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Decision

Matter of: Octo Consulting Group, Inc.--Reconsideration

File: B-416097.5

Date: February 28, 2019

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Richard L. Hatfield, Esq., Kelly Zeng, Esq., and Holly H. Styles, Esq., Department of the Treasury, for the agency.
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the requesting party has not shown that our decision contains errors of fact or law that warrant reversal or modification of the decision.

DECISION

Octo Consulting Group, Inc., a small business of Reston, Virginia, requests that we reconsider our decision in Octo Consulting Group, Inc., B-416097.3, B-416097.4, Sept. 24, 2018, 2018 CPD ¶ 339, in which we denied Octo's protest challenging the Department of Treasury, Internal Revenue Service's (IRS), establishment of a blanket purchase agreement (BPA) to Northrop Grumman, of McLean, Virginia, pursuant to request for quotations (RFQ)¹ No. TIRNO-18-Q-00002, which was issued against General Services Administration's Federal Supply Schedule 70 for information technology services in support of the HRConnect human resource management system. Octo argues that our decision contained errors of fact and law that warrant reconsideration.

¹ Although firms who compete for the issuance of a BPA are generally referred to as "vendors" that submit "quotations," the record here uses the terms "offerors" and "vendors," and "quotations" and "proposals," interchangeably.

We deny the request for reconsideration.

BACKGROUND

The acquisition was conducted pursuant to the procedures of Federal Acquisition Regulation (FAR) section 8.405-3 to establish a single BPA with a 1-year base period and four 1-year option periods. RFQ at 2; Agency Report (AR), Tab 7b, Revised Source Selection Decision (SSD), at 9. The RFQ provided that the initial task order would be issued on a fixed-price basis and further task orders would be issued on either a fixed-price or a labor-hour basis. RFQ at 2. The RFQ provided that award would be made on the basis of a best-value tradeoff between price and the following technical factors listed in descending order of importance: (1) technical quality; (2) corporate experience and key personnel; and (3) socioeconomic status. Id. at 180-181. All technical factors when combined were more important than price. Id.

The IRS received quotations from six vendors, including Octo and Northrop, and ultimately made award to Northrop on February 16, 2018. Contracting Officer Statement (COS) at 3-4. Octo filed a protest with our Office on March 5, and on March 23, the IRS advised our Office that it intended to take corrective action. Id. at 4. The agency, in implementing its corrective action, reevaluated quotations resulting in the following ratings assigned to the Octo and Northrop quotations:

	Octo Consulting Group	Northrop Grumman
Technical Quality	Marginal	Good
Corporate Experience and Key Personnel	Good	Excellent
Socioeconomic Status	Excellent	Neutral
Price	\$52,998,498	\$60,933,727

AR, Tab 7b, Revised SSD, at 22

On the basis of this evaluation, the agency concluded that Northrop's quotation provided the best value to the agency, and sent an unsuccessful vendor notice to Octo on June 6. Id. at 30; COS at 5.

Octo filed a protest with our Office on June 18. In its protest, Octo challenged the evaluation of its technical and price quotations, and the evaluation of Northrop's technical quotation. With respect to the evaluation of its technical quotation, Octo argued that the agency improperly assigned weaknesses, and double-counted other weaknesses under the technical quality factor and the corporate experience and key personnel factor. Octo also alleged that the agency conducted an improper price realism assessment of its price quotation. With respect to the evaluation of the awardee, Octo alleged that the agency double-counted strengths in the evaluation of Northrop's quotation under the technical quality factor and the corporate experience and key personnel factor, and failed to consider negative past performance information. Octo also alleged disparate treatment in the evaluation of Octo's and Northrop's

quotations and challenged the agency's best-value tradeoff decision. The agency responded that its evaluation was reasonable and equal. The IRS argued that Octo's disagreement with the agency's evaluation did not provide a basis on which to sustain the protest.

In our decision, we concluded that the agency properly evaluated Octo's and Northrop's quotations. We also concluded that the evaluation was conducted equally and in accordance with the solicitation's evaluation criteria. Accordingly, we found the agency's best-value tradeoff decision was unobjectionable.

DISCUSSION

In its request for reconsideration, Octo argues that our prior decision contained several errors that warrant its reversal. We discuss Octo's contentions below. We note at the outset that, under our Bid Protest Regulations, a party requesting reconsideration either must show that our decision contains an error of fact or law, or present information not previously considered, that warrants reversal or modification of our prior decision. 4 C.F.R. § 21.14(a)(c); Waterfront Techs., Inc.--Recon., B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. Octo's request does not meet this standard.

Octo first requests that we reconsider our decision due to inconsistent findings and a misapprehension of the law with respect to its challenge to the agency's price evaluation and best-value tradeoff. We have reviewed the record and, as explained below, find no error that warrants reversal of our decision.

The agency's best-value decision provided the tradeoff rationale between Octo's and Northrop's technical and price quotations. AR, Tab 7b, Revised SSD, at 26-29. With respect to Octo's technical quotation, the source selection authority (SSA) listed multiple issues with Octo's staffing. Id. The SSD noted that "risks associated with the staffing model proposed, if not mitigated, will impede[] successful contract performance." Id. at 27. The SSA also found that the "significant weaknesses identified with Team Octo's approach to staffing models increases schedule, costs, and technical risk." Id. at 28. The SSA concluded that Octo provided a technical approach that does not clearly address or meet all of the technical requirements in all areas stated in the performance work statement. Id.

With respect to Octo's price, the SSA noted that Octo's evaluated price was \$7.9 million, or 13 percent, lower than Northrop's total evaluated price. Id. at 29. The SSA also stated that the expected savings of Octo's quotation "may be much lower given their proposed staffing level may not be adequate to meet the expected workload," which would "likely result in the need to issue additional task orders to execute the minimum work required to maintain the HRConnect system. The true cost risk is unknown." Id.

In its protest, Octo argued that the solicitation did not provide for a price realism analysis, and that, in the context of an evaluation based on a fixed-price task order, the

agency's references to cost risk can only be understood as a conclusion that the protester's price was unrealistically low. The protester also alleged that the best-value decision was impacted by the improper price evaluation.

Our decision provided that the purpose of a price realism analysis is to determine whether proposed prices are so low that they are not realistic for the work to be performed, reflect a lack of clear understanding of the requirements of the solicitation; or are not consistent with the methods of performance described in the vendor's technical quotation. FAR § 15.404-1(d); C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3. In other words, a price realism evaluation assesses whether a vendor is likely to be able to execute its proposed technical approach in the manner described at its proposed price.

The decision noted our agreement with the protester's position that the solicitation did not provide for a price realism analysis. However, we disagreed with the protester that the agency's references to cost risk required the finding that the agency conducted an improper price realism analysis. In this regard, we found that there was nothing in the record to demonstrate that the agency concluded that Octo would be unable to retain the staff it proposed at the prices it proposed. Nor was there anything in the record that demonstrated that Octo would be unable to execute its proposed technical approach due to its pricing. Rather, the SSD stated that "risks associated with the staffing model proposed, if not mitigated, will impede successful contract performance, which aligned to a rating of marginal. The significant weaknesses identified with Team Octo's approach to staffing models increases schedule, cost, and technical risks." AR, Tab 7b, Revised SSD, at 27-28. Thus, we concluded that no price realism analysis had occurred because the agency's concern was clearly related to the risks of Octo's proposed staffing plan and not Octo's proposed price.

In its request for reconsideration, Octo alleges that our decision was inconsistent and misapprehends the law with respect to the agency's evaluation of Octo's price. To demonstrate the inconsistency in our decision, Octo's request for reconsideration argues that, "on one hand, the record did not indicate that the IRS found that Octo would 'be unable to execute its proposed technical approach,' but, on the other, the IRS found that the proposed technical approach presented cost risk in that it may require supplemental task orders and equitable adjustments, and that such a determination was a reasonable consideration of technical risk." Request for Recon. at 3. We find the protester mischaracterizes our decision and fails to demonstrate any inconsistency or error of law.

