



Decision

Matter of: MGM Computer Systems, Inc.--Reconsideration

File: B-422741.2

Date: February 18, 2025

Michael Maurer for the protester.
Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency.
April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the requester has not shown that our prior decision contained either errors of fact or law or information not previously considered that warrants reversal or modification of the decision.

DECISION

MGM Computer Systems, Inc., a service-disabled veteran-owned small business (SDVOSB) located in Galloway, New Jersey, requests reconsideration of our decision in *MGM Comput. Sys., Inc.*, B-422741, Oct. 16, 2024, 2024 CPD ¶ 248, in which we denied MGM's protest of the cancellation of request for quotations (RFQ) No. 36C26124Q0444, issued by the Department of Veterans Affairs (VA) for a patient elopement wander management system at the VA Central California Healthcare System in Fresno, California. MGM argues that our decision contains errors of fact and law that warrant reconsideration.

We deny the request for reconsideration.

BACKGROUND

On March 6, 2024, the VA published the RFQ on the System for Award Management website as a set-aside for SDVOSBs, under the commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulation (FAR) parts 12 and 13. Agency Report (AR), Exh. 2, RFQ at 1, 44. The solicitation contemplated the award of a fixed-price contract for the WanderGuard BLUE patient elopement wander management system or an equivalent system. *Id.* at 1.

As explained in the protest decision,¹ the solicitation provided that award would be made to the responsible vendor whose quotation, conforming to the RFQ, would be the most advantageous to the government, considering the following factors: (1) price; (2) capability of proposed system (if other than the brand name system); and (3) an authorized distributor letter issued by the original equipment manufacturer (OEM) within the past year. RFQ at 39, 44-45. As relevant to the protest, the funding available for this procurement was \$110,000. AR, Exh. 6, Funding Document at 3. The agency's independent government cost estimate (IGCE) also amounted to \$110,000. Contracting Officer's Statement (COS) ¶ 7.

The VA received two quotations in response to the solicitation, including one from MGM. *Id.* ¶ 4. After rejecting the other quotation, the VA proceeded with evaluating MGM's quotation and found, among other things, concerns about the reasonableness of MGM's price. AR, Exh. 4, Technical Evaluation at 1. The contracting officer contacted MGM via email, stating that MGM's quotation "is priced significantly higher than our [IGCE] and your [contract line item number] pricing exceeds appropriated funding that the VA has allocated for this action." AR, Exh. 5, Email Exchanges Between MGM and Agency at 10. The contracting officer then asked if MGM could provide "any discounts" to its price of \$272,174; in response, MGM submitted a revised quotation and reduced its price to \$248,174. *Id.*; see also AR, Exh. 3, MGM's Quotation at 17; AR, Exh. 7, MGM's Revised Quotation at 15.

On June 5, the agency cancelled the solicitation. The contracting officer noted, among other things, that "MGM's revised quote exceeded available funds and significantly exceeded the IGCE." COS ¶ 13. After MGM filed an agency-level protest challenging the cancellation of the solicitation, which the agency denied, MGM filed a protest with our Office. In our decision denying the protest, we concluded that the VA's decision to cancel the RFQ was reasonable where the only quotation being considered was substantially higher-priced than the agency's available funding. *MGM Comput. Sys., Inc., supra*. This request for reconsideration followed.

DISCUSSION

MGM alleges that our decision is based on various errors of fact and law. Under our Bid Protest Regulations, to obtain reconsideration, a requesting party either must demonstrate that our prior decision contains errors of fact or law, or present new information not previously considered, that would warrant reversal or modification of our earlier decision. 4 C.F.R. § 21.14(a); *Bluehorse Corp.--Recon.*, B-413929.2, B-413929.4, May 16, 2017, 2017 CPD ¶ 149 at 4. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. *Epsilon Sys. Sols., Inc.--Recon.*, B-414410.3, Sept. 20, 2017, 2017 CPD ¶ 292 at 3.

¹ For additional background on the procurement, see *MGM Comput. Sys., Inc., supra*.

Here, we have reviewed all of MGM's arguments and find no basis to grant its request for reconsideration of our earlier decision. First, MGM disagrees with the legal standard noted in our decision that the "VA ha[s] broad discretion to cancel a solicitation"--in essence, suggesting that our decision was based on an error of law. Req. for Recon. at 2.

