U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

Comptroller General
of the United States

Decision

Matter of: CSlope Solutions, LLC

File: B-422249.5

Date: April 8, 2026

Jeremy D. Burkhart, Esq., Tanner N. Slaughter, Esq., and Ben R. Smith, Esq., Holland & Knight LLP, for the protester.
Jonathan A. Hardage, Esq., Department of the Army, for the agency.
Kasia Dourney, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the requester has not shown that our prior decision contains an error of fact or law warranting reversal or modification.

DECISION

CSlope Solutions, LLC, a small business of Arlington, Virginia, requests reconsideration of our decision in *CSlope Sols., LLC*, B-422249.2 *et al.*, Dec. 10, 2025, in which we denied its protest of the issuance of a task order to JCS Solutions, LLC, a small business of Fairfax, Virginia, under request for proposals (RFP) No. W519TC-23-R-0111, issued by the Department of the Army for services in support of the Arlington National Cemetery customer care support center. We denied CSlope's allegation that the agency unreasonably evaluated proposals resulting in a flawed source selection decision. The requester argues that our decision contains errors of fact and law that warrant reconsideration.

We deny the request for reconsideration.

BACKGROUND

On November 3, 2023, the Army issued the solicitation under the General Services Administration's 8(a)[1] Streamlined Technology Acquisition Resource for Services III

[1] Our underlying decision explained that section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration (SBA) to enter into

(continued...)

governmentwide acquisition contract, using the procedures of FAR section 16.505. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5-6. The initial due date for proposals was December 13, 2023. *Id.* at 7.

As explained in our underlying protest decision,[2] shortly before the due date for the submission of proposals, JCS filed a protest with our Office, challenging the terms of the solicitation. *CSlope Sols., LLC*, *supra* at 2. In response to the protest, the agency took partial corrective action by amending the RFP to remove any reference to a best-value tradeoff source selection process and to specify that only proposals that received a past performance rating of substantial confidence would be eligible for award. *Id.* Following this announced plan, the only remaining protest ground for resolution by our Office was an allegation that the RFP improperly provided for a lowest-price, technically acceptable (LPTA) source selection process, in violation of the FAR and the Defense Federal Acquisition Regulation Supplement. That protest ground was subsequently denied. *See JCS Sols., LLC*, B-422249, Mar. 13, 2024.[3]

The amended solicitation provided for the evaluation of proposals based on three factors: technical, past performance, and cost/price evaluation. *CSlope Sols., LLC*, *supra* at 2 (citing Agency Report (AR), Tab 28, RFP at 4). The solicitation instructed that the agency would "make an award to the responsible [o]fferor (in accordance with FAR 9.1) whose proposal complies with the RFP requirements and is determined to be the lowest total evaluated (fair and reasonable) priced proposal that is determined to be [t]echnically [a]cceptable with a past performance rating of [s]ubstantial [c]onfidence." RFP at 49.

The RFP evaluation scheme anticipated a three-step process. *Id.* at 50. In step one, the agency was to evaluate the five lowest-priced proposals under the technical factor on an acceptable/unacceptable basis. *Id.* In step two, the Army was to conduct a past performance evaluation and a price analysis for the three lowest-priced, technically acceptable proposals. *Id.* As relevant here, the agency was to evaluate each offeror's past performance references as very relevant, relevant, somewhat relevant, or not

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contracts with government agencies and to arrange for performance of those contracts through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800 (describing the 8(a) program).

[2] In short, as discussed below, the underlying protest was preceded by two prior protests filed by JCS: first, a challenge to the terms of the solicitation, and second, a protest of a contract award to CSlope. *See JCS Sols., LLC*., B-422249, Mar. 13, 2024; *JCS Sols., LLC*, B-423136, Dec. 2, 2024 (unpublished decision).

