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

Comptroller General
of the United States

Decision

Matter of: Morgan Business Consulting, LLC--Reconsideration

File: B-418165.11

Date: July 19, 2021

Todd R. Overman, Esq., Sylvia Yi, Esq., and Roee Talmor, Esq., Bass Berry & Sims, PLC, for the protester.
Michelle S. Bennett, Esq., Cara R. Little, Esq., and Kelsey Harrer, Esq., Department of the Navy, for the agency.
Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of a prior decision is denied where the requesting party has not shown that our decision contains either errors of fact or law or information not previously considered that warrants reversal or modification of the decision.

DECISION

Morgan Business Consulting, LLC, of Arlington, Virginia, requests that we reconsider our decision in *Morgan Business Consulting, LLC*, B-418165.6, B-418165.9, Apr. 15, 2021, 2021 CPD ¶ 171. In that decision, we denied Morgan's protest challenging the issuance of a task order to Synchron, LLC, of Fairfax Station, Virginia, under request for proposals (RFP) No. N66604-18-R-3012, issued by the Department of the Navy, to procure program, business, and engineering management, as well as integrated logistics support services. Morgan argues that our decision should be reconsidered because it contains errors of fact and law that warrant reversal or modification of the decision.

We deny the request for reconsideration.

BACKGROUND

As explained in our decision, the RFP was issued on August 22, 2018, as a small business set-aside pursuant to the procedures of Federal Acquisition Regulation subpart 16.5, seeking proposals from holders of the Navy's SeaPort-e indefinite-

delivery, indefinite-quantity multiple award contract.[1] *Morgan Bus. Consulting*, *supra* at 1. Award was to be made on a best-value tradeoff basis, where the technical capability factor was more important than the past performance factor, and these two factors combined were significantly more important than the cost/price factor. *Id.* at 2. The Navy received four timely proposals, and on September 23, 2019, made an award to Morgan. *Id.* The award to Morgan was challenged by the disappointed offerors; the Navy elected to take corrective action and the protests were dismissed as academic. *Id.* The agency reevaluated proposals and on December 21, 2020, informed Morgan that an award had been made to Synchron. *Id.* at 3.

In its protest, Morgan challenged numerous aspects of the evaluation of proposals. Relevant here, Morgan argued that Synchron's proposal should have been rejected because it was clear on its face that the proposal did not comply with FAR clause 52.219-14, Limitation on Subcontracting. Morgan also argued that the agency's waiver of certain key personnel requirements was tailored specifically to remedy deficiencies in Synchron's proposal, and that the agency improperly credited Synchron for proposing to use Lean Six Sigma procedures although no such representation was made within the proposal. Further, Morgan argued that the agency unreasonably identified weaknesses in its proposal related to a corporate transaction involving a proposed subcontractor, and that the agency's cost evaluation contained numerous, prejudicial errors.

After we reviewed the record, our Office denied Morgan's protest. In our decision, we agreed with the agency's conclusion that it was not clear on the face of Synchron's proposal that it would violate the limitation on subcontracting clause. *Morgan Bus. Consulting*, *supra* at 10-11. We further found no basis in the record to conclude that the agency had tailored the waiver of certain key personnel requirements solely to cure deficiencies in Synchron's proposal, or that the evaluation was otherwise flawed. *Id.* at 15. Our Office did conclude that there was "no support for the agency's conclusion that Synchron offered to use Lean Six Sigma tools to perform [the task order]," but nonetheless did not find that the agency's evaluation was unreasonable. *Id.* at 13. We also concluded that the agency had reasonably assessed weaknesses in Morgan's proposal based on its consideration of the potential impacts to performance as a result of its subcontractor's corporate transaction. *Id.* at 7. Finally, we concluded that the agency's cost evaluation was reasonable, specifically denying allegations that the agency had improperly and unreasonably upwardly adjusted Morgan's escalation and indirect rates, and made unequal adjustments to Morgan's and Synchron's escalation rates. *Id.* at 7-10, 16-17.

This request for reconsideration followed on April 26.

[1] Our Office took jurisdiction of the underlying protest, and this request for reconsideration, because the value of the task order exceeded $25 million. 10 U.S.C. § 2304c(e)(1)(B).

DISCUSSION

Morgan argues that our decision contained factual and legal errors that warrant reversal or modification of the decision. In particular, according to the requester, the decision omits consideration of the following: (1) prejudicial facts in the denial of individual protest grounds; (2) prejudicial protest grounds; and (3) protest grounds to which the agency conceded by failing to respond.

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). We will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contains a material error of law or facts. *AeroSage, LLC--Recon.*, B-417529.3, Oct. 4, 2019, 2019 CPD ¶ 351 at 2 n.2; *Department of Justice; Hope Village, Inc.--Recon.*, B-414342.5, B-414342.6, May 21, 2019, 2019 CPD ¶ 195 at 3. The repetition of arguments made during our consideration of the original protest and disagreement with our prior decision do not meet this standard. *Wyle Labs., Inc.--Recon.*, B-416528.3, Mar. 6, 2019, 2019 CPD ¶ 102 at 3. As discussed below, we find that none of the arguments presented by Morgan provides a basis to grant the request for reconsideration.

In its request, Morgan identifies five protest allegations for which it argues that our decision is either based on factual errors or misapplied the facts to the law. Req. for Recon. at 3-10. Based on our review, Morgan's allegations that our decision failed to consider prejudicial facts in denying its protest do not identify any such facts, but largely repeat arguments made in its protest filings and express disagreement with our conclusions.