In this regard, our decision explained that a contacting agency has broad discretion in deciding whether to cancel a solicitation and need only establish a reasonable basis for doing so. *MGM Comput. Sys., Inc.*, *supra* at 4 (citing *Firetech Automatic Sprinkler*, B-295882, May 4, 2005, 2005 CPD ¶ 146 at 3; *Quality Tech., Inc.*, B-292883.2, Jan. 21, 2004, 2004 CPD ¶ 29 at 2-3; *DataTrak Consulting, Inc.*, B-292502 *et al.*, Sept. 26, 2003, 2003 CPD ¶ 169 at 5). Our decision also explained that it is well-established that an agency's lack of funding for a procurement provides a reasonable basis for cancellation, as agencies may not award contracts that exceed available funds; moreover, agencies simply cannot create obligations that exceed available funds. *MGM Comput. Sys., Inc.*, *supra* at 4 (citing *Quality Support, Inc.*, B-296716, Sept. 13, 2005, 2005 CPD 172 at 2; *Firetech Automatic Sprinkler*, *supra*).

MGM's disagreement with this legal standard does not establish any error that would warrant reversal or modification of our earlier decision. 4 C.F.R. § 21.14(a). Moreover, other than asserting that "there were no valid reasons for cancelling the RFQ," Req. for Recon. at 2, MGM does not meaningfully dispute the underlying circumstances on which we applied this standard. Specifically, our decision explained that: the record demonstrated that MGM's quoted price substantially exceeded the funding available for this procurement; the agency represented--and the protester did not dispute--that the VA made efforts to secure additional funding, which, ultimately, were unsuccessful; and the record revealed that the agency invited MGM to provide "discounts" to its proposed price, in an unsuccessful attempt to reduce pricing to an amount that would align with the IGCE and the available funding for the procurement. *MGM Comput. Sys., Inc.*, *supra* at 4-5 (and internal citations). As we concluded in our decision, under these circumstances, we had no basis to object to the cancellation of the solicitation, and MGM's disagreement does not demonstrate otherwise.

Second, throughout in its request, MGM seeks to provide "clarification of the facts." Req. for Recon. at 1. As a representative example, MGM disputes the agency's statement that the "cost [was] substantially higher than the agency's available funding" by arguing--as it did in the development of the protest--that the agency's IGCE failed to properly account for a significant change to the original RFQ requirement that was included in the amended solicitation and that allegedly resulted in an increased cost. *Id.*; *MGM Comput. Sys., Inc.*, *supra* at 5 (citing Comments at 2).

As noted above, the repetition of arguments made during our consideration of the original protest do not meet the standard for granting a request for reconsideration. See *Epsilon Sys. Sols., Inc.--Recon.*, *supra*; 4 C.F.R. § 21.14(a). Moreover, as our earlier decision noted in rejecting this now-repeated argument, to the extent this argument challenges the agency's decision to set funding at a level that would allegedly not meet

its needs, it is not our role to question the unavailability of funds. *MGM Comput. Sys., Inc., supra* at 5 (citing *VetPride Servs., Inc.*, B-401435, July 28, 2009, 2009 CPD ¶ 156 at 3). In other words, our decision considered the facts that the IGCE and the budget for the instant procurement each totaled approximately \$110,000, and MGM's revised price of \$248,174 substantially exceeded that amount. On these facts, we do not find that our decision contained any errors as alleged by the requester.

Finally, in its request, MGM states that, "[u]ntil receiving notification of denial of our protest, we were never made aware of the 'several flaws' in the RFQ for which you reference" in the decision. Req. for Recon. at 2. Our decision referenced various ancillary aspects of the VA's response to MGM's protest, including the agency's explanation that "there were several flaws in the RFQ warranting cancellation," such as the omission of several required clauses in the solicitation. *MGM Comput. Sys., Inc., supra* at 4 (citing Memorandum of Law at 7-10). To the extent MGM contends that it was "never made aware" of, and did not have an opportunity to respond to, these aspects of the agency's response to its protest, which were in the protest record, we disagree and find no basis on which to grant MGM's request for reconsideration.

The request is denied.

Edda Emmanuelli Perez
General Counsel