The decision notes that there was no suggestion in the record that the agency concluded that the protester would be unable to execute its proposed technical approach due to its pricing. See Octo Consulting Grp., Inc., supra at 8 ("[T]here is no suggestion in the record that the agency concluded that the protester will be unable to retain the staff it proposed at the prices it proposed, or would otherwise, due to its pricing, be unable to execute its proposed technical approach."). While citing only a portion of our decision, the protester appears to conclude that our decision stated that

the agency found no issues with Octo's technical approach. This is not an accurate characterization of our decision or of the evaluation record. Rather, the record makes clear that the SSA concluded that Octo provided a marginal technical approach with multiple issues in its staffing plan. AR, Tab 7b, Revised SSD, at 26-29. In fact, the SSA found that risks associated with Octo's staffing plan could impede successful contract performance. Id. at 27. Thus, as our decision pointed out, the cost risk mentioned in the evaluation documents related to the risk of Octo's technical approach, and not, as the protester believes, a risk based on the protester's proposed price. While it is clear that Octo disagrees with the outcome of our decision, it has not demonstrated an error in our prior decision that requires our reconsideration.²

Octo's request also presents multiple arguments that primarily reflect the repetition of arguments previously raised and rejected by our Office. Such arguments do not demonstrate an error of fact or law in our prior decision. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4 (The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard.). For example, with respect to the agency's consideration of Octo's socioeconomic status factor, Octo contends that our decision is legally or factually flawed because it assumed an evaluation of Octo's socioeconomic status took place or speculated as to what the results of a reasonable evaluation would have been. Our Office considered Octo's arguments with respect to the agency's consideration of the protester's socioeconomic status and concluded that the evaluation and tradeoff decision were reasonable. The record reflected that the agency acknowledged Octo's excellent rating and considered this preference in its best-value tradeoff decision. In this regard, the documentation in the record satisfied the minimum documentation requirements for establishing a BPA, see FAR § 8.405-3(a)(7), and provided sufficient detail to show that the agency's evaluation was reasonable. Thus, Octo's repeated insistence that the agency's consideration of Octo's socioeconomic status was unreasonable does not demonstrate an error of fact or law in our prior decision.

As another example, Octo argues that our decision contained an error of law because we determined that the agency did not double-count weaknesses assigned to Octo's technical quotation pursuant to the technical quality factor and the corporate experience and key personnel factor. Moreover, Octo contends that because our decision concluded that the agency did not double-count weaknesses, our Office failed to analyze clear instances of disparate treatment raised in Octo's protest with respect to the agency's double-counting of strengths assigned Northrop's technical quotation. Again, Octo's attempts to reargue the merits of the underlying protest are unavailing.

² The request for reconsideration also argues that the decision failed to consider the impact of the improper price evaluation on the agency's best-value tradeoff decision. As explained above, we found no error in the agency's price evaluation. Accordingly, there was no basis to question the agency's best-value tradeoff decision.

In its protest, Octo argued that the agency erred in assigning its quotation two significant weaknesses under the technical quality evaluation factor, and also erred in assigning two weaknesses under the corporate experience and key personnel evaluation factor. As relevant here, the protester contended that the agency erred in concluding that it proposed only a single full-time developer, and that, even if a weakness was correctly assessed for this issue, the agency double-counted it by assigning the firm both a significant weakness under the technical quality evaluation factor, and a weakness under the corporate experience and key personnel evaluation factor based on the same concern.

Our decision noted that the record reflected that the agency reasonably assigned Octo's quotation a significant weakness under the technical quality evaluation factor, based on Octo's proposed software development staffing. The decision also found that the agency reasonably assigned a separate weakness under the corporate experience and key personnel factor, based on the development lead's lack of experience. Our decision noted, with respect to the significant weakness under the technical quality evaluation factor, that the agency had concerns about Octo's approach because the HRConnect system had historically been supported by at least four full-time developers, while Octo proposed only two developers, only one of whom had significant direct development experience. See Octo Consulting Grp., Inc., supra at 5. Our decision also noted, with respect to the weakness assigned the development lead's experience, that the agency had concerns because the development lead's resume did not demonstrate direct software development experience. Id.

Our decision concluded that the assignment of the significant weakness and weakness did not result in improper double-counting, and was instead prompted by two separate and distinct concerns. First, the agency assessed the significant weakness for proposing inadequate overall development resources under the technical quality evaluation factor, and second, the weakness was assessed for the use of a development lead to perform direct development without demonstrated qualifications in the individual's resume under the corporate experience and key personnel evaluation factor. Our decision also found that, even if the protester were correct that both weaknesses related to the same flaw, the record shows that both weaknesses reasonably related to the evaluation factors under which they were assigned, and there is nothing inherently wrong with an agency assigning multiple weaknesses where the same flaw is relevant to multiple evaluation factors. See UNICCO Gov't Servs., Inc., B-409111 et al., Jan. 23, 2014, 2014 CPD ¶ 55 at 11 n.6 (An agency may properly consider an element of a quotation under more than one evaluation criterion where the element is relevant and reasonably related to each criterion under which it is considered.).

In its request for reconsideration, Octo argues that the decision contained an error of law because the significant weakness and weakness assigned were predicated on the same perceived shortcomings in the development lead's resume, and not, as our decision provided, based on two separate and distinct concerns. Again, this allegation reargues issues already considered by our Office. Octo's protest contended that

improper double-counting occurred because the significant weakness and weakness were based on the same underlying issue. While Octo disagrees with our Office's determination of the underlying basis of the significant weakness and weakness, this disagreement and rearguing of the merits is not sufficient to demonstrate that the decision contained an error of law.³

Octo also contends that our decision is legally flawed because our review of the assignment of a weakness to Octo's technical quotation for its program manager's lack of HR lines of business experience conflates evaluation criteria and solicitation requirements. Octo contends, as it did in its protest, that the weakness was based on unstated evaluation criteria because the solicitation did not provide specific key personnel resume requirements with respect to human resources (HR) lines of business experience.

The RFQ instructions provided that a vendor shall submit resumes for three key personnel positions: program manager, lead technical architect, and development lead. RFQ at 178. The solicitation advised that the key personnel resumes "shall specifically address the Key Personnel's experience, . . . , in support of shared service environments and HR Lines of Business." Id. The RFQ evaluation criteria provided that the vendor "shall specifically address their experience, including teaming partners, personnel and sub-contractors experience, in support of shared service environments and HR Lines of Business." Id. at 183

In our decision, we found no merit to Octo's allegation that the agency erred in assigning a weakness because Octo's program manager lacked HR lines of business experience. The decision explained that the solicitation made clear that the agency would be assessing quotations on the basis of how well vendors, through the submitted resumes, demonstrated HR lines of business experience. Thus, we concluded that the protester's disagreement with the agency's assignment of a weakness did not provide a basis to sustain the protest.

³ Similarly, we find no basis to reconsider our decision with respect to the protester's allegation that we failed to consider its allegation of disparate treatment in the assignment of strengths and weaknesses or its allegation of double-counting of Northrop's strengths. Although our Office reviews all issues raised by protesters, our decisions may not necessarily address with specificity every issue raised; this practice is consistent with the statutory mandate that our bid protest forum provide for "the inexpensive and expeditious resolution of protests." See Research Analysis & Maint., Inc.--Recon., B-409024.2, May 12, 2014, 2014 CPD ¶ 151 at 6, citing 31 U.S.C. § 3554(a)(1). In further keeping with our statutory mandate, our Office does not issue decisions in response to reconsideration requests to address a protester's dissatisfaction that a decision does not address each of its protest issues. See Ahtna Facility Servs., Inc.--Recon., B-404913.3, Oct. 6, 2011, 2012 CPD ¶ 270 at 3.

Here, we again find that Octo's request provides no basis for our Office to reconsider our decision. While the agency conceded that the solicitation did not provide for specific key personnel requirements, the agency's assignment of a weakness for the program manager's lack of HR lines of business experience was not based on an unstated evaluation criterion. In this regard, the solicitation made clear that the agency's evaluation would consider HR lines of business experience, including as it relates to personnel. Accordingly, we find no error of law as the agency's evaluation was in accordance with the evaluation criteria. In any event, while not specifically addressed in our decision, since this weakness was not considered as part of the ultimate tradeoff decision, we find that the protester has not demonstrated that it would be prejudiced by any error in the agency's evaluation of its program manager's experience. See Synergy Sols. Inc., B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 12-13 (finding no prejudice in the assignment of significant weakness where the source selection authority did not rely on the weakness in distinguishing between the proposals in the best-value decision).

Finally, Octo alleges that our decision is based on an error of law because we concluded that Octo's arguments related to a mismatch between Northrop's technical and price quotations were untimely raised. We find no error.

Octo's initial protest challenged the agency's evaluation of the awardee alleging that the agency failed to assign multiple significant weaknesses under the technical quality factor and/or corporate experience and key personnel factor with respect to the awardee's high employee turnover rate on the incumbent contract; its historically ineffective approach to configuration management, change management, knowledge management, and project management; increased costs required to upgrade to PeopleSoft 9.2 on the incumbent contract; Northrop's proposed lead technical architect; and lack of experience with HR lines of business. Octo's initial protest also alleged that the agency failed to evaluate Northrop's unreasonably high price. After receiving the agency report on July 16, which included a copy of Northrop's quotation as well as the agency's evaluation of Northrop's quotation, Octo filed a supplemental protest with its comments on July 26.⁴

Octo's supplemental protest alleged unequal treatment in the evaluation of Octo's and Northrop's staffing plans. Specifically, Octo alleged the agency's evaluation under the technical quality factor failed to scrutinize Northrop's staffing plan as it had for Octo. Octo also alleged that the agency double-counted strengths in favor of Northrop related to the awardee's Capability Maturity Model Integration maturity level three certification. In response to the protester's July 26 supplemental allegations, the agency filed a second agency report on August 6.

⁴ In its comments to the agency report, Octo withdrew or abandoned many of its arguments with respect to the agency's evaluation of the awardee. For example, the protester withdrew its challenge to the agency's evaluation of the awardee's price.

In response to the agency's second agency report, Octo filed comments on August 10. In addition to the comments responding to the agency's second report, the protester's response also contained a new argument. This argument was presented by Octo as part of its disparate evaluation allegation, but raised for the first time the allegation that the agency failed to recognize that the labor mix and full time equivalents (FTE) proposed in Northrop's technical and price quotations were not consistent. Octo's comments provided multiple examples of the mismatch between Northrop's technical and price quotations with respect to various labor categories including: database administrator, program manager, and information technology subject matter expert (IT SME).

Our decision concluded that Octo's arguments relating to inconsistencies in Northrop's technical and price quotations constituted untimely protest grounds because Octo had received Northrop's technical and price quotations on July 16 but waited to file these allegations and examples until August 10, which was more than 10 days after it knew or should have known the basis of its protest. 4 C.F.R. § 21.2(a)(2). Octo contends that its arguments regarding a mismatch between Northrop's technical and price quotations were timely raised based on a clear nexus between the new allegations and Octo's prior allegation that the agency engaged in disparate treatment during its evaluation of the vendors' staffing plans. We find that Octo has failed to demonstrate that the decision contained an error of fact or law.

Where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our Regulations do not contemplate the piecemeal presentation or development of protest issues. Epsilon Sys. Sols, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 11 n.7; see also CapRock Gov't Sols., Inc., et al., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 24 (Bid Protest Regulations do not contemplate piecemeal presentation or development of protest issues through later submissions). Here, Octo's allegations related to the agency's evaluation of the mismatch between Northrop's technical and price quotations are distinct from its allegation that the agency engaged in disparate treatment in the evaluation of the vendors' staffing plans under the technical quality factor. We disagree.

Moreover, where a protester files a broad initial allegation and later supplements that broad allegation with allegations that amount to specific examples of the initial, general, challenge, these specific examples must independently satisfy our timeliness requirements where such examples involve different factual circumstances that require a separate explanation or defense from the agency; this is because our regulations do not contemplate the piecemeal presentation of protest arguments. Savannah River Tech. & Remediation, LLC; Fluor Westinghouse Liquid Waste Servs., LLC, B-415637 et al., Feb. 8, 2018, 2018 CPD ¶ 70 at 6. Here, the agency was required to respond to the protester's new examples of alleged disparate treatment related to the agency's consideration of instances of inconsistently-proposed resources in Northrop's technical and price quotation (i.e. the number of FTEs allotted to the database administrator, program manager, and IT SME labor categories). As we stated in our decision, these

new allegations, raised in Octo's comments to the agency's supplemental report, constituted new untimely protest grounds, since the protester raised those protest grounds more than 10 days after it knew or should have known of them. We find no basis to conclude an error of law occurred.

In sum, while it is clear that Octo disagrees with the outcome of our decision, our Office will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contained an error of fact or law, or identifies information that was not previously considered. Octo's various efforts to reargue the merits of the underlying protest do not demonstrate an error of fact or law that warrants reversing or modifying our decision.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel