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# Decision

**Matter of:** Access Interpreting, Inc.

**File:** B-413990.2

**Date:** June 12, 2018

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Daniel S. Koch, Esq., Katherine B. Burrows, Esq., and Michael E. Samuels, Esq., Miles & Stockbridge PC, for the protester.

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## DIGEST

Request for reconsideration of prior decision denying a protest of the agency's evaluation of awardee's proposal is denied, where the protester does not show that the prior decision contains errors of fact or law that warrant reversal or modification of the decision.

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## DECISION

Access Interpreting, Inc., of Washington, District of Columbia, requests reconsideration of our decision in Access Interpreting, Inc., B-413990, Jan. 17, 2017, 2017 CPD ¶ 24, denying the firm's protest of the award of a contract to Vital Signs LLC, of Silver Spring, Maryland, under request for proposals (RFP) No. DTOS591R00005, issued by the Department of Transportation (DOT) for sign language interpreter services. Access argues that our decision was wrong as a matter of law and fact.

We deny the request for reconsideration.

## BACKGROUND

The RFP, issued on May 23, 2016, contemplated the award of a labor-hour, indefinite-delivery, indefinite-quantity contract for a base year and four one-year option periods, using the procedures in Federal Acquisition Regulation Part 12, Acquisition of Commercial Items. Agency Report (AR), Tab 2, RFP at 1. In general terms, the RFP required the contractor to provide sign language interpreting services to the DOT and other federal agencies located in the Baltimore-Washington metropolitan area, as well as various locations throughout the United States including Puerto Rico, U.S. Virgin

Islands, Guam, and American Samoa.<sup>1</sup> Id. at 8. The solicitation established that contract award would be made on a best-value tradeoff basis, based on five evaluation factors: (1) technical approach; (2) personnel/staffing; (3) past performance; (4) management approach; and (5) price. Id. at 28-29. The solicitation also stated that non-price factors were of equal importance, and more important than price.<sup>2</sup> Id. at 28.

As relevant here, for the past performance factor, the RFP required an offeror to identify at least three companies and/or government agencies with which it had conducted “a significant amount of business” within the past three years. RFP at 29. The RFP stated, further, that an offer would be evaluated under this factor based on the offeror’s knowledge and experience, along with its capability and capacity to effectively deliver high-quality and timely service solutions. Id.

Sixteen offerors, including Vital Signs and Access, submitted proposals by the July 27 closing date. The TEP evaluated offerors’ proposals using a combined point-scoring and adjectival-rating system.<sup>3</sup> AR, Tab 11, TEP Report, at 3-7. The point scores and prices of Vital Signs and Access, the two highest-rated offerors, were as follows:

	Vital Signs	Access
Technical Approach (30)	30	30
Personnel/Staffing (30)	30	30
Past Performance (5)	5	5
Management Approach (35)	35	35
Overall (100)	100	100
Price	\$8,066,454	\$8,308,192

Id. at 8-10.

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<sup>1</sup> The solicitation estimated approximately 18,000 sign language interpreting hours nationwide annually; the agency’s total estimated cost for these services over the base period and option year was \$9,540,000. RFP at 7; AR, Tab 7, Acquisition Plan at 3.

<sup>2</sup> Although the RFP stated that the non-price factors were of equal importance, the technical evaluation panel (TEP) instead assigned varying weights to the evaluation criteria. Tab 11, TEP Report, at 3-6. Specifically, technical approach and personnel/staffing were each assigned 30 points; past performance was assigned 5 points; and management approach was assigned 35 points. Id. The contracting officer knew, prior to award, that the agency evaluators had not complied with the solicitation in this regard, but, as the record established, she was also aware that Vital Signs’ and Access’s proposals had received identical point scores under each evaluation factor and overall. AR, Tab 8, Source Selection Decision, at 4, 6-10.

<sup>3</sup> The point scores ranged from 0 to 100 overall, and the adjectival ratings were excellent, good, satisfactory, marginal, and unsatisfactory. Id. at 5. A total point score ranging from 90 to 100 corresponded to an excellent adjectival rating. Id.

The contracting officer, acting as the source selection authority (SSA), thereafter found the proposals of Vital Signs and Access to be essentially equal in technical quality, such that Vital Signs' lower-priced proposal (among those found to be technically equal) was found to represent the best value. AR, Tab 8, Source Selection Decision, at 9-10. In this regard, the SSA stated that "[b]ased on the nature of the services provided, the Government could not justify paying the increased price for a same or similar technical quality." Id. at 10.

On October 11, after being advised of the agency's award decision and receiving a debriefing, Access filed its protest with our Office.

In its protest, Access argued that the agency's evaluation of Vital Signs' past performance and management approach, and the resulting best-value determination, were improper.<sup>4</sup> Protest at 8-14. In our decision, we dismissed Access's protest regarding the evaluation of Vital Signs' past performance, and denied Access's challenges to the agency's evaluation of Vital Signs' management approach and best-value determination. Access Interpreting, Inc., supra, at 4-6. This request for reconsideration followed.

## DISCUSSION

Access requests that we reconsider our decision denying its protest. The requestor contends that we misapplied the governing law and/or erred with regard to facts relating to the agency's evaluation of Vital Signs' past performance and management approach, and its best-value determination.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a); Waterfront Techs., Inc.--Recon., B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. Further, errors of fact warranting reversal must be ones crucial to the outcome of the protest. Richards Painting Co.--Recon., B-232678.2, May 19, 1989, 89-1 CPD ¶ 481. As detailed below, we see no basis to reverse our prior conclusion about the merits of this protest.

### Past Performance Evaluation of Vital Signs

Access requests reconsideration of our decision with regard to DOT's evaluation of Vital Signs' proposal under the past performance factor. Access complains that this issue

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<sup>4</sup> Access also initially protested the evaluation of Vital Signs' technical approach. Protest at 6-8. As the agency provided a substantive response to this challenge, which Access failed to rebut in its comments, we considered this challenge to have been abandoned. Access Interpreting, Inc., supra, at 3 n.5.

was not addressed in our underlying decision, and maintains that the agency's past performance evaluation failed to consider whether Vital Signs' references involved "a significant amount of business," as required by the solicitation.

Our decision explained that although we did not specifically address all of Access's allegations, we fully considered them and found that none provided a basis to sustain the protest. See Access Interpreting, Inc., supra, at 3. 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.

With regard to the protester's various arguments relating to whether Vital Signs' references constituted a significant amount of business, we note that these arguments were also raised in the underlying protest, and therefore do not meet the standard necessary to obtain reconsideration. Waterfront Techs., Inc.--Recon., supra (repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet our standard for reconsideration). Nevertheless, to the extent the protester's request argues that we misconstrued its past performance arguments, below we more fully explain our conclusions regarding these arguments.

With regard to the evaluation of past performance, the RFP stated,

Each Offeror will be evaluated on its knowledge and experience along with its capability and capacity to effectively deliver high quality and timely service and solutions. Each Offeror will submit at least 3 companies and/or government agencies with which they have conducted a significant amount of business within the last 3 years. The Offeror shall use the Past Performance Questionnaire to submit reference information.

RFP at 29.

Vital Signs' proposal stated that, in 2015 alone, it used more than [redacted] interpreters to deliver over [redacted] hours of interpreting services--that is, the proposal stated that Access had delivered more than 125 percent of the estimated annual requirements for this procurement.<sup>5</sup> AR, Tab 5, Vital Signs' Proposal, at 5. Nonetheless, despite the proposal's narrative, Access argues that the past performance evaluation of Vital Signs

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<sup>5</sup> As noted above, the solicitation estimated that 18,000 hours of interpreting services would be required annually. RFP at 7; AR, Tab 7, Acquisition Plan at 3.

was unreasonable because Vital Signs' past performance references did not involve a "significant amount of business," since two of the three references reflected dollar-values of past performance that were substantially below the value of the awarded contract.<sup>6</sup> At the same time, Access acknowledges that the solicitation did not define the phrase "significant amount of business"--and, also, that Access neither sought clarification of this phrase, nor protested the terms of the solicitation prior to the solicitation's closing time. Recon. Request at 4 n.2; Protest at 8; Comments at 6.

To the extent Access's protest challenged the agency's application of the term "significant amount of business" as unreasonable--based on Access's belief that proposals were required to provide at least three references for work, each with an annual value "in the range of \$1.6 million"--we found no merit to this argument. In this regard, Access's request for reconsideration complains that our decision "reads out of the solicitation" the language regarding a "significant amount of business," and asserts that the value of past performance could only be considered "significant" if it was similar in size to the value of the awarded contract. Recon. Request at 3; Protester's Submission, June 8, 2017, at 5. We disagree.

As an initial matter, we are mindful that some solicitations expressly provide that the procuring agency's evaluation of past performance will be limited to consideration of prior contracts that are "of similar size . . . to the requirement of this solicitation." See, e.g., AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19; Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 3. However, such limiting language regarding past performance did not appear in this solicitation, and Access's attempts to read that language into the solicitation are unavailing. To the contrary, this solicitation--which contemplated multiple individual assignments for interpreter services--simply provided that offerors must identify three past performance references for which the offeror had performed a significant amount of business.

Based on the specific provisions of the solicitation here, we rejected--and we continue to reject--Access's attempts to augment the solicitation's past performance requirements by inserting language into the solicitation that the agency could have chosen to include, but did not. That is, pursuant to the terms of the solicitation here, we reject Access's assertion that an offeror's past performance could only be considered "significant" if it involved an amount of business similar in size to the awarded contract. Instead, the language regarding a "significant amount of business" is undefined and unlimited by the terms of the solicitation. In our view, while our decision did not "read out" the terms "significant amount of business," it also did not "read in" language to modify this phrase to mean an amount of business similar in size and scope to the level of effort contemplated by this solicitation.

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<sup>6</sup> The contract awarded to Vital Signs was in the amount of \$8,066,454, or approximately \$1.6 million annually.

Moreover, we note for the record that on the very next page of this solicitation the definition of the evaluation factor for management approach expressly required offerors to “consider addressing . . . the ability to manage the size and scope of all the requirements set forth in the RFP.” RFP at 30. Inclusion of this language under one evaluation factor, but not another, suggests that the agency certainly understood how to require consideration of factors involving similar size and scope, but did not do so with respect to the past performance references. This omission under one factor and inclusion under a different factor, together with the fact that many solicitations do, in fact, limit consideration of past performance information to efforts of similar size, undercuts the protester’s assertion that the term “significant” could only be read reasonably to mean “similar in size or scope.” While an agency reasonably might have decided to downgrade an offeror because its past performance experience involved work of a smaller scope than solicited, under the circumstances here, we are not prepared to say the agency’s conclusions were legally flawed because the agency did not downgrade the proposal for this reason.

Finally, the evaluators for this procurement provided our Office with a declaration explaining that they considered offerors to have a significant amount of business if their past performance references included three or more examples of sign language interpreting capabilities, as opposed to simply translation services, which were identified by several other of the 16 offerors here. Declaration of Technical Evaluation Panel, June 5, 2017, at 1. The evaluators also explained that they relied on the past performance narrative in the Vital Signs’ proposal for their assessment of this evaluation factor in addition to the past performance references.<sup>7</sup> Id. Given the absence of any language to modify the phrase “significant amount of business,” we again see no basis to conclude that the approach (or interpretation) of the evaluators was unreasonable.

In conclusion, Access has failed to show any error in our decision warranting reversal or modification based on the agency’s application of the solicitation’s past performance provisions. If the solicitation had required that offerors demonstrate past performance on work of similar size and scope, our Office might have reached a different conclusion. But, given the wording for the solicitation here, we see no basis to conclude that the agency acted improperly.

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<sup>7</sup> This approach of looking beyond the references to assess past performance was addressed in the questions and answers (Q&A) appended to the solicitation by Amendment 0005. AR, Tab 2, Solicitation, Amendments, Q&As. Specifically in answer to question 3, about alternatives if there is no past performance, the agency stated, “A past performance questionnaire is being provided for Offerors to use to submit Past Performance. Offerors with no relevant Past Performance history should provide three (3) references for any interpreting work performed. In addition, the evaluation team reserves the right to access Past Performance information from varying sources (e.g. PPIRS).” Id. In sum, the solicitation nowhere states that the past performance evaluation would be limited to a review of the quality of the past performance provided for these three references.

## Management Approach Evaluation of Vital Signs

Access also requests reconsideration of our decision with regard to DOT's evaluation of Vital Signs' proposal under the management approach factor. Access argues that Vital Signs' proposal failed to demonstrate its ability to manage a contract of the size and scope to be awarded.

The management approach factor stated that "[e]ach Offeror will be evaluated on how well its overall program management approach, including its management plan, quality of service, cost control, timeliness of performance, business relations, personnel management, and subcontractor utilization, will meet or exceed the requirements of the [s]olicitation." RFP at 30.

In its earlier protest, Access argued that Vital Signs' proposal should have received a lower management approach rating because of the awardee's "extremely limited prior federal contracting experience, both in dollar value and in geographical scope." Protest at 9-10. In our decision, we found that the agency had reasonably concluded that Vital Signs addressed all management approach requirements--the awardee's proposal provided a detailed breakdown of its management plan, structure, and staff utilization--and thereby warranted an excellent rating. Access Interpreting, Inc., supra, at 4-5.

Access alleges that our decision denying its protest was in error. Access again asserts that the only way by which Vital Signs could "demonstrate" its ability to manage the size and scope of the contract here was by having done so previously. Recon. Request at 5-7. We disagree.

As a preliminary matter, the protester repeats arguments it made previously and expresses disagreement with our decision. Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(c); Waterfront Techs., Inc.--Recon., B-403638.4, June 29, 2011, 2011 CPD ¶ 126 at 3. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Id.

Moreover, the agency evaluators reasonably determined that Vital Signs' management approach proposal demonstrated the offeror's ability to successfully manage all the solicitation's requirements. AR, Tab 11, TEP Report at 8 ("[i]dentified & demonstrated strong management support staff [redacted]"); Contracting Officer's Statement/Memorandum of Law at 11. There was simply no solicitation requirement, as Access suggests, that the only means by which an offeror could demonstrate its ability to meet

or exceed the solicitation requirements was by having previously done so under identical conditions.<sup>8</sup>

### Best-Value Determination

Finally, Access requests reconsideration of our decision with regard to DOT's best-value tradeoff. Specifically, Access contends that the agency's determination of technical equivalence was based entirely upon the assigned numerical and adjectival ratings. Access also maintains that our decision, which found that the agency had "looked beyond those [rating] labels" was in error, asserting that neither the TEP nor the SSA compared the relative merits of the offerors' proposals. Recon. Request at 8, citing Access Interpreting, Inc., supra, at 6.

As a preliminary matter, Access again repeats arguments it made previously (and which we fully considered), and disagrees with our conclusions. Further, this argument lacks merit, where our decision stated that the SSA's selection of Vital Signs' proposal as the best-value, was "based on the SSA's consideration of the TEP's evaluation and the SSA's review of the record." Access Interpreting, Inc., supra, at 3, citing AR, Tab 8, Source Selection Decision, at 10.

The request for reconsideration is denied.

Thomas H. Armstrong  
General Counsel

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<sup>8</sup> Consistent with our discussion above regarding past performance, to the extent Access believed that the RFP should have required offerors to have previously managed a contract of the size and scope of the requirements here, that protest is untimely. See 4 C.F.R. § 21.2(a)(1). Instead, the provision simply stated that the offerors "should consider addressing the following topics as applicable to their overall approach: Demonstrate the ability to manage the size and scope of all the requirements set forth in the RFP . . . ." RFP at 30.