to demonstrate that it would have a substantial chance of receiving the award. *Id.* at 7.

On reconsideration, MSG alleges that our decision materially erred in finding that the protester was not an interested party to challenge the adequacy of the agency's source selection decision. Specifically, the protester contends that it raised legally sufficient allegations that the source selection official unreasonably relied only upon the adjectival ratings assigned to the quotations, without reasonably considering the underlying, individual merits of the quotations. MSG contends that had the agency conducted a reasonable source selection decision, it would have identified discriminators favoring MSG's non-price quotation such that it would have reasonably justified paying MSG's associated price premium. In this regard, MSG contends that our decision erred in concluding that its interest was too remote in light of its competitive standing under both the non-price and price factors. For the reasons that follow, we disagree that our decision erred in concluding that the protester failed to demonstrate a substantial chance that its quotation would have been next in line for award but for the alleged errors.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *DNC Parks & Resorts at Yosemite, Inc.*, B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 12. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit of the relief sought. *Id.*

In a post-award context, we have generally found that a protester is an interested party to challenge an agency's evaluation of proposals only where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *CACI, Inc.-Fed.*, B-419499, Mar. 6, 2021, 2021 CPD ¶ 125 at 5; *OnSite Sterilization, LLC*, B-405395, Oct. 25, 2011, 2011 CPD ¶ 228 at 4. In this regard, we have explained that where there are intervening offerors who would be in line for the award even if the

protester's challenge was sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify as an interested party. *HCR Constr., Inc.; Southern Aire Contracting, Inc.*, B-418070.4, B-418070.5, May 8, 2020, 2020 CPD ¶ 166 at 6-7 n.6; *Automated Power Sys., Inc.--Recon.*, B-246795.2, Feb. 20, 1992, 92-1 CPD ¶ 208 at 2.

Stated differently, whether a protester has demonstrated a sufficient direct economic interest to qualify as an "interested party" or has alleged sufficient allegations demonstrating that it was competitively prejudiced by an alleged error by the procuring agency, a central evidentiary requirement is that the protester must demonstrate a *substantial chance* that it would have received the award but for the alleged errors in the procurement process. See, e.g., *Gulf Civilization General Trading & Contracting Co.*, B-419754, B-419754.2, June 10, 2021, 2021 CPD ¶ 208 at 9 (dismissing a protest for lack of interest where the protester failed to raise any credible allegations challenging the agency's evaluation of intervening offers); *HVF West, LLC v. U.S.*, 846 F. App'x 896, 898 (Fed. Cir. 2021) ("To succeed in showing that it had a direct economic interest, HVF had to make a sufficient showing that it had a 'substantial chance' of winning the contract."); *Information Tech. & Apps. Corp. v. U.S.*, 316 F.3d 1312, 1319 (Fed. Cir. 2003) (holding, to establish competitive prejudice, that "the protester's chance of securing the award must not have been *insubstantial*") (emphasis added).

Here, the protester's request essentially argues that, notwithstanding the overall similarity in ratings of the quotations, a reasonable source selection decision would have elevated discrete alleged benefits of the protester's quotation to justify paying a sizable price premium in excess of 20 percent. MSG's unsupported conjecture, however, was insufficient to show it had a substantial chance of winning the award. *HVF West, supra*, at 898-99 (citing *Bannum, Inc. v. United States*, 404 F.3d 1346, 1358 (Fed. Cir. 2005)). In this regard, even if the protester were to have prevailed on its challenges to the evaluation of Safal's quotation, we reasonably found that MSG's interest was too remote to qualify as interested as compared to Offeror A where: (a) there was no basis to conclude that the agency unreasonably evaluated MSG's quotation (a conclusion not challenged on reconsideration); (b) MSG failed to materially challenge the evaluation of Offeror A's quotation (a conclusion that MSG failed to reasonably rebut on reconsideration); and (c) therefore, MSG and Offeror A would effectively have comparable non-price quotations, but MSG's proposed price was more than 20 percent more expensive. Therefore, we find no basis to conclude that our prior decision materially erred in finding that the protester, having lost on its challenges to the agency's evaluation of its own quotation, failed to demonstrate that it was interested to pursue the remainder of its protest allegations.

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel