



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Triad Logistics Services Corporation

File: B-406416.2

Date: June 19, 2012

Edward J. Kinberg, Esq., Kinberg & Associates, LLC, for the protester. Matthew T. Crosby, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision denying protest is affirmed on reconsideration where protester fails to demonstrate that decision erred in requiring protester to demonstrate prejudice.

DECISION

Triad Logistics Services Corporation, of Melbourne, Florida, requests reconsideration of our March 19, 2012 decision denying its protest challenging the award of a contract to Shilo Services, Incorporated, of Cedar Park, Texas, under request for proposals (RFP) No. FA480-11-R-0015, issued by the Department of the Air Force for transient aircraft services.

We deny the request for reconsideration.

As discussed in our decision, the solicitation contemplated the award of a contract with a base period of 9 months and four 1-year options. RFP at 4-11. Award was to be made to the offeror submitting the lowest-priced, technically acceptable proposal, with an acceptable level of past performance. Id. at 19. Price was to be evaluated by adding the offeror's price for the 9 month base period to the offeror's price for the four 1-year options; i.e., price was to be evaluated on the basis of a 57 month period of performance. Id. at 21.

After receiving proposals in response to the solicitation, the agency decided to request revised proposals. Agency Request for Dismissal, attach. 1, Contracting Officer Memorandum for Record (COMFR), ¶ 2.e. The acceptance and evaluation of revised proposals delayed the procurement. This delay, together with a budgetary requirement that the base period conclude during the 2012 fiscal year, had the effect of reducing the base period from nine months to seven months. Id. ¶ 2.c. To account for this reduction, the agency evaluated price on the basis of a

55 month period of performance.¹ Id. ¶ 2.g. Based on this evaluation, the agency selected Shilo for award. Id.²

In its protest, Triad challenged the award to Shilo on the ground that the agency improperly failed to both amend the solicitation to reflect the reduced base period of performance, and to obtain revised pricing based on the reduced base period of performance. Protest at 6.

As stated in our decision, Triad did not assert that it would have reduced its unit pricing by an amount that would have overcome Shilo's price advantage, and Triad did not offer any evidence to establish that it was prejudiced by the agency's failure to issue an amendment that sought revised pricing for a reduced base period. Triad Logistics Servs., Corp., B-406416, Mar. 19, 2012, 2012 CPD ¶ 118 at 3. As we also stated, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Id.; see also Marine Group Boat Works, LLC, B-404277, B-404277.2, Jan. 19, 2011, 2011 CPD ¶ 23 at 5; Online Video Serv., Inc., Oct. 15, 2010, B-403332, 2010 CPD ¶ 244 at 2. Because Triad failed to establish that it was prejudiced by the agency's actions, we denied the protest.

In its request for reconsideration, Triad argues that our prior decision warrants reversal because, according to Triad, we errantly concluded that in order to have established prejudice, Triad must have alleged that it would have reduced its pricing. Request for Reconsideration at 2. In this regard, Triad contends that, because "the base period of the work [had] been significantly shortened it is . . . reasonable to assume that all offerors would have increased their prices and that Triad may have become the low offeror after price revisions were submitted to the Agency."³ Id. Based on this rationale, Triad maintains that it was prejudiced by the agency's failure to amend the solicitation and obtain revised pricing. Id.

¹ The solicitation defined the units on which pricing was to be based, RFP at 4-12, and, therefore, the offerors' unit pricing would be evident from their proposals. The agency used each offeror's unit pricing to calculate each offeror's evaluated price for a 55 month period of performance. COMFR ¶ 2.g.

² The agency determined that Shilo offered the lowest price for both a 55 month period of performance and a 57 month period of performance. COMFR ¶ 2.h.

³ Triad reasons that offerors would increase their pricing because "a shortened performance period can increase the cost of work as the contractor has shorter period in which to recover its home office overhead and other indirect costs associated with obtaining the award." Request for Reconsideration 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) (2012). In order to provide a basis for reconsideration, additional information not previously considered must have been unavailable to the requesting party when the initial protest was being considered. Allstate Van & Storage, Inc--Recon., B-270744.2, Aug. 20, 1996, 96-2 CPD ¶ 72 at 2. A party's failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of all parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546 at 4.

Here, Triad's request for reconsideration is based on arguments that were available during the initial protest, but were not presented at that time. That is, during the initial protest, Triad could have asserted that prejudice would have occurred based on Triad's belief that offerors would raise their pricing in response to a two month reduction of the base period. Accordingly, Triad's request does not provide a basis for reconsideration.

Moreover, even accepting for the sake of argument Triad's position that offerors' would raise their pricing in response to a two month reduction to the base period, Triad has failed to explain why Triad--like the other offerors--would not commensurately raise its pricing, such that its evaluated price would remain higher than Shilo's evaluated price. In this regard, Triad has asserted that it is "reasonable to assume that all offerors would have increased their prices." Request for Reconsideration at 2 (emphasis added). Triad has not asserted--or provided any basis to conclude--that Triad would not raise its pricing in response to a two month reduction in the base period. Thus, Triad's argument that offerors' would raise their pricing in response to a reduced base period, in addition to being an argument that Triad could have made during the initial consideration of the protest, does not alter our view of the record, and does not provide a basis for reconsideration.

Finally, we observe that Triad apparently misinterprets our decision by reading it to convey that the only way that Triad could have established prejudice was to assert that Triad would have lowered its pricing. See Request for Reconsideration at 2. Although the decision noted that Triad had not asserted that it would have reduced its pricing in response to an amendment to the solicitation, the basis on which we denied the protest was that Triad offered no evidence of any kind to support the required showing of prejudice.

The request for reconsideration is denied.

Lynn H. Gibson
General Counsel