[3] Specifically, our Office found that the source selection process was not an LPTA because the solicitation provided for a comparative assessment of past performance (on a scale, which included possible ratings of no confidence, limited confidence, neutral confidence, satisfactory confidence, or substantial confidence). *JCS Sols., LLC*, B-422249, Mar. 13, 2024, at 5.

relevant, and then conduct a performance confidence assessment, assigning an overall confidence rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 52. Finally, in step three, the agency was to issue the task order to the offeror that submitted the lowest-priced, technically acceptable proposal with a past performance rating of substantial confidence. *Id.*

Following the submission and evaluation of proposals, the agency selected CSlope's proposal for award. COS/MOL at 13. JCS filed a timely protest with our Office, challenging the agency's evaluation of proposals and its source selection decision. *Id*. While the protest was pending, the Army informed our Office that it intended to take corrective action, by reevaluating proposals and making a new source selection decision.[4] AR, Tab 62, Notice of Corrective Action at 1-2. As a result, our Office dismissed the protest as academic. *JCS Sols., LLC* (B-423136), *supra*.

During the reevaluation of proposals, the Army revised its rating for CSlope's past performance proposal from substantial confidence to satisfactory confidence; otherwise, all other ratings remained the same. AR, Tab 68, Corrective Action Source Selection Evaluation Board Report at 9. Following the reevaluation, the agency selected JCS's proposal for award. COS/MOL at 23.

CSlope protested the award with our Office, challenging the agency's evaluation of JCS's and CSlope's past performance. Protest 15-21, 25-26. As relevant to this request for reconsideration, CSlope argued, among other things, that the agency's assignment of a satisfactory confidence past performance rating for CSlope's proposal was, in essence, a nonresponsibility determination that the agency improperly failed to refer to the Small Business Administration (SBA). *Id.* at 21 (citing 13 C.F.R. § 125.5(a)(2)(ii) and FAR subpart 19.6.)

During the course of the protest, our Office sought input from the SBA on this issue. *CSlope Sols., LLC*, *supra* at 9 n.4. The SBA filed a brief in support of the protester's position, stating that "whenever a contracting officer's evaluation of a firm's eligibility for an award involves a binary choice . . . the contracting officer must refer the matter to SBA for a [certificate of competency (COC)]." SBA Comments at 4.

Our Office, however, disagreed with the SBA's view, noting that:

> we find that the solicitation did not specify that the agency's past performance evaluation would involve a binary choice; rather, the solicitation required the agency to perform a comparative assessment of past performance.

[4] As a reason for the corrective action, the agency indicated that it had discovered that the past performance evaluation reports were not finalized at the time of the source selection decision. COS/MOL at 14. Accordingly, the agency decided to take corrective action to reevaluate proposals and adequately document its evaluation results. *Id*.

CSlope Sols., LLC, *supra* at 9 n.4. As such, we concluded that "the agency did not engage in a nonresponsibility determination when it assigned the protester's proposal a past performance rating of satisfactory confidence, and therefore, that no referral to SBA for a [COC] was required." *Id*. at 11. Accordingly, we denied this protest ground and, ultimately, the entire protest. *Id*., *supra* at 11, 15.

This request for reconsideration followed.

DISCUSSION

CSlope argues that our Office "fail[ed] to apply the proper analysis in interpreting regulations of the [SBA]" and as such, our decision contains errors of law and fact. Req. for Recon. at 1. The requester complains that our decision "failed to defer to the SBA's interpretation of 13 C.F.R. § 125.5(a)(2), a Small Business Act regulation, in violation of GAO precedent," or "even analyze the SBA's position." *Id*. Moreover, CSlope contends that before declining to give deference to the SBA's interpretation of its own regulations, our Office was "legally required" to find that "SBA's interpretation was unreasonable" but our decision failed to make such a finding. *Id.* at 2. CSlope also alleges that our Office "committed factual and legal error by not acknowledging that the Army determined that CSlope was ineligible for award" and "failing to apply this fact in its analysis." *Id.* at 11-12. Finally, the requester asserts that our decision improperly focused on whether the agency had made a "[n]onresponsibility [d]etermination," when the "proper inquiry" should have been whether the Army "[r]efuse[d] to consider" CSlope for award "after evaluating the concern's offer on a noncomparative basis (*e.g*., a pass/fail, go/no go, or acceptable/unacceptable [basis]) under one or more responsibility type evaluation factors." *Id.* at 14-16. For the reasons discussed below, we see no basis to reconsider our prior decision.

To prevail on a request for reconsideration, the requesting party either must show that our decision contains errors of fact or law, or represent information not previously considered, and which could not have been provided during the original protest, that warrants the decision's reversal or modification. 4 C.F.R. § 21.14(a); *Department of Veterans Affairs--Recon.*, B-405771.2, Feb. 15, 2012, at 3. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. 4 C.F.R. § 21.14(c); *Darton Innovative Techs., Inc.--Recon.*, B-418034.3, Mar. 9, 2020, at 3.

As noted above, CSlope alleges that our Office improperly failed to defer to the SBA's interpretation of 13 C.F.R. § 125.5(a)(2)(ii). Req. for Recon. at 9-11. That regulation provides, in pertinent part, as follows:

> A contracting officer must refer a small business concern to SBA for a possible COC, even if the next apparent successful offeror is also a small business, when the contracting officer . . . Refuses to consider a small business concern for award of a contract or order after evaluating the concern's offer on a non-comparative basis (e.g., a pass/fail, go/no go, or

> acceptable/unacceptable) under one or more responsibility type evaluation factors (such as experience of the company or key personnel or past performance) . . . .

13 C.F.R. § 125.5(a)(2)(ii).

As discussed earlier, the SBA agreed with CSlope that the solicitation established a "binary" evaluation scheme for the past performance assessment, creating a "binary choice as to whether that firm is suitable for the award based upon a responsibility determination." SBA Comments at 4. Accordingly, the SBA opined that the Army was required to refer CSlope to the SBA for the issuance of a COC. *Id.* at 6.

Our Office found, however, that the solicitation evaluation scheme:

> differs from an evaluation of past performance on a pass/fail basis because it uses a comparative analysis. Put another way, because proposals could receive ratings of no confidence, limited confidence, neutral confidence, satisfactory confidence, or substantial confidence, there was not a "binary choice," as argued by the protester and the SBA. We thus conclude that the agency did not engage in a nonresponsibility determination when it assigned the protester's proposal a past performance rating of satisfactory confidence, and therefore, that no referral to SBA for a [COC] was required.

CSlope Sols., LLC, *supra* at 11.

The requester argues that our Office should have deferred to the SBA's interpretation of 13 C.F.R. § 125.5(a)(2)(ii), "analyze[d] the SBA's position," and, at the minimum, found that "SBA's interpretation was unreasonable" before electing not to follow its guidance. Req. for Recon. at 1, 10. We find CSlope's allegations to be based on an unreasonably expansive--and incorrect--understanding of our Office's usual consideration of SBA's views. In short, CSlope's arguments are unsupported by our Bid Protest Regulations, GAO precedent, and our customary practice.

When considering small business matters, including protests where we have invited the SBA to provide its views on the issue, we start with an analysis of the plain meaning of the applicable statute or regulation.[5] *TLS Joint Venture, LLC*, B-422275, Apr. 1, 2024, at 3. If the regulation has a plain and unambiguous meaning, our inquiry ends with that plain meaning. *Coast to Coast Comput. Prods., Inc.*, B-419624.2, June 28, 2021, at 10. While our Office will give deference to an agency's reasonable interpretation of its own regulations, where the language of a regulation is plain on its face, and its meaning is

[5] Our regulations list three instances, generally referred to as "Small Business Administration . . . . issues," that fall outside of our Office's jurisdiction. *See* 4 C.F.R. § 21.5(b). Otherwise, the regulations are silent as to our consideration of small business issues.

clear, there is no reason to move beyond the plain meaning of the text. *ASRC Fed. Data Network Techs., LLC*, B-418028, B-418028.2, Dec. 26, 2019, at 10.

We note that our Office has consistently declined to defer to the SBA's interpretation of an applicable statute or regulation when, after an analysis of the plain meaning of the language of a small business provision at issue, we disagreed with the SBA's interpretation. *See, e.g., ASRC Fed. Data Network Techs., LLC*, *supra* (declining to apply SBA's interpretation of SBA regulation where the language of the regulation was plain on its face and where we noted that "while the SBA may have intended this to be the policy, its interpretation is contradicted by the plain language of the Policy Directive and is therefore unreasonable."); *Coast to Coast Comput. Prods., Inc.*, B-417500, B-417500.2, July 29, 2019, at 6 (rejecting the SBA's interpretation of the provisions of the Small Business Jobs Act of 2010 and its implementing regulations as not "supported by the applicable authority."); *Latvian Connection Gen. Trading and Constr. LLC*, B-408633, Sept. 18, 2013, at 5 (refusing to apply SBA's interpretation of a particular Small Business Act provision where the Act was silent about certain aspect at issue in the protest, and where the FAR, in contrast, provided a clear guidance on that same issue; our Office concluded that "SBA's view of the statute--which is not reflected in its own implementing regulation despite the existence of the government-wide FAR rule for decades--does not overcome the deference accorded to the FAR.").

In our underlying decision, our Office examined the language of 13 C.F.R. § 125.5(a)(2)(ii) and found it to be unambiguous.[6] Specifically, the plain language of the regulation unambiguously provides that the contracting officer must refer a small business concern to the SBA for the issuance of a COC when he or she "[r]efuses to consider a small business concern for award of a contract . . . after evaluating the concern's offer on a non-comparative basis (e.g., a pass/fail, go/no go, or acceptable/unacceptable)." 13 C.F.R. § 125.5(a)(2)(ii). Applying this standard, our Office concluded that the agency was not required to refer CSlope to the SBA because the solicitation did not provide for evaluation of past performance on a pass/fail basis but rather, it used a comparative analysis. We therefore disagreed with the SBA's position on the issue and found no merit to the protesters' challenges.

We find this conclusion to be reasonable in light of the plain language of the regulation at issue, which only requires referral to the SBA when the evaluation of a concern's proposal is made on a non-comparative basis. *See, e.g.*, *ASRC Fed. Data Network Techs., LLC*, *supra* (finding that because the regulations at issue are plain on their face, GAO need not look beyond the text of those regulations); *see also Analytica LLC*, B-422681.3, B-422681.4, Nov. 26, 2024, at 8 (finding SBA's interpretation of its regulation unreasonable where the "GAO need not look beyond the text of those regulations" and finding that the SBA created a protest-specific "exemption to its own rules"). Here, while the solicitation stated that award would be made to firms with a

[6] Because we analyzed the plain and unambiguous meaning of the regulation at issue, there was no need "to consider the regulatory history of 13 C.F.R. § 125(a)(2)(ii)," as CSlope argues we were obligated to do. Req. for Recon. at 14.

substantial confidence past performance rating, it called for the evaluation of past performance on a comparative basis. In this regard, past performance was to be evaluated as more than simply pass/fail, with ratings of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. RFP at 52. These ratings were to be assigned based on the government's expectation, following the agency's review of the offeror's recent and relevant performance record, of whether the offeror would successfully perform the instant requirement. *Id.* Importantly, while offerors with a satisfactory confidence rating would not be eligible for an award due to the solicitation's announced award limitation, such a rating would nonetheless reflect that the agency "has a reasonable expectation that the [o]fferor will successfully perform the required effort." *Id.* Thus, contrary to the requester's position, the solicitation anticipated the comparative evaluation of past performance, albeit a comparative evaluation that was then followed by an award limitation to offerors with a substantial confidence past performance rating.[7]

CSlope also argues that our decision contains "factual and legal error" because it failed to acknowledge that the Army determined that CSlope was ineligible for award based on its satisfactory confidence rating and did not apply this fact in our analysis. Req. for Recon. at 11-12. According to the requester, it was "a pivotal fact demonstrating that the Army's purported rating scheme was actually a pass/fail go/no-go binary choice." *Id*. at 8.

We dismiss this aspect of the reconsideration request because CSlope only repeats--although framed slightly differently--the arguments it made during the protest development process, which our Office already considered in resolving the underlying protest. While CSlope did not characterize the agency's determination that CSlope was ineligible for award as a "pivotal fact" demonstrating that the Army's rating scheme was a pass/fail, go/no-go, binary choice, Req. for Recon. at 8, CSlope did contend that "because a past performance rating other than 'Substantial Confidence' rendered CSlope ineligible for award, the Army was required to refer CSlope to the SBA for a COC under the plain text of 13 C.F.R. § 125.5." CSlope Resp. to SBA Comments at 1. CSlope also argued that "[a]nything short of [a substantial confidence] rating was unacceptable and ineligible for award, and because CSlope was rated only Satisfactory Confidence, the Army refused to consider it for award." Comments and 2nd Supp. Protest at 19. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet our standard for granting reconsideration. *Darton Innovative Techs., Inc., supra*.

[7] This distinction is more than merely semantic. We note that since the agency found that CSlope's satisfactory past performance provided a reasonable expectation that it would successfully perform the contract, a referral to SBA for a COC would not have served any purpose. In this regard, any finding by SBA that CSlope was responsible, and could successfully perform the contract, would not have been inconsistent with the agency's assignment of a satisfactory confidence rating to the firm's past performance.

But even if we were to consider the requester's argument again, we would find that CSlope inaccurately asserts that our underlying decision ignored the Army's ineligibility decision. In this regard, we noted, in several places, that the solicitation called for award to be made only to offerors receiving a substantial confidence past performance rating, and that CSlope only received a satisfactory confidence rating. *CSlope Sols., LLC*, *supra* at 3, 5, 9, 10. For example, our decision noted the protester's argument that "the solicitation's restriction of award to only those offerors that received a past performance rating of substantial confidence means that the solicitation provided for evaluation of past performance on a non-comparative basis. . ." *Id.* at 9. Our decision further noted that the "RFP provided that only those proposals that received a rating of substantial confidence would be eligible for award." *Id.* at 10 (*citing* RFP at 50). Although the requester takes issue with our decision's discussion of the agency's award decision as a *de facto* nonresponsibility determination, we note that this analysis followed the arguments advanced by CSlope in the underlying protest, *see, e.g.*, Comments at 21-25, and did not reflect a failure to understand or consider that CSlope's satisfactory confidence rating led to its ineligibility for award.

Finally, CSlope contends that "GAO committed legal error by improperly analyzing . . . whether the Army performed a 'nonresponsibility determination,' language that does not appear in 13 C.F.R. § 125.5(a)(2)(ii)" instead of analyzing "whether the Army '[r]efuse[d] to consider' CSlope for award 'after evaluating the concern's offer on a noncomparative basis (e.g., a pass/fail, go/no go, or acceptable/unacceptable) ***under one or more responsibility type evaluation factors***.'" Req. for Recon. at 14-16.

As noted above, our Office framed the issue as a nonresponsibility determination in direct response to CSlope's allegations that "[t]he Army's determination that CSlope's proposal only provided [s]atisfactory [c]onfidence, rather than [s]ubstantial [c]onfidence, was a de facto determination of nonresponsibility." Protest at 21. We then analyzed whether the agency was required to refer CSlope to the SBA for the issuance of a COC, examining the language of 13 C.F.R. § 125.5(a)(2)(ii) and the key question of whether the Army evaluated past performance on a pass/fail basis. *CSlope Sols., LLC*, *supra* at 11. As discussed above, we concluded it did not and denied this protest ground.

The request is denied.

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