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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Choctaw Staffing Solutions, Inc.--Reconsideration

File: B-412152.4

Date: January 26, 2017

Nathaniel Cox for the protester.

Sarah E. Dadson, Department of the Air Force, for the agency.

Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision is denied where the requestor does not show that the prior decision contains any error of fact or law that would warrant reversal or modification of the decision.

DECISION

Choctaw Staffing Solutions, Inc., a small business located in Durant, Oklahoma, requests that we reconsider our decision in Choctaw Staffing Solutions, Inc., B-412152.3, Aug. 24, 2016, 2016 CPD ¶ 228, in which we denied its protest challenging the award of a contract to 1st American Systems and Services, LLC (1A), of Falls Church, Virginia under request for proposals (RFP) No. FA8052-15-R-0017, issued by the Department of the Air Force to provide services for the Air Force's family advocacy program (FAP) at locations in Europe. Our Office dismissed Choctaw's protest because we found that the record reasonably supported the agency's evaluation of past performance and its best-value tradeoff decision. Choctaw alleges that the decision contained an error of fact.

We deny the request.

BACKGROUND

The Air Force issued the RFP on September 4, 2015, as a set-aside competition for participants in the Small Business Administration's section 8(a) program. RFP at 1, 49-51. The solicitation contemplated the award of a single commercial-item, indefinite-quantity, personal services contract (in accordance with Defense Federal Acquisition Regulation Supplement § 237.104) for a 5-year ordering period. Id.

Proposals were to be submitted in separate volumes for the three factors under which they would be evaluated: technical capability, past performance, and price. Id. at 23. The technical capability factor was to be evaluated by a technical team, on an acceptable/unacceptable basis. For proposals that were rated technically acceptable, a past performance team would evaluate past performance qualitatively, and then select an awardee using a past performance/price tradeoff under which past performance was to be significantly more important than price. Id. at 23, 27.

The RFP instructed offerors to provide no more than three past performance references demonstrating recent and relevant experience performing the requested services as either a prime or subcontractor. Id. at 16. The solicitation defined recency as performance occurring within the three years from the date the RFP was issued, and specifically noted that the agency would not consider for its past performance review any contract for which there was less than one year of performance. Id. Relevancy, for the purpose of this procurement, meant experience performing behavioral health services outside of the continental United States under a contract valued at \$10 million or more. Id. Among other things, the solicitation provided that “[c]ontracts performed by the company submitting the proposal are viewed more favorably than those performed by predecessor companies and/or key personnel.” RFP at 28.

The Air Force received three timely-submitted proposals. Agency Report (AR), Tab 2, Contracting Officer’s Statement at 4. Initially, Choctaw was selected for award; however, 1A protested the agency’s evaluation and award decision. The Air Force took corrective action by reevaluating Choctaw’s and 1A’s proposals and made a new source-selection decision.¹ Id. at 4-5.

In its past performance proposal volume, Choctaw identified three task orders that were performed by its corporate predecessor, Choctaw Professional Resource Enterprise, and no contracts that Choctaw itself had performed. In its evaluation, the Air Force considered these three task orders and sought information about the indefinite-delivery/indefinite-quantity FAP contract under which they were issued. The evaluation determined that a rating of satisfactory confidence reasonably represented the agency’s confidence in Choctaw, based on its predecessor’s past performance.

Choctaw’s and 1A’s proposals were assigned the same confidence rating. Citing identical ratings for these two offerors’ proposals under the technical and past performance evaluation factors, the source selection authority selected 1A for

¹ The agency’s corrective action rendered that protest academic, and we dismissed it on that basis.

award, based on its lower-priced proposal. AR, Tab 11A, Source Selection Decision Document, at 7.

Choctaw filed a protest of the new evaluation and award decision on May 17, 2016, alleging that the Air Force misevaluated both proposals under the past performance factor and made an unreasonable source selection. Our office concluded that the agency's evaluation was both reasonable and consistent with the terms of the solicitation, and denied the protest on August 24. See Choctaw Staffing Solutions, Inc., supra.

Choctaw timely filed this request for reconsideration on September 1. Of relevance to Choctaw's reconsideration request, the decision contained a footnote that referred to an argument, raised in Choctaw's comments on the agency report, in which Choctaw claimed that the Air Force was required to "consider past performance information from other sources, as well as '[p]ast performance information for contracts not listed by the offeror.'" Id., at 6 n.6, citing Protester's Comments at 3. Choctaw argued that the agency failed to seek out information about Choctaw's own past performance, which it described as "readily available." Our decision noted that Choctaw had not shown that this past performance was so close at hand that it would be unreasonable for the agency to have overlooked it, "nor [did Choctaw's] argument show that the past performance (which Choctaw itself did not list in its proposal) would have improved the firm's past performance evaluation." Choctaw Staffing Solutions, Inc., supra, at 6 n.6. We concluded that this argument provided no basis to sustain the protest.

DISCUSSION

In its request for reconsideration, Choctaw alleges that footnote 6 of the decision, described above, contained a factual error. Specifically, the protester takes issue with the parenthetical comment that "Choctaw itself did not list in its proposal" the past performance reference that it was claiming the agency was required to review. Request for Recon. at 1-2, quoting Choctaw Staffing Solutions, Inc., supra.

Under our Bid Protest Regulations, to prevail on a request for reconsideration, the requesting party must show that our decision contains errors of fact or law, or present information not previously considered that warrants the decision's reversal or modification. 4 C.F.R. § 21.14(c).

Here, the sole error alleged in the decision is the statement that Choctaw's proposal did not include a reference to its own (as opposed to its predecessor's) performance history. With regard to this alleged factual error, Choctaw asserts that "In truth, we did list this information in our Technical Capability volume: '[Choctaw] is now meeting [Air Force] FAP CONUS East contract requirements . . .'" Request for Recon. at 2. Despite this, Choctaw admits that it was "unable [to] provide the [Air

Force] FAP CONUS East contract as a formal past performance reference because it did not meet the RFP's recency and relevance requirements" Id.

The requester's arguments do not meet our Regulations' standard for reconsideration. First, Choctaw concedes that the past performance information at issue here was not included in the protester's past performance volume, but only in the technical capability volume, which, as stated above, was to be evaluated separately, by a separate team. While the footnote in our decision would have been clearer if it had specified that "Choctaw itself did not list this past performance in its past performance proposal," the fact remains that the passing reference to this information in a separate proposal volume (where proposal volumes are to be evaluated by separate teams) is not the same as identifying the prior work for review by the evaluation team, which Choctaw concedes it could not do because the work did not meet the relevancy criteria of the RFP. Req. for Recon. at 2; See Wolf Creek Fed. Servs., Inc., B-409187 et al., Feb. 6, 2014, 2014 CPD ¶ 61 at 6-7 (where past performance evaluation was to be based on contents of past performance volume, agency was not required to consider past performance information included only in separate mission suitability proposal volume).² We therefore find no error of fact here.

Choctaw has not demonstrated that the decision contained an error that warrants the decision's reversal or modification, and thus does not meet our standard for reconsideration.

The request is denied.

Susan A. Poling
General Counsel

² Moreover, even were we to agree that the wording of the footnote could be viewed as an error, it would not be an error warranting reversal or modification of the decision. The solicitation limited the information that could be considered to past performance information that was recent and relevant, and stated that "references for contracts for which there is less than one year performance will not be considered." Id. at 16. Thus, whether included in Choctaw's proposal or not, the information at issue here involved past performance that Choctaw admits "spanned less than one year," so that its consideration in the evaluation would have been inconsistent with the terms of the RFP.