U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: MiamiTSPi, LLC--Reconsideration

File: B-421216.3

Date: May 11, 2023

Elizabeth N. Jochum, Esq., Samarth Barot, Esq., and Amanda C. DeLaPerriere, Esq., Blank Rome LLP, for the requestor.
Uri R. Yoo, Esq., and Alexander O. Levine, 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 request does not show that our earlier decision contained an error of fact or law, or present information not previously considered that would merit modification or reversal.

DECISION

MiamiTSPi, LLC, an 8(a) small business joint venture[1] of Reston, Virginia, requests reconsideration of our decision in *AttainX, Inc.*, B-421216, B-421216.2, Jan. 23, 2023, 2023 CPD ¶ 45, in which we sustained the protest of AttainX, an 8(a) woman-owned small business of Herndon, Virginia. The protest challenged the issuance of a task order to MiamiTSPi under request for quotations (RFQ) No. 47QFNA22R0006, issued by the General Services Administration (GSA) for information technology (IT) services. MiamiTSPi contends that our prior decision contained an error of law.

We deny the request for reconsideration.

[1] Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small businesses. Federal Acquisition Regulation (FAR) subpart 19.8. This program is commonly referred to as the "8(a) program."

The joint venture members of MiamiTSPi, LLC are Miami Technology Solutions, LLC (MTS), the managing member and 8(a) small business, and Technology Solutions Provider, Inc. (TSPi), the minority member and also a small business.

BACKGROUND

On June 14, 2022, GSA issued the solicitation on behalf of the U.S. Department of Agriculture (USDA) as a total small business set-aside under FAR subpart 16.5. Agency Report (AR), Tab 1, RFQ amend. 4, at 1-2, 15.[2] The RFQ sought quotations for IT services to sustain, enhance, and modernize USDA's Farm Loan Program systems and applications. AR, Supp. Production,[3] Tab 6, RFQ amend. 3, attach. 1, PWS at 9. The solicitation limited competition to firms holding Streamlined Technology Acquisition Resources for Services (STARS) III contracts.[4] RFQ at 3-4. The RFQ anticipated issuing a fixed-price task order with a 1-year base period and four 1-year option periods. *Id.*

Award was to be made using a best-value tradeoff, considering the following four factors in descending order of importance: (1) similar experience; (2) technical approach; (3) staffing and qualifications; and (4) price. *Id.* at 17-20. The RFQ stated that non-price factors, when combined, were significantly more important than price. *Id.* at 18. As relevant here, under the similar experience factor, the RFQ required each vendor to identify a minimum of two relevant contracts that are either currently being performed or which have been completed within the last five years.[5] *Id.* at 16. The RFQ informed vendors that, under this factor, the agency would consider the extent of the contractor's experience in providing like or similar services in accordance with original project deadlines. *Id.*

GSA received quotations from 13 vendors, including AttainX and MiamiTSPi, by the closing date for receipt of quotations. AR, Tab 2, Award Decision Document at 1. The agency evaluated the quotations of AttainX and MiamiTSPi as follows:

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[2] Citations to the record refers to the agency report documents produced in the underlying protest. The RFQ was amended five times; all references to the RFQ are to the final conformed version in amendment 4 and all references to the performance work statement (PWS) are to the final conformed version in amendment 3.

[3] In response to the protester's objections to the production of documents in the agency report, the agency produced supplemental documents with non-continuous tab numbers.

[4] STARS III contracts are indefinite-delivery, indefinite-quantity (IDIQ) contracts awarded by GSA to participants in the 8(a) program to provide information technology services and service-based solutions.

[5] Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors," and responses to an RFQ are usually referred to as quotations, the record and the parties' briefings use the terms offerors and vendors, and quotations and proposals, interchangeably. Our prior decision and this decision use the terms vendors and quotations for the sake of consistency.

	AttainX	MiamiTSPi
Similar Experience	Exceptional[6]	Acceptable
Technical Approach	Exceptional	Exceptional
Staffing and Qualifications	Acceptable	Exceptional
Total Evaluated Price	$135,594,429	$93,207,631

Id. at 1-2. Based on this evaluation, the contracting officer, who also served as the source selection authority, selected MiamiTSPi for award, concluding that AttainX's slight technical advantage did not merit a 45 percent price premium. *Id.* at 2.

GSA notified AttainX of the award and, after requesting and receiving a debriefing, AttainX filed a protest with our Office. In the protest, AttainX challenged the agency's evaluation of MiamiTSPi's quotation under the similar experience and price factors, as well as the agency's best-value determination. Protest at 6-20.

With respect to the agency's evaluation of MiamiTSPi's quotation under the similar experience factor, the protester argued that the agency erred by failing to consider that all of the experience examples submitted by MiamiTSPi were for work managed by TSPi, the minority member of the MiamiTSPi joint venture. Comments & Supp. Protest at 12-15. In this regard, the protester argued that the agency's evaluation did not comply with applicable SBA regulations, which require the agency to "consider work done . . . by each partner to the joint venture as well as any work done by the joint venture itself previously." 13 C.F.R. § 125.8(e). The agency maintained that it complied with the terms of the solicitation and applicable SBA regulations because all projects submitted by MiamiTSPi were for work performed by either MiamiTSPi or one of its joint venture partners. Supp. Contracting Officer's Statement at 2; Supp. Memorandum of Law (MOL) at 6.

The record showed that MiamiTSPi submitted two projects to demonstrate its similar experience. AR, Tab 6, MiamiTSPi Non-Price Quotation at 5-9. The first example described work performed by TSPi as "Prime (member of a [joint venture] MTSPi)"[7] under the disaster credit management system modernization contract for the SBA Office of Disaster Assistance. *Id.* at 5. The second example described the work performed, again by TSPi, for USDA's Farm Production and Conservation under its Olympia Agile Release Train contract. *Id.* at 7-9. Both examples included narratives that described at length the work performed by TSPi in those projects; neither example described any work performed by MTS or mentioned MTS at all. *See id.* at 5-9. In short, for the most important factor (similar experience), MiamiTSPi's quotation relied entirely on the

[6] For the similar experience, technical, and staffing and qualifications factors, the agency assigned quotations an adjectival rating of exceptional, acceptable, marginal, or unacceptable. AR, Tab 4, Evaluation Guide at 1.

[7] MTSPi is another joint venture entity comprised of TSPi and MTS. *AttainX, Inc.*, *supra* at 7 n.13.

experience of one joint venture partner, TSPi, without describing or demonstrating similar experience by the joint venture itself or by MTS, the 8(a) partner of the joint venture.

In evaluating MiamiTSPi's quotation under the similar experience factor, the agency concluded that there was a "very high probability of successful contract performance with a low degree of risk based on the two similar experience samples provided." AR, Tab 9, MiamiTSPi Non-Price Evaluation Report at 3. The agency evaluated the two samples to be "of similar size, scope, and complexity to the requirements" and found that they "demonstrate ability to successfully perform the work required in the PWS with low risk," without noting that both examples represented work performed only by TSPi. *Id.* In fact, the record showed that the evaluators appeared not to have noticed which entity performed work on the example projects before crediting both experience examples to the joint venture itself. *See id.*

After reviewing this record, AttainX renewed its argument that the agency unreasonably failed to consider that MiamiTSPi relied entirely on the experience of its minority member without demonstrating any similar experience by MiamiTSPi or MTS. Comments & Supp. Protest at 12-15. The agency maintained that it reasonably evaluated MiamiTSPi's experience because the solicitation did not restrict vendors from providing similar experience examples from joint venture partners, and the applicable SBA regulations allowed the agency to consider the experience of a joint venture partner in evaluating the experience of the joint venture. Supp. MOL at 5-6.

On January 23, 2023, our Office sustained the protest based in part on the agency's failure to evaluate MiamiTSPi's quotation under the similar experience factor in accordance with the applicable SBA regulations because the agency had only considered the experience of one of the two joint venture members. *AttainX, Inc., supra* at 6-10.[8] Our decision explained that, when evaluating a small business joint venture for award of a contract, the Small Business Act requires agencies to consider the experience of the individual members of the joint venture if the joint venture itself does not demonstrate sufficient capabilities or past performance to be considered for award. *Id.* at 8-9, *citing* 15 U.S.C. § 644(q)(1)(C). We further noted that the SBA regulations implementing the Act required agencies to "consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously." *Id.* at 9, *citing* 13 C.F.R. §§ 125.8(e), 124.513(f).

Although the agency insisted that it properly considered "similar experience examples [that] were submitted by either MiamiTSPi or one of its joint venture partners," our Office found that the record was clear that the agency had mistaken the experience example

[8] We also sustained AttainX's challenges to the agency's evaluation of MiamiTSPi's price quotation and best-value determination. *See AttainX, Inc., supra* at 10-16. The requestor, however, limits its request for reconsideration to our decision to sustain the protest with respect to the challenge to the agency's evaluation of MiamiTSPi's experience. *See* Req. for Recon. at 4 n.4.

of MTSPi as that of MiamiTSPi. *AttainX, Inc.*, *supra.* Our decision further noted that "the contemporaneous record lack[ed] any type of acknowledgment of the fact that the only experience examples submitted were for . . . TSPi, indicating that the evaluators never even considered the limited nature of the experience examples" submitted by MiamiTSPi. *Id.* Based on this record, our decision concluded that the agency's evaluation--which considered only one joint venture member's experience--was inconsistent with the SBA regulations requiring agencies to consider the qualifications held individually by each partner to the joint venture. *Id.*

DISCUSSION

In its request for reconsideration, MiamiTSPi contends that our decision contains an error of law in its interpretation of the applicable SBA regulations. Specifically, the requestor argues that our Office failed to consider the portion of the SBA regulations that prohibits the agency from negatively evaluating the 8(a) partner of the joint venture for its lack of relevant experience. Req. for Recon. at 3. The requestor contends that the regulations required the agency to consider the similar experience of each joint venture partner as being that of the joint venture itself. *Id.* Based on this contention, MiamiTSPi argues that the agency properly considered the two example projects of one of the joint venture partners and reasonably attributed that experience to the joint venture itself. *Id.*

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 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, B-419113.7, Mar.15, 2021, 2021 CPD ¶ 120 at 4.

As noted above, our decision cited and quoted portions of the SBA regulations pertaining to the evaluation of small business joint ventures. In this regard, the applicable regulation provides as follows:

> When evaluating the capabilities, past performance, experience, business systems, and certifications of an entity submitting an offer for an 8(a) contract as a joint venture established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

13 C.F.R. § 124.513(f). The second portion of that rule, not quoted in our decision, states as follows:

> A procuring activity may not require the 8(a) Participant to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems, and certifications necessary to perform the contract.

Id.

MiamiTSPi asserts that the second portion of this rule prohibited the agency from negatively evaluating the protégé member of the joint venture for failing to submit any experience references. Req. for Recon. at 3. Based on this assertion, the requestor argues that the requirement that "[t]he partners to the joint venture in the aggregate must demonstrate the . . . experience . . . necessary" is actually a mandate for the agency to accept just one partner's experience as the experience of the joint venture itself. *See id.* at 3-4. We find the requestor's interpretation of this rule to be unreasonably expansive and unsupported by the plain language of the rule or by SBA's stated explanation of the rule.

First, contrary to the requestor's contention, nothing in the rule prohibits an agency from applying *any* evaluation or responsibility criteria to the 8(a) partner of the joint venture. Instead, the rule provides that the agency may not require the 8(a) partner to meet *the same* evaluation or responsibility criteria as that of other offerors. In this respect, the clarifying second portion of the rule is logically meant to explain the application of the preceding sentence, not to nullify it. Read together, the rule directs agencies to "consider work done and qualifications held individually by each partner to the joint venture," and, in that consideration, prohibits agencies from requiring the protégé or 8(a) participant partner to individually meet the same criteria as the mentor or non-8(a) partner. 13 C.F.R. § 124.513(f).

In promulgating these regulations, SBA explained that these "rules require a small business protégé to have *some* experience in the type of work to be performed under the contract," while it would be "unreasonable to require the protégé concern itself to have the *same level* of past performance and experience . . . as its large business mentor." 85 Fed. Reg. 66146, 66167-66168 (Oct. 16, 2020) (emphasis added). [9] The notice further stated that, although "SBA intends that the protégé firm gain valuable business development assistance through the joint venture relationship," the protégé firm "must, however, bring something to the table other than its size or socio-economic status." *Id.* SBA further explained that "[t]he joint venture should be a tool to enable it to win and perform a contract *in an area that it has some experience* but that it could not

[9] SBA initially left out conforming revisions in the final rule to § 124.513 to address the evaluation of a joint venture formed outside SBA's mentor-protégé program to pursue a contract set-aside or reserved for 8(a) participants. *See* 85 Fed. Reg. 66146 (Oct. 16, 2020). SBA subsequently published a notice to correct the inconsistency by revising § 124.513(f) to incorporate the amendment. *See* 86 Fed. Reg. 2957 (Jan. 14, 2021).

have won on its own." *Id.* (emphasis added). These explanations support our interpretation of the rule here as requiring the consideration, in the aggregate, of the experience of each partner to the joint venture and, when doing so, not to hold the protégé or 8(a) partner to the same standard as required for the mentor or non-8(a) partner of the joint venture or the joint venture itself.

MiamiTSPi argues that our decision in *AttainX* is legally erroneous because it is inconsistent with our Office's prior decisions on this issue. The requestor points to *Ekagra Partners, LLC*, where we relied in part on SBA's input advising that "neither SBA regulations nor the Small Business Act specifically address the relative consideration that an agency must give to the past performance of a large business mentor in a mentor-protégé joint venture, as compared to a small business protégé." Req. for Recon. at 3, *citing Ekagra Partners, LLC*, B-408685.18, Feb. 15, 2019, 2019 CPD ¶ 83 at 6 (*quoting* SBA Comments, Feb. 1, 2019, at 1).

We disagree with MiamiTSPi's contention that our decision in *Ekagra* stands for the proposition that the regulations allow the agency to only consider the experience of one partner of a joint venture (the mentor firm) when evaluating the joint venture. *See* Req. for Recon. at 3. To the contrary, in *Ekagra*, considering SBA's advice, we found as follows:

> Although SBA regulations require agencies to consider the experience of *both the mentor and protégé members of the joint venture,* the regulations neither mandate a specific degree of consideration for the mentor and the protégé firm, nor prohibit an agency from limiting the experience that may be submitted by one of the members.

Ekagra Partners, LLC, *supra* (emphasis added). While the requestor focuses on our finding that the regulations "neither mandate a specific degree of consideration for the mentor and the protégé firm," this ignores our preface to that finding: "SBA regulations require agencies to consider the experience of both the mentor and protégé members of the joint venture." *Id.* In other words, even though the regulations do not mandate a *specific degree* of consideration, it is clear that the agency must consider *to some degree* the experience of both partners of the joint venture.

MiamiTSPi also contends that our decision in *Gunnison Consulting Grp., Inc.*, B-418876 *et al.*, Oct. 5, 2020, 2020 CPD ¶ 344, found it reasonable "for [an] agency to have considered the experience of [only a mentor firm], as a partner to [a] joint venture, during its evaluation of [the joint venture]." Req. for Recon. at 3. However, in *Gunnison*, the protester argued that the awardee's proposal should have been found unacceptable because the awardee--a small business mentor-protégé joint venture--was required to submit a past performance reference performed by the joint venture itself as the prime contractor. *Gunnison Consulting Grp., Inc., supra* at 5. Our Office concluded that the agency reasonably attributed the past performance of one of the joint venture partners to the joint venture, but never reached the question of whether it would be proper for the agency to consider the experience of *only* the mentor partner to the joint venture. *See id.* at 6 ("In accordance with this provision [of 13 C.F.R. § 125.8(e)],

we find it reasonable for the agency to have considered the experience of Octo Consulting, as a partner to the joint venture, during its evaluation of [the joint venture] Octo Metric.").

Therefore, we disagree with MiamiTSPi's contention that our decision in *AttainX* expands or contradicts the SBA regulation by "mandat[ing] a *specific degree* of consideration" for the protégé or 8(a) firm. *See* Req. for Recon. at 4. Instead, our decision properly reflected the SBA-stated intent of the regulations, as well as our finding in *Ekagra,* that the agency must consider the experience held by both partners to the joint venture, even though no specific degree of consideration is mandated.

As noted, the record here was devoid of any indication that the agency had given any consideration to the experience of the 8(a) joint venture partner, or even recognized that all of the experience references were for only one joint venture partner. Instead, the record indicated that the agency had mistaken the experience reference submitted for MTSPi (another joint venture) as that of MiamiTSPi. In this regard, the agency maintained the position that "[a]ll similar experience examples submitted by MiamiTSPi were from either MiamiTSPi or one of its underlying joint venture partners," even though the record showed that no experience example was submitted for work performed by MiamiTSPi. Supp. MOL at 6. Furthermore, the agency has not asserted, even in its briefs responding to the protest, that it ever considered the lack of experience examples for the joint venture itself or the 8(a) partner of the joint venture.[10]

For this reason, we find that our decision did not contain an error of law in concluding that the agency's evaluation of MiamiTSPi's quotation was unreasonable and inconsistent with the SBA regulations. The record supports our conclusion that the agency improperly failed to consider the experience of each partner to the joint venture in evaluating the experience of the joint venture. This conclusion is consistent with the SBA regulations, which do not "mandate a specific degree of consideration for the mentor and the protégé firm," but do "require agencies to consider the experience of

[10] As a point of comparison, in *Meltech Corporation, Inc.*, we found that the agency reasonably evaluated an awardee's past performance where the only past performance references submitted for the joint venture were for incumbent work performed by the mentor entity as a prime contractor and the protégé entity as a subcontractor. *Meltech Corporation, Inc.*, B-421064, B-421064.2, Dec. 22, 2022, 2023 CPD ¶ 9 at 6-9. In that protest, although the contemporaneous evaluation record did not show that the agency had considered the past performance of both partners to the joint venture, the agency supplemented the record with post-protest declarations from the chair of the past performance evaluation team (PPET). *Id.* at 8-9. The PPET chair, who was also the contracting officer's representative for the awardee's referenced projects, attested that he informed the evaluation team of his first-hand knowledge of the work performed by each joint venture partner in the referenced projects, and the evaluators fully considered this information in evaluating the joint venture's past performance. *Id.* On that record, we found that the agency had properly considered the past performance of each member of the joint venture as required by the SBA regulations. *Id.*

both the mentor and protégé members of the joint venture." *See Ekagra Partners, LLC*, *supra* at 6.

The request for reconsideration is denied.

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