

Decision

Matter of: People, Technology and Processes, LLC--Reconsideration

File: B-418781.5

Date: September 23, 2021

Victor Buonamia, for the protester.

Major Mark T. Robinson, and Major Aaron K. McCartney, Department of the Army, for the agency.

David A. Edelstein, Esq., Todd C. Culliton, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision is dismissed where the requesting party repeats prior argument and has not provided any new information that warrants reversal or modification of the decision.

DECISION

People, Technology and Processes, LLC (“PTP”), a service-disabled veteran-owned small business of Tampa, Florida, requests reconsideration of our decision in *People, Technology and Processes, LLC*, B-418781.4, July 2, 2021, 2021 CPD ¶ 252, regarding request for quotations (RFQ) No. W1924L20R0020, issued by the Department of the Army for joint fires observers (JFO) course instructors at Fort Sill, Oklahoma. Our office denied PTP’s protest of the agency’s proposed corrective action in response to a prior protest because we found that the agency’s corrective action was reasonable and that PTP could not demonstrate competitive prejudice. PTP argues that our decision incorrectly denied its protest.

We dismiss the request for reconsideration.¹

The Army issued the RFQ through the General Services Administration’s e-Buy system using the Federal Supply Schedule procedures of Federal Acquisition Regulation (FAR) subpart 8.4 and the commercial item acquisition procedures of FAR part 12. The RFQ

¹ The protester here proceeded without legal counsel and no protective order was issued in this protest. Our discussion is necessarily general in nature in order to avoid reference to non-public information.

sought quotations to provide 14 previously qualified terminal attack controller (PTