



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. The entire decision has been approved for public release.

Decision

Matter of: Harper Construction Company, Inc.--Reconsideration

File: B-419947.4

Date: April 15, 2026

Dirk Haire, Esq., Jessica Haire, Esq., A. Michelle West, Esq., Michael J. Brewer, Esq., and Isabella S. Capanna, Esq., Burr & Forman LLP, for the requester.
Kristopher M. Cronin, Esq., Department of the Navy, for the agency.
Michelle Litteken, Esq., and April Y. Shields, 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 contained an error of fact or law warranting reversal or modification.

DECISION

Harper Construction Company, Inc., of San Diego, California, requests reconsideration of our decision in *Harper Construction Company, Inc.*, B-419947.3, March 18, 2016, in which we denied its protest of the issuance of a task order to Clark Construction Group - California LP, of Irvine, California, by the Department of the Navy, Naval Facilities Engineering Systems Command, under request for proposals (RFP) No. N6247325RF016, to repair five existing bachelor enlisted quarters (BEQ). Harper argues that our Office erred in denying its protest.

We deny the request for reconsideration.

BACKGROUND

On July 1, 2025, under the procedures of Federal Acquisition Regulation subpart 16.5, the Navy issued the RFP to holders of the agency's indefinite-delivery, indefinite-quantity multiple award construction contracts. Contracting Officer's Statement (COS)

at 401.¹ The Navy sought proposals to repair five existing BEQs at Marine Corps Base Camp Pendleton, including converting units to new room standards and replacing deteriorated building components and outdated building systems. Agency Report (AR), Exh. 1, RFP, amend. 11 at 3. The solicitation contemplated issuance of a fixed-price task order, *id.* at 164, and it provided for award to be made on a lowest-priced, technically acceptable basis, considering the technical solution evaluation factor (on an acceptable or unacceptable basis) and price. RFP, amend. 2 at 116-17.

As relevant here, the RFP required offerors to submit a three-page design narrative and conceptual drawings for the first floor of each BEQ. RFP at 117. The solicitation provided a project description directing offerors to “[c]omply with the current version of FC [Facilities Criteria] 4-721-10N, Navy and Marine Corps Bachelor Housing” for design, as well as the RFP’s attachment G, a memo titled “Interim Department of Defense Design Standards for Unaccompanied Housing.” AR, Exh. 13, RFP attachs. at 353. Those criteria and standards established, among other things, required spaces within rooms and minimum net square footage (NSF) for those spaces. AR, Exh. 7, FC 4-721-10N at 57-58; AR, Exh. 13, RFP attachs. at 1404-07.

In evaluating Harper’s proposal, the agency concluded that the firm’s technical solution was unacceptable because the floor plan for one of the proposed unit types was not large enough “to accommodate all required spaces and meet the minimum NSF” requirements. AR, Exh. 5, Revised Technical Evaluation at 220. The evaluators considered the solicitation as amended by responses to requests for information (RFI) received from potential offerors, and they noted that the agency “clarified that the kitchenette could be reduced to no less than 36 NSF, if it were practically infeasible to accommodate 40 NSF.” *Id.* at 222. The evaluators found that Harper’s technical solution was “insufficient to realistically accommodate all required spaces, to include the bedroom, closets, bathroom, kitchenette, interior walls, interior furring and chases behind interior walls[,]” and the Navy rated Harper’s proposal as technically unacceptable and ineligible for award. *Id.* at 220-22.

On December 16, Harper filed the underlying protest, arguing that the agency should have found that Harper’s proposed units met the RFP’s requirements. Protest at 5-6. In this regard, Harper asserted that because the scope of work involved existing construction, the provisions in FC 4-721-10N, Chapter 3-3.2 regarding existing older facilities applied, and offerors were therefore permitted to deviate from the NSF requirements that apply to new construction. *Id.* at 7; *see also* Comments at 3. In advancing its arguments, Harper argued “that the terms of the Solicitation, RFI responses, and FC 4-721-10N must be read harmoniously[,]” and under such a reading, offerors were permitted to deviate from the minimum NSF requirements—including the 36 NSF minimum for the kitchenette that was communicated in the RFI responses. Comments at 2; *see also* Protester Resp. at 5-6.

¹ Citations are to the Bates numbers that the agency assigned to each document, where available. For documents that were not assigned Bates numbers, citations are to the PDF page numbers.

On March 18, 2026, we issued our decision, *Harper Construction Company, Inc.*, B-419947.3, denying the protest. In our decision, we noted that Harper contended that the RFP permitted offerors to deviate from the minimum NSF--including the NSF for the kitchenette--and the Navy asserted that the RFI responses established that the kitchenettes could not be less than 36 NSF. *Harper Constr. Co., supra* at 5-6. We found that the agency's evaluation was reasonable and consistent with the terms of the solicitation--in this regard, we found that to the extent the RFI responses stating that the minimum NSF for the kitchenettes was 36 NSF conflicted with FC 4-721-10N, the conflict was apparent or obvious, and Harper's arguments constituted untimely challenges to the terms of the RFP. *Id.* at 6-7. On March 23, Harper filed this request for reconsideration.

DISCUSSION

The requester argues that our prior decision "relie[d] on four errors that each warrant reconsideration." Req. for Recon. at 1. We have considered all of Harper's arguments, and we conclude that none provides a basis to grant this request for reconsideration. We discuss two representative examples below.

At the outset, we note under our Bid Protest Regulations, to obtain reconsideration, a requesting party must either 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); *CymSTAR, LLC--Recon.*, B-422576.2, Sept. 10, 2024, 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.

Harper's Position Regarding Minimum NSF Requirements

As a first representative example, Harper argues that our Office erred in suggesting that it had acknowledged that its proposal did not meet the NSF minimum requirements. Req. for Recon. at 1-2. The underlying decision states: "Harper acknowledges that the relevant unit type proposed by the firm did not meet all minimum NSF requirements identified in the agency's evaluation." *Harper Constr. Co., supra* at 4. The requester asserts that this statement is inaccurate and states: "Harper's position throughout briefing of this protest has been that there is no minimum NSF set forth in the Solicitation based on its inclusion of FC 4-721-10N, Chapter 3-3.2, which permits offerors to reduce NSF of any space within the unit based on the conditions of existing older facilities." Req. for Recon. at 2 (citing Protest at 9; Comments at 2, 6; Protester's Resp. at 3, 5).

As an initial matter, the requester mischaracterizes our decision and takes the quoted statement out of context. In the underlying decision, our Office recognized that Harper claimed the solicitation did not establish minimum NSF requirements and permitted

offerors to deviate from the new construction requirements. *Harper Constr. Co., supra* at 5 (“Harper contends that it was allowed to deviate from the minimum NSF for the kitchenettes by the terms of the solicitation.”). The language that Harper quotes from the underlying decision is not inconsistent with Harper’s argument. Rather, it conveys the fact that Harper recognized that the firm’s proposal depicted kitchenettes that were less than 36 NSF. A reasonable reading of the underlying decision demonstrates that our Office understood Harper did not believe that the solicitation required the kitchenette to be at least 36 NSF.

Furthermore, as Harper demonstrates in making this argument here, in claiming reconsideration is appropriate, Harper repeats assertions made in the underlying protest, which our Office considered and rejected. 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., supra*.

In sum, Harper’s mischaracterization of the basis of our decision and its repetition of its earlier arguments do not meet our standard for reconsideration.

The Navy’s Allegedly Inconsistent Statements

As a second example, Harper asserts that our Office erred in relying on the Navy’s arguments regarding its evaluation of Harper’s proposal. Specifically, Harper argues that our Office should have rejected the Navy’s arguments regarding the RFP’s RFI responses about the minimum space requirements for the kitchenettes because, according to Harper, the Navy’s “post-protest statement” that the RFI responses clarified that the kitchenettes could not be less than 36 NSF was inconsistent with the RFP’s inclusion of FC 4-721-10N. Req. for Recon. at 3.

As an initial matter, to the extent that Harper contends that our Office should not have credited the Navy’s assertions in defending the protest because the agency’s statements constituted *post hoc* arguments, we are not persuaded. In reviewing an agency’s procurement actions, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties’ arguments and explanations. *AllWorld Language Consultants, Inc.*, B-414244, B-414244.2, Apr. 3, 2017, at 4 n.3. While we afford greater weight to contemporaneous materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. *Computer World Servs. Corp.--Recon.*, B-420777.4, May 9, 2023, at 4. Here, the requester has not demonstrated that the agency’s arguments before our Office were inconsistent with or contradicted by the contemporaneous record.

Furthermore, the requester repeats arguments that our Office considered and rejected in the underlying protest. In this regard, our decision specifically stated that Harper claimed that the agency’s position regarding the RFI responses was “‘inconsistent’ with

other parts of the solicitation,” including the deviations allowed by FC 4-721-10N. *Harper Constr. Co., supra* at 6 (citing Comments at 6 n.3). We considered Harper’s allegations and found the Navy’s evaluation of Harper’s proposal was reasonable. The requester’s arguments, as set forth in its submissions in the underlying protest--and repeated in its request for reconsideration--do not persuade us otherwise. Accordingly, Harper’s arguments do not show an error of fact or law and thus provide no basis on which to reconsider our decision.

In sum, Harper’s request for reconsideration repeats arguments made during our consideration of the protest, expresses disagreement with our decision denying its earlier protest, and fails to allege a legal or factual error. The request does not satisfy our standard for reconsideration and does not provide a basis for reversing our prior decision.

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel