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Washington, DC 20548

Comptroller General
of the United States

Decision

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

File: B-418876.5

Date: February 4, 2021

James Y. Boland, Esq., Michael T. Francel, Esq., and Taylor A. Hillman, Esq., Venable LLP, for the protester.
Ashlee N. Adams, Esq., and Mary Schaffer, Esq., Department of the Treasury, for the agency.
Lois Hanshaw, Esq., and Evan C. Williams, 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 protester essentially reiterates contentions raised and considered in our prior decision and fails to show any error of fact or law that would warrant reversal or modification of prior decision.

DECISION

Gunnison Consulting Group, Inc. (Gunnison), a small business located in Alexandria, Virginia, requests that we reconsider our decision in *Gunnison Consulting Grp., Inc.*, B-418876 *et al.*, Oct. 5, 2020, 2020 CPD ¶ 344, denying its protest alleging that the Department of the Treasury, Bureau of the Fiscal Service (Bureau), unreasonably issued a task order to Octo Metric LLC, a small business located in Atlanta, Georgia, under request for proposals (RFP) No. 20341420R00001 for development operations (DevOps) and software development services. Gunnison argues that our decision contained legal errors with regard to our analysis of the agency's evaluation of relevant experience.

We deny the request for reconsideration.

BACKGROUND

The agency contemplated a five-phase procurement process resulting in the issuance of a hybrid task order with cost-plus-award-fee, labor-hour, and fixed-price contract line items. *Gunnison Consulting Grp., Inc.*, B-418876 *et al.*, Oct. 5, 2020, 2020 CPD ¶ 344 at 2. The five phases were as follows: (1) opt-in, (2) pre-proposal conference, (3) relevant experience, (4) proposal submission, and (5) technical challenge. On

December 19, 2019, as part of phase one, the Bureau provided notice to holders of the National Institutes of Health Information Technology Acquisition and Assessment Center (NITAAC) Chief Information Officer-Solutions and Partners 3 (CIO-SP3) Small Business (SB) governmentwide acquisition contract of a requirement to provide DevOps and software development services for the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau. In phase three, the Bureau invited offerors to submit relevant experience information, including narratives based on instructions provided by the agency. *Id.*

The RFP, issued after the agency evaluated offerors' relevant experience information, anticipated the evaluation of the following non-cost factors, in descending order of importance: relevant experience, technical approach, past performance, and technical challenge. *Id.* The non-cost factors, when combined, were equal in importance to the cost factor. The solicitation anticipated the selection of the most advantageous offeror using the fair opportunity guidelines of Federal Acquisition Regulation (FAR) subpart 16.5.

With respect to the evaluation of relevant experience, the agency's instructions contemplated assessing relevant experience narratives for at least three contracts and/or task orders for each offeror. *Id.* The instructions stated:

> If the Offeror is utilizing Major Subcontractors and/or Teaming Partners in its proposal, at least one (1) of the examples of the relevant experience provided shall be that of each Major Subcontractor and/or Teaming Partner and at least one (1) example shall be that of the Prime Contractor. A Prime Contractor is defined as an Offeror who listed as a vendor on the NITAAC, NIH CIO-SP3 SB contract. An Offeror's Major Subcontractor and/or Teaming Partner is defined as one which is expected to perform 20 [percent] or more of the work on this task order.

Id. at 3 (citing Agency Report, Tab E, Relevant Experience Instructions at 1).

Following the evaluation of proposals, the agency found the proposals of Octo Metric and a third offeror, Offeror A, to be the highest-rated under the three non-cost factors. The agency conducted a comparative analysis between Octo Metric and Offeror A, and concluded that Octo Metric was the best-suited contractor. *Id.* at 4. The agency issued the task order to Octo Metric. On July 1, 2020, Gunnison filed the underlying protest with our Office.

In its protest, Gunnison challenged the agency's evaluation of proposals and conduct of discussions. *Id.* at 5. Relevant to this request for reconsideration, Gunnison asserted that the solicitation required Octo Metric, the prime contractor identified on the CIO-SP3 SB contract, to submit at least one relevant experience example for itself. *Id.*

Our Office denied Gunnison's protest, including its allegation that the agency improperly evaluated Octo Metric's experience. We explained that the relevant experience

instructions required an offeror relying on a major subcontractor or teaming partner to submit one reference from the prime contractor. *Id.* at 6. In this regard, we further stated that although the instructions defined the prime contractor as the "[o]fferor" listed on the CIO-SP3 SB contract, the term "offeror" was not further defined or proscribed. *Id.* In addition, we noted that Octo Metric is a mentor-protégé small business joint venture that submitted relevant experience examples from its mentor joint venture partner, Octo Consulting Group, and its proposed subcontractor, Connexta. *Id.* at 5.

In our decision, we concluded that under the phrasing of the relevant experience instructions, and Small Business Administration regulation, 13 C.F.R. § 125.8(e)--which provides that an agency must consider the experience of a joint venture and its partner in the agency's consideration of a small business joint venture's experience--the agency reasonably accepted an experience example from Octo Consulting Group. *Id.* at 6. Stated differently, because the relevant experience instructions did not specifically define the prime contractor as the joint venture itself and 13 C.F.R. § 125.8(e) permitted the agency to consider the experience of a partner to the joint venture, we concluded that the agency reasonably considered Octo Consulting Group's experience example.

On October 15, 2020, Gunnison filed this request for reconsideration.[1]

DISCUSSION

In its request for reconsideration, Gunnison contends that our decision contained multiple legal errors. Specifically, the protester asserts that our interpretation of the relevant experience instructions ignored portions of the RFP. Req. for Recon. at 3, 5. The protester also alleges legal error because the underlying decision did not address one of the protester's arguments. *Id.* at 2.

Under our Bid Protest Regulations, to obtain reconsideration, a requesting party 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); *22nd Century Techs., Inc.--Recon.*, B-417478.5, Apr. 28, 2020, 2020 CPD ¶ 153 at 2. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Gunnison argues that it was legal error for GAO to ignore critical portions of the RFP's language merely because the RFP did not separately define "offeror." Req. for Recon at 3. The protester contends that our interpretation of the solicitation treated as superfluous the requirement that "at least one (1) example shall be that of the Prime

[1] Because the awarded value of the task order exceeded $10 million, we concluded that the protest was within our jurisdiction to consider protests of task orders placed under civilian agency indefinite-delivery, indefinite-quantity multiple-award contracts. *See* 41 U.S.C. § 4106(f)(1)(B).

Contractor;" the prime contractor being defined as the "Offeror who [is] listed as a vendor on the NITAAC, NIH CIOSP3 SB contract." In this regard, Gunnison contends that the prime contractor was Octo Metric, not Octo Consulting Group. *Id.* at 4.

We deny Gunnison's challenge. Gunnison's argument here essentially disagrees with our conclusion that the agency could reasonably accept experience examples from the partners of the joint venture. In our decision, we reviewed the RFP's relevant experience instructions, which stated that if an offeror utilizes a major subcontractor, then "at least one (1) example shall be that of the Prime Contractor." As noted above, the solicitation defined prime contractor as the offeror who is listed as a vendor on the CIO-SP3 SB contract. The decision shows that we interpreted this language as distinguishing between experience offered by a prime contractor and its subcontractors or teaming partners, rather than between experience offered by a joint venture and its joint venture partners. See *Gunnison Consulting Grp., supra* at 6 ("In our view, this provision was intended to differentiate between a prime contractor and its subcontractors or teaming partners, and was not intended to create a separate requirement for a joint venture to submit a reference on its own behalf rather than relying on the experience of a partner to the joint venture, as it would be otherwise entitled to do.").

We reached this conclusion because the RFP's definition of the term "prime contractor," *i.e.*, the offeror who is listed as a vendor on the CIO-SP3 SB contract, did not explicitly define the term "offeror" as the joint venture itself. Based on our interpretation of this language, we further concluded that the agency reasonably considered Octo Consulting Group's experience and evaluated Octo Metric's proposal in accordance with the evaluation criteria identified in the RFP. The protester's disagreement with our interpretation of the solicitation does not show that we committed an error of law.

We also find no legal error based on our consideration of the protestor's contention that our decision did not give effect to the RFP language stating that at least one experience example be submitted by each "teaming partner and/or major subcontractor." Req. for Recon. at 5. The crux of Gunnison's argument in this regard is that the solicitation required joint venture partners to be viewed as teaming partners.[2] *Id.* at 6. As we stated above, and in our decision on this matter, we understood the solicitation to distinguish joint venture partners from teaming partners and major subcontractors, *i.e.*, joint venture partners were not to be understood as teaming partners. Accordingly, the decision did not ignore the solicitation language identified by the protester. In essence, Gunnison's challenge to this aspect of the decision amounts to nothing more than

[2] In this regard, the protester's request cites to FAR section 9.601, which defines Contractor Teaming Arrangement as either: (1) a partnership or joint venture; or (2) a prime contractor and subcontractor. Req. for Recon. at 6. Gunnison contends that the solicitation's reference to teaming partners contemplated an offeror utilizing the teaming arrangements described in FAR section 9.601. *Id.* We disagree. The RFP defined a teaming partner based on the amount of work the entity would perform and not its status as a joint venture under the terms of FAR section 9.601.

disagreement with our previous findings, which does not meet our standard for reversing or modifying that decision.

The protester also alleges that our decision contains a legal error because it did not address the protester's argument that the protégé joint venture partner was also required to submit an experience example. Req. for Recon at 2. Our decision explained that although we did not specifically address all of Gunnison's allegations, we fully considered them and found that none provided a basis to sustain the protest. *Gunnison Consulting Grp., supra* at 5.

While 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 mandate, our Office does not issue decisions in response to reconsideration requests solely to address a protester's dissatisfaction that a decision does not address each of its protest issues. *Id.* Thus, we find no basis to grant the request for reconsideration simply because our prior decision did not specifically address this argument.

In any event, we have reviewed the argument referenced by the protester and find that it does not provide a basis to warrant reversal or modification of our prior decision. In this regard, our decision stated that the RFP provision requiring relevant experience from a prime contractor reasonably permitted the joint venture to rely on the experience of a partner to the joint venture. *Gunnison Consulting Grp., Inc.*, *supra* at 6. The solicitation required only one reference from the prime contractor, and we found that the agency reasonably accepted a reference from the mentor joint venture partner. On these facts, we see no basis to conclude that the solicitation also required the protégé partner to submit a reference example. Accordingly, we find no legal error that would warrant reconsideration of our decision.

Other than alleging disagreement, Gunnison's reconsideration request merely repeats contentions it previously raised. We have considered each contention raised by Gunnison, and its disagreement with our previous decision and reassertion of its prior position does not constitute evidence of factual or legal errors in our decision which would warrant reconsidering this matter.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel