



DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: Epsilon Systems Solutions, Inc.

File: B-414410.3

Date: September 20, 2017

David B. Dixon, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.
Jeff Mansfield, Esq, Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of our Office's decision denying a protest is denied where the decision did not contain errors of fact or law that warrant reversal or modification.

DECISION

Epsilon Systems Solutions, Inc., of San Diego, California, requests reconsideration of our decision, Epsilon Systems Solutions, Inc., B-414410, B-414410.2, June 6, 2017, 2017 CPD ¶ 199, denying its protest of the Department of the Navy's issuance of a task order to URS Federal Services, Inc., of Germantown, Maryland, for engineering and technical support services under request for proposals (RFP) No. N00024-17-R-3019.

We deny the request for reconsideration.

BACKGROUND

The solicitation, for a cost-plus-fixed-fee level-of-effort task order, provided for award on a best-value basis, and identified five evaluation factors: management approach (with five subfactors in the form of questions), technical capability and approach (with two subfactors), past performance, small business participation plan, and cost. RFP at 79-80. As relevant to this request for reconsideration, the technical capability factor was comprised of the staffing plan and technical capability question subfactors. Id. at 80. The staffing plan subfactor required offerors to submit a proposed staffing plan to demonstrate how the government-provided level-of-effort would be used to support all tasks in the statement of work (SOW). Id. at 73. The RFP provided that the agency would evaluate the proposed staffing plan, including proposed key personnel and management, as indicative of the offeror's understanding of the scope of work and what is required to successfully meet the requirements of the SOW. Id. at 80. The RFP

further provided that the management approach factor was more important than the technical capability factor, and the non-cost factors, when combined, were more important than cost. Id.

The agency received two proposals in response to the solicitation, which were evaluated as follows:

	URS	Epsilon
Management Approach	Good	Acceptable
Question 1	Good	Acceptable
Question 2	Good	Acceptable
Question 3	Acceptable	Acceptable
Question 4	Acceptable	Acceptable
Question 5	Acceptable	Acceptable
Technical Capability	Acceptable	Good
Staffing Plan	Marginal	Good
Technical Capability Question	Acceptable	Good
Past Performance	Substantial Confidence	Substantial Confidence
Small Business Participation Plan	Acceptable	Acceptable
Total Evaluated Cost	\$91,341,863	\$94,476,989

Agency Report (AR), Tab 16, Source Selection Decision (SSD), at 2-4. Following the evaluation, the source selection authority found that URS' proposal, which was rated higher overall for technical merit and offered the lowest-cost, provided the best value to the government. Id. at 7. The agency awarded the task order to URS, and Epsilon protested the selection decision, challenging the agency's evaluation of non-cost and cost factors.

In its protest, Epsilon complained that the agency should have rated URS' proposal unacceptable, rather than marginal, under the staffing plan subfactor because URS proposed multiple engineers that did not meet the qualification and certification requirements set forth in the SOW. We denied the protest on June 6. In our decision, we found that the agency reasonably assessed URS a significant weakness and rated URS' proposal marginal under this subfactor. We specifically found that the solicitation did not require the agency to assign URS a deficiency, as the qualifications and certifications of proposed non-key personnel were not material requirements. As explained by the agency, and documented in the source selection authority's contemporaneous evaluation, a small number of employees not identified as having certain relevant qualifications or certifications did not constitute a material failure; rather, it showed a lack of technical detail. AR, Tab 16, SSD, at 6.

After receipt of the decision, Epsilon filed its request for reconsideration.

DISCUSSION

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(a). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. In its request for reconsideration, Epsilon argues that the decision contains several legal and factual errors relating to the agency's evaluation of the proposals. For the reasons discussed below, we find no basis to reconsider our decision.

Staffing Plan

Epsilon asserts that with respect to the agency's evaluation of the staffing plan subfactor, our decision is legally and factually erroneous regarding required certification requirements. Epsilon argues that in deciding that the solicitation did not require the agency to assign a deficiency based on URS' proposal of several engineers that did not have the qualifications and certifications required, GAO ignored language in the solicitation making the certification and training requirements mandatory. In its supplemental protest, Epsilon had also argued that, in accordance with the solicitation, the agency should have assigned URS a deficiency, which rendered URS ineligible for award, because multiple personnel did not meet certain minimum requirements. Supp. Protest and Comments at 2-4. Since Epsilon is simply repeating an argument it made in its protest, and disagreeing with our decision, Epsilon has not provided a basis for us to reconsider the decision.¹ Veda, Inc.--Recon., *supra*.

Epsilon also asserts that we should reconsider our decision because we did not specifically discuss whether the certification and training requirements were material. We disagree. In our decision, we stated that the solicitation required offerors provide a proposed staffing plan showing how the offeror would support all of the tasks in the SOW. As part of this staffing plan, offerors were to provide a spreadsheet that included certain information about the staff, including the key personnel designation. The RFP provided that the agency would evaluate an offeror's staffing plan, including key personnel and management, as indicative of its understanding of the scope of work and what is required to successfully meet the requirements of the SOW. As noted above, the agency concluded that URS' staffing plan, which contained a small number of non-key personnel that were not identified as having certain relevant qualifications or certifications did not constitute a material failure, but, indicated a lack of technical detail. We found no basis to question the agency's conclusions. Thus, while Epsilon characterizes its argument as an error of law and fact, it is nothing more than a

¹ Similarly, Epsilon repeats its argument, raised in its protest, that URS' proposal of engineers that did not meet the training and certification requirements was not considered in the best-value determination.

disagreement with our decision, and provides no basis for reconsideration. Veda, Inc.--Recon., supra.

Epsilon further asserts that the decision did not address its protest allegation that the training and certification requirements were material because they could affect the quality or price of performance. Our decision explained that although we did not specifically address all of Epsilon's numerous allegations, we fully considered them and found none provided a basis to sustain the protest. 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 to address a protester's dissatisfaction that a decision does not address each of its protest issues. Id.

Unequal Treatment

Epsilon asserts that the agency treated Epsilon and URS unequally in evaluating their proposed staffing plans. The agency assigned both Epsilon and URS a risk under the staffing plan for failing to propose sufficient management personnel. Epsilon proposed **[DELETED]** full time equivalents (FTE) comprised of **[DELETED]** program manager and **[DELETED]** program manager, while URS proposed **[DELETED]** comprised of approximately **[DELETED]** program manager and one **[DELETED]** support specialist.²

Epsilon protested that the Navy treated the offerors unequally because it did not include hours proposed for Epsilon's administrative assistant in its level-of-effort calculation, but did count the hours proposed for URS' support specialist. Epsilon also asserted that the evaluation was not equal because the agency failed to recognize that Epsilon proposed more project management hours overall.

We found that the allegation of unequal treatment was without merit. Specifically, we found that Epsilon identified the duties of its administrative assistant as administrative in nature, AR, Tab 6, Epsilon Proposal, at XVIII, while URS proposed that its support specialist would perform management functions. AR, Tab 11, URS Proposal, at 2. With respect to the protester's contention that the agency failed to recognize that Epsilon proposed more program manager hours than URS, we noted that nothing in the solicitation required the agency to treat more favorably a proposal proposing only program manager hours.

² The solicitation provided a fixed level-of-effort for seven engineering and technical labor categories. RFP at 77. Offerors were to propose their own management level-of-effort. Id. at 76.

In its request for reconsideration, Epsilon asserts that our decision is wrong because there is no evidence that the agency was aware of the differences in the two proposals with respect to proposed management staffing at the time it conducted its evaluation. This argument does not provide a basis for reconsideration. The agency evaluated each proposal and assessed the risk based on the contents of the proposal, and the requirements of the solicitation. There was no unequal treatment because the evaluation of each proposal was reasonable and consistent with the requirements of the solicitation.³

Staffing Change

In a supplemental request for reconsideration, Epsilon asserts that we should reconsider our decision because URS misrepresented its proposed staffing. Epsilon specifically explains in this regard that on June 20, 2017, after it filed its request for reconsideration, it learned that the program technicians that performed meteorology and calibration tasks for Epsilon would be transitioning to URS under the newly awarded task order, to support the shipboard gage calibration program. According to Epsilon, we should reconsider our decision because it is apparent that URS misrepresented the staffing it intended to use to perform the task order. Epsilon believes that this will affect the evaluation of URS' technical and price proposals. Since this information, even if true, arose from events that took place after our decision was issued, it does not provide a basis for reconsideration. InSpace 21 LLC, B-410852.4, Apr. 3, 2015, 2015 CPD ¶ 124 at 5.

The request for reconsideration is denied.

Susan A. Poling
General Counsel

³ Epsilon also argues on reconsideration that its administrative assistant was also part of its management team. This argument was also made in the protest and therefore does not provide a basis for reconsideration. In this regard, we addressed this argument in our decision noting that in its proposal, Epsilon described the duties of the administrative assistant as administrative in nature. Similarly, Epsilon has repeated arguments raised in its protest that URS should not have been rated acceptable for the technical capability factor because it proposed unqualified engineers and its proposal was assigned four weaknesses.