



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Metasoft, LLC--Reconsideration

File: B-402800.2

Date: February 17, 2011

Andrew Mohr, Esq., Cohen Mohr LLP, for the protester.
Sandra Cain, Esq., Department of the Navy, for the agency.
Cherie J. Owen, Esq., and Sharon Larkin, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process.

DECISION

Metasoft, LLC, of San Diego, California requests that we reconsider our July 23, 2010, decision denying its protest of the terms of request for proposals (RFP) No. N66001-10-R-0057, issued by the Department of the Navy for support services, including software maintenance and upgrades. Metasoft argued that the solicitation should have been set aside for small businesses.

We deny the request for reconsideration.

Prior to issuing the RFP, the agency issued a sources sought notice to identify qualified small businesses interested in competing for the requirement. Eight firms--five small and three large--submitted responses to the notice. The agency evaluated the responses and determined that each of the large firms was capable of providing the services sought, but that none of the small firms were capable of providing at least 50 percent of the services themselves. Because the agency did not expect to receive offers from at least two capable small businesses, the contracting officer recommended that the acquisition be conducted as a full and open competition. The agency's small business specialist and the local district office of the Small Business Administration concurred in the recommendation. Therefore, the agency issued the RFP on April 26, 2010 on an unrestricted basis.

In its protest filed with our office on April 30, Metasoft raised a number of arguments that it claimed supported its position that the RFP should be set aside for small businesses. One of the protester's arguments was that the agency evaluated responses to the sources sought notice on the basis of overstated technical requirements not included in the RFP itself. Comments at 22-27. This argument first appeared in the protester's June 7 comments on the agency report. Id.

We denied the protest, finding that the record supported the agency's determination that it could not expect to receive offers from at least two responsible small businesses capable of providing at least 50 percent of the services. Metasoft, LLC, B-402800, July 23, 2010, 2010 CPD ¶ 170 at 4. We declined to address the protester's argument that the agency overstated its technical requirements, finding the argument to be untimely. Id. at 3. In our decision, we stated that the argument was untimely because it was based on information furnished to the protester on April 9 and on the contents of the RFP released on April 26 and amended on May 20 and May 25; yet the protest argument was not raised until June 7 in the protester's comments on the agency report. Id. at 3-4.

Metasoft has requested that we reconsider our decision. It maintains that GAO erred when it determined that its argument regarding overstated technical requirements was untimely. Request at 1-2. Metasoft also contends that GAO erred in failing to address an argument raised in the protester's supplemental comments that the independent verification and validation test task order portion of the RFP could be severed and set aside for small businesses. Id. at 4-5. In addition, Metasoft argues that GAO made an error of fact in its statement that no other small businesses had contested the agency's conclusions. Id. at 3-4.

To prevail on a request for reconsideration, the requesting party must either show that our decision contains an error 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) (2010). A request for reconsideration that reiterates arguments made previously and merely expresses disagreement with the prior decision does not meet the standard for granting reconsideration. Gordon R. Fishman--Recon., B-257634.4, Sept. 9, 1996, 1996 CPD ¶ 110 at 2-3. Here, we conclude that the standard for reconsideration has not been satisfied.

The protester contends that GAO erred in rejecting as untimely an argument that the protester raised for the first time on June 7--over a month after its initial protest filing. In challenging our decision, the protester argues that our Bid Protest Regulations provide for the dismissal of untimely bases of protest, not untimely arguments. Essentially, the protester contends that so long as a protester files a timely protest containing a broad basis of protest in its initial filing, it may supply the specific facts and arguments in support of that basis of protest at any time during the protest process.

We find that the rejection of the protester's argument was proper. Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490, B-402490.2, et al., May 11, 2010, 2010 CPD ¶ 124 at 24. University Research Co., LLC, B-294358.8 et al., Apr. 6, 2006, 2006 CPD ¶ 66 at 16. Our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. Alfa Consult S.A., B-298288, B-298164.2, Aug. 3, 2006, 2006 CPD ¶ 127 at 3. Because the protester did not present its argument earlier in the protest process, even though it could have done so, the protester's argument was properly rejected as untimely.

Similarly, Metasoft's argument regarding the severability of the independent verification and validation test task order is also untimely. This argument appeared for the first time in the protester's supplemental comments, filed on June 21, which was 52 days after the initial protest filing. Supplemental Comments at 6. This argument is based on information contained in the RFP and a GAO report issued in 2009. Therefore, because the protester did not present this argument earlier in the protest process, even though it could have done so, the argument was untimely.

The protester also contends that GAO made an error of fact in a footnoted statement that "[n]one of the other small businesses has contested the agency's technical evaluation or the issuance of the RFP on an unrestricted basis." Metasoft, LLC, supra, at 3 n.4. The protester contends that this statement is incorrect because two other small businesses filed declarations in support of, and attached to, Metasoft's protest comments. Request at 3.

We find that the statement in our decision was correct. While it is true that two other small businesses filed declarations in support of Metasoft's comments, the fact remains that no small businesses, other than Metasoft, protested these issues.

The request for reconsideration is denied.

Lynn H. Gibson
General Counsel