

INTERVENING OFFER

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The Government Accountability Office (“GAO”) denied a request for reconsideration of a decision dismissing a protest because the protester was not an interested party since there was an “intervening offer, i.e. another offeror in line to receive award if the protest was sustained. GAO held that it would not reconsider the decision because the requesting party failed to show that the original protest decision contained either errors of fact or law or information not previously considered that warranted reversal or modification of that decision. *Vox Optima, LLC- Reconsideration*. B-423661.3, Sept. 3, 2025.

Vox Optima requested reconsideration of the denial of its earlier protest which alleged that the agency withheld information pertinent to the protest (the existence of the intervening offer that would have received award if the award was deemed wrongful by the GAO).

Vox had initially challenged the issuance of an order under its General Services Administration multiple award schedule contract pursuant to a solicitation for commercial corporate services for the Naval Surface Warfare Center in Philadelphia, PA. The Navy requested dismissal because Vox Optima would not be next in line for award even if its protest was sustained. In its request for dismissal, the agency disclosed that a third firm had submitted an acceptable offer at a lower price than Vox’s evaluated price of \$4.7 million and stated that the solicitation provided for the order to be issued to the firm that submitted the lowest priced technically acceptable offer. Vox never raised any challenge to the Navy’s evaluation of the intervening offer, and GAO concluded that Vox was not an interested party because it lacked the direct economic interest required to maintain a protest since, even if Vox prevailed, the third, intervening offer would be next in line to receive the offer.

The Navy sent an “unsuccessful offeror notice” to Vox, and the company requested a debriefing. However, the Navy advised that it was providing a brief explanation of the basis for its award decision in accordance with Federal Acquisition Regulation (“FAR”) 8.405-2(d). The brief explanation relied on the solicitation’s lowest priced technically acceptable basis for award, but contained no discussion of the proposal submitted by the intervening offeror. When asked for an oral briefing, the Navy declined, merely repeating that Vox’s proposal was technically acceptable but higher priced than the awardee, and therefore not selected.

Vox argued that the Navy’s failure to disclose the existence of a third technically acceptable offer violated FAR 8.405-2, alleging that the regulation “explicitly incorporated FAR 15.506(d) which requires agencies to disclose the overall ranking of all offerors. GAO rejected this argument, noting that FAR 8.405-2(d) does not explicitly or otherwise incorporate FAR 15.506(d), which prescribed the content of a formal debriefing. And the omission of the existence of a third intervening offeror in the “brief explanation” provided no basis for a reconsideration. The GAO noted that the Navy provide notice of the intervening offer as part of its request for dismissal of the original protest, but Vox never challenged the acceptability of that offer, and there was no basis to conclude that Vox was an interested party in line for award.

For these reasons, GAO denied the reconsideration request because of the existence of an intervening offer.

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