For example, Morgan argues that our Office erred in its application of facts and law by finding reasonable the agency's consideration of the potential impacts to Morgan's performance and assessment of weaknesses related to its subcontractor's sale of the business unit proposed to perform the task order. Req. for Recon. at 8-9. Morgan argues that our conclusion is erroneous and the decisions cited as precedent are inapplicable because the decisions "do not conclude (or even suggest) that a prime offeror is required to notify the agency of a corporate transaction involving a subcontractor when it has no authorized mechanism by which to notify the agency." *Id.* at 9.

While true, Morgan has not cited (and we are not aware of) any authority that prohibits a prime offeror from communicating with or notifying an agency about a publicly disclosed corporate transaction that impacts its proposal that is then under evaluation by the agency. Indeed, Morgan relied on such a communication to challenge the weaknesses related to its subcontractor's corporate transaction. Specifically, in arguing that the agency was aware of the transaction and should not have assessed any weaknesses, Morgan relied on an unsolicited letter summarizing the transaction that its subcontractor had submitted to the contracting officer in an unrelated procurement in which the

subcontractor's proposal was then under evaluation. *See* Protest at 20-21; *id.*, attach. 17, Letter from Morgan's Subcontractor to the Navy. Morgan's argument presents no new facts or error of law, represents disagreement with our conclusion, and therefore provides no basis to grant its request.

Likewise, Morgan argues that our Office reached factual findings inconsistent with the record to conclude that the agency reasonably applied two years of escalation to Morgan's proposed direct labor, but only one year to Synchron's. Req. for Recon. at 9-10. Morgan argues we incorrectly concluded that Synchron's proposal did not indicate the start of its fiscal year, when in fact Synchron's proposal stated that it "uses a calendar year," which can only mean that its fiscal year begins on January 1. *Id.* at 9. Morgan again argues that the agency should have applied two years of escalation to Synchron's proposal, and our Office's conclusion to the contrary is plain error. *Id.* at 10.

Our decision concluded that the differences in the evaluation were the result of differences in the information provided in the proposals. Specifically, our decision indicates that the agency found that both Morgan and Synchron failed to adequately support their proposed escalation rates, and computed upward adjustments to both offerors' cost proposals using the IHS Global Insight Rate of 3.60%. *Morgan Bus. Consulting*, *supra* at 16. However, as discussed in our decision, the agency computed the adjustments differently:

> [B]ecause Morgan's fiscal year runs from [DELETED] to [DELETED] and Morgan annualized its salary in [DELETED] of each year, the [cost evaluation team (CET)] had to make an adjustment to account for the period from May 30, 2019 (the original planned award date) to July 1, 2020 (the revised planned award date). As a result, the CET escalated Morgan's labor rate by two years, to account for wage increases from 2018 to 2019, and from 2019 to 2020. . . . The CET prorated [Synchron's] base year labor rates to account for the period from May 30, 2019 to July 1, 2020, by multiplying 3.60% by 1.09 years to arrive at 3.93%. *Id.*
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> Here, the record shows that Morgan's proposal clearly stated that "[Morgan's] fiscal year runs from [DELETED] through [DELETED]." [Agency Report (AR)], Encl. 11g, Morgan Cost Proposal at 4. As such, we find the CET reasonably concluded that Morgan's proposed direct labor rates would have increased twice from when they were proposed in October 2018, once on January 1, 2019, and once on January 1, 2020. AR, Encl. 14, CET Report at 55-57.
>
> Synchron's proposal, however, did not make any representations about its fiscal year or provide specific information about when labor rate increases would be applicable. Supp. [Memorandum of Law] at 28. As such, we do not find objectionable the CET's assumption that Synchron's labor rates would increase within a year from proposal submission to reflect the rates the employees would most likely be paid when the contract period began. *Id.*; AR, Encl. 14, CET Report at 188.

Id. at 16-17.

Even if Morgan is correct that Synchron's fiscal year is the same as the calendar year--a far from certain conclusion, as noted in our decision--Synchron's proposal did not provide specific information about when labor rate increases would occur, unlike Morgan's proposal. Nonetheless, the record showed that the agency accounted for the lapse in time between the original and revised planned award dates when computing an upward adjustment to Synchron's base year labor rates by using the higher escalation rate of 3.93%, rather than 3.60%. *Id.* at 16 (*citing* AR, Encl. 14, CET Report at 188). Accordingly, there was no basis in the record for our Office to conclude that the agency should have computed the adjustments to Synchron's proposal to account for labor rate increases effective as of January 1, [DELETED], or otherwise treated the offerors disparately. Morgan's repetition of its arguments, and disagreement with our conclusion, do not provide a basis to reconsider our decision. *Wyle Labs., Inc.--Recon.*, *supra*.

Morgan also argues that our Office erroneously ignored protest grounds that demonstrated there were prejudicial errors in the agency's cost and technical evaluations. Req. for Recon. at 10-11. In this regard, Morgan contends that our Office made a legal error in not concluding that the agency conceded the merit of at least four of Morgan's protest allegations--all related to the agency's evaluation of cost/price proposals--because, according to Morgan, the agency failed to provide a substantive response to the allegations. *Id.* at 11-12. Again, Morgan's arguments simply repeat its previous protest allegations.

Our decision explained that although we did not specifically address all of Morgan's allegations, we fully considered them, to the extent that they were not withdrawn or abandoned, and concluded that none furnished a basis on which to sustain the protest. *See Morgan Bus. Consulting*, *supra* at 4. 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 Access Interpreting, Inc.*, B-413990.2, June 12, 2018, 2018 CPD ¶ 224 at 4. 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 consideration simply because our prior decision did not specifically address these arguments.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel