



DOCUMENT FOR PUBLIC RELEASE

This decision issued on the date below was subject to a GAO Protective Order and contained classified information. This version has been approved for public release. Redactions obscured by black boxes remove classified information per the contracting agency.

Decision

Matter of: Department of the Air Force--Reconsideration

File: B-419657.3

Date: September 30, 2021

Jason A. Carey, Esq., and J. Hunter Bennet, Esq. Covington & Burling, LLP, for the protester.

Marcia G. Madsen, Esq., and Luke Levasseur, Esq., Mayer Brown LLP, and Noah Bleicher, Esq., Jenner Block, LLP, for the intervenor.

Major David S. Gilkes, Jason R. Smith, Esq., and Summer Browning, Esq., Department of the Air Force, for the agency.

Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision is denied because the request repeats arguments already made in the original protest, relies on arguments and information that could have been, but were not, presented during the initial protest, and does not demonstrate that our decision contained errors of fact as alleged in the request.

DECISION

The Department of the Air Force requests reconsideration of our decision *ManTech Advanced Systems International, Inc.*, B-419657, *et al.*, June 17, 2021 (unpublished decision), in which we sustained ManTech's protest against the award of an indefinite-delivery, indefinite-quantity contract and issuance of associated task orders to General Dynamics One Source (GDOS), LLC, under request for proposals No. FA8240-19-R-350, issued by the Air Force for security support services. The Air Force contends that our earlier decision contains errors of fact that warrant reconsideration of our decision.

We deny the request for reconsideration.

BACKGROUND

ManTech filed a protest and several supplemental protests with our Office alleging the award to GDOS was improper because, among other things, GDOS proposed to

[REDACTED] See Protest at 2; Second Supp. Protest at 7-15. Specifically, the protester noted the solicitation included Federal Acquisition Regulation (FAR) provision 52.222-46, which requires agencies to assess an offeror's proposed professional employee compensation in terms of its impact on recruiting and retention. *Id.* According to the protester, the agency did not reasonably consider the impact of the [REDACTED]

Id.

The record revealed that the agency evaluated GDOS's proposed compensation by comparing its proposed unburdened labor rates to government average rates by position. Contracting Officer's Statement (COS) at 18; see Agency Report (AR), Tab 77, Comparison of GDOS Rates to Government Average Rates. Initially, [REDACTED] COS at 15. Following discussions, GDOS revised its proposal and pay rates and the agency removed the significant weakness and risk assessment because [REDACTED]

[REDACTED]. *Id.* The agency explained that it calculated the government average rates using historical data, industry inputs, salary surveys, OPM.gov, and subject matter input, but did not explain how the agency combined those factors to calculate a specific rate for a particular position. *Id.* at 18. The agency subsequently clarified that the historical data used in part to calculate the government average rates were obtained from ManTech in September of 2018 and were ManTech's projections of its fully-burdened rates for 2019. Supp. COS and Memorandum of Law (Supp. COS/MOL) at 12-13. The agency also noted that the government average rates were "not substantially lower" than what the incumbent personnel were being paid. *Id.* at 9.

In response, the protester argued the agency's government average rates were not a reasonable benchmark for incumbent pay because they were significantly below the actual, current incumbent rates. If an offeror had proposed the government average rates, [REDACTED] of incumbent staff would have had to take a pay cut. Second Supp. Protest at 2. This was in part due to the fact that the government calculated the average rates using two-year-old data concerning the incumbent rates, and personnel received annual pay increases in the intervening period. Supp. Comments at 8-10. Further, [REDACTED]

Id. at 11-14.

On June 17, 2021, our Office sustained ManTech's argument concerning the agency's failure to reasonably evaluate GDOS's proposed professional compensation. *ManTech Advanced Systems International, Inc., supra*. Preliminarily, our decision explained that we have consistently concluded that, when conducting a recompetition for professional

services, a solicitation incorporating FAR provision 52.222-46 requires procuring agencies to consider whether a proposal envisions professional employee compensation below that of the predecessor contract “by comparing the incumbent rates and the proposed rates.” *SURVICE Eng’g Co., LLC*, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 6.

Our decision noted that the record contained no contemporaneous documentation of any agency comparison between GDOS’s proposed levels of compensation and actual incumbent compensation, and that the agency conceded that the government average rates were lower than what the incumbent personnel were being paid. *ManTech Advanced Systems International, Inc.*, *supra* at 7-8. Our decision concluded on that basis that the agency did not have a reasonable basis for concluding that GDOS’s proposal reflected low technical risk and that the agency’s evaluation did not comply with FAR provision 52.222-46. *Id.*

DISCUSSION

The agency argues that our decision erred in two primary respects. First, the agency contends we erred by concluding that the agency did not compare GDOS’s proposed levels of compensation to actual incumbent compensation because the agency’s government averages were calculated using actual incumbent compensation data. Req. for Reconsideration at 2-8. Second the agency argues that we erred by relying on the agency’s representation that the government average rates were “not substantially lower” than the incumbent rates, because the government average rates were, notwithstanding the agency’s description, uniformly higher than the incumbent salary data on which the agency relied. *Id.* at 9-12. For the reasons discussed below, the agency’s arguments do not provide a basis for our Office to grant the agency’s request for reconsideration.

To prevail on a request for reconsideration, the requesting party either must show that our decision contains errors of fact or law, or present information not previously considered, and which could not have been provided during the original protest that warrants the decision’s reversal or modification. *Department of Veterans Affairs--Recon.*, B-405771.2, Feb. 15, 2012, 2012 CPD ¶ 73 at 3. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. *Bluehorse Corp.--Recon.*, B-413929.2, B-413929.4, May 16, 2017, 2017 CPD ¶ 149 at 4. Moreover, a party’s assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest fails to satisfy the standard for granting reconsideration. *AeroSage, LLC--Recon.*, B-419113.6, 8-419113.7, Mar.15, 2021, 2021 CPD ¶ 120 at 4.

Here, the agency’s arguments either represent repetition of arguments previously made, or involve the presentation of new information that it could readily have presented during the protest. As noted above, the agency first argues that our decision erred in concluding that the agency did not compare GDOS’s rates to the incumbent rates. Req.

for Reconsideration at 2-8. The agency argues it conducted such a comparison because [REDACTED]

[REDACTED]. *Id.* at 4-8. In this regard, the agency notes that inspection of an excel spreadsheet formula provided in the original record would confirm this fact. *Id.*

However, other than the reference to the excel formula, the agency made precisely this argument during the course of the original protest. Our decision specifically acknowledged that the agency's government average rates included projected 2019 fully-burdened labor rates from the incumbent contract, but nonetheless we concluded that the agency's evaluation was unreasonable because the agency did not compare GDOS's proposed levels of compensation with actual incumbent compensation. See *ManTech Advanced Systems International, Inc.*, *supra* at 5, n. 10. That is to say, we previously considered and rejected the argument that the agency's evaluation was reasonable because the government estimated rates were based in part on incumbent rate estimates from 2018.

Turning to the newly provided information, the agency is seeking to bolster the same unconvincing position with information not previously presented in the protest. In the underlying protest, the agency did not contemporaneously explain how the 2019 projected fully-burdened rates were incorporated into the government rates, which were unburdened. While the agency has attempted to do so now, the agency concedes that its arguments in this regard rely on information not provided as part of its document production during the protest, and provides no explanation for why that information could not have been presented previously. Req. for Reconsideration at 5 (acknowledging that the agency prepared additional analytic documents deriving the unburdened rates from the fully burdened rates but that "it was an oversight that the Agency failed to include this information in the Agency Report"). Because the agency could have provided this information during the course of the protest, we will not consider it as part of the agency's request for reconsideration.

The agency also contends that we erred by relying on the agency's representation that the government average rates were "not substantially lower than what the incumbent personnel are being paid." Req. for Reconsideration at 9-12. Specifically, the agency contends that this statement was misleading because the record revealed that all government average rates were actually higher than the projected 2019 rates on which the government relied. *Id.*

We did not, however, commit any error by taking the agency's statement at face value. Although, the agency now strains to interpret the phrase "what the incumbent personnel are being paid" as referring to the two-year-old projected 2019 rates on which the agency relied in computing its government average rates, we find the statement to be equivocal at best. That is to say, the phrase "what the incumbent personnel are being paid" can also reasonably be read as referring to the actual, current incumbent rates. This was our understanding of the language, which was supported by the context in which the statement was made. It appeared in a supplemental filing responding to the

protester's allegations that the government average rates were lower than the actual, current incumbent rates [REDACTED]. See Supp. COS/MOL at 9. The agency did not (and still does not) contest ManTech's claims that the actual, current salaries paid to incumbent staff are higher than the government average rates. Supp. COS/MOL at 12-13; Req. for Reconsideration at 6-7. Accordingly, we do not believe we were in error to read the agency's statement as a concession that the government average rates were lower, but not substantially lower, than the current, actual rates of incumbent compensation, rather than as an incorrect description of the 2019 projected rates on which the agency relied.

For these reasons, this request for reconsideration does not meet our standard for granting reconsideration. However, even if we further consider the agency's arguments, we find the request still fails.

Our decisions have concluded that a professional compensation analysis under FAR provision 52.222-46 requires a comparison of proposed rates to incumbent rates, and the agency is correct that an agency may rely on the information reasonably available to it at the time of its evaluation. *SGT, Inc.*, B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7 (an analysis must provide a reasonable measure of confidence that the costs proposed are realistic based on information reasonably available to the agency at the time of its evaluation). But it cannot be said here that the agency based its analysis on the information reasonably available to it at the time of the evaluation.

The agency's arguments are premised on the proposition that the agency's projected 2019 rates, which were received from ManTech in September 2018, were a reasonable proxy for the then current incumbent rates, and thus provided a reasonable basis for comparison. [REDACTED]

[REDACTED] See Req. for Reconsideration at 7-9; Protester's Resp. at 4-6. Relevant here, the agency indicated ManTech provided projected salary information annually as a contract deliverable, and more than two years elapsed between when the agency received the 2019 projections in September of 2018, and when the evaluation occurred in November of 2020. Supp. COS/MOL at 12-13. The agency has not clarified whether it requested or received more current rate information, to which it would have been entitled as a contract deliverable.¹ *Id.*

¹ While the agency's request for reconsideration now argues, without explanation, that the agency should not be faulted if the incumbent "withheld information from the Agency that could be used to compare incumbent salary information to proposed rates for a follow-on competitive award," the agency has not alleged that it requested more current information and was rebuffed. Req. for Reconsideration at 8. Indeed, given that ManTech provided the original 2019 projections on which the agency relied and provided rate information for [REDACTED] of its positions in its proposal, it is unclear in what respect the agency believes ManTech to be withholding information.

Rather, the agency defends its decision to use 2019 projected data from September of 2018 when conducting an evaluation in November of 2020. Req. for Reconsideration at 7-9. For example, the agency argues relying on 2019 projections was appropriate because the solicitation was issued in 2019. *Id.* While the agency is correct that the solicitation was issued in 2019, we note that it was issued in September of 2019, a full year after the agency requested the projections in September of 2018. Further, the relevant evaluation did not occur until November of 2020, more than two years after the original data request. Given the agency's representation that ManTech provided these projections annually, the agency has not convincingly explained why it did not use, at a minimum, the 2020 projected rates in the evaluation.

In short, the agency relied on projections that were more than two years out of date when it was, at a minimum, entitled to receive more recent projections. Therefore, we cannot conclude that the agency relied on the information reasonably available to it at the time of its evaluation.

For this reason, we do not believe our decision was in error in concluding that the agency did not compare GDOS's rates to the actual incumbent rates. The record supports our conclusion that the agency relied on poorly explained composite rates based, in part, on two-year-old projections of the incumbent rates. Likewise, we do not believe we erred in relying on the agency's concession that the government average rates were lower than what the incumbent personnel were being paid. The protester's uncontested analysis shows that, for ██████████ of positions, the government average rates were lower than the actual current, incumbent compensation.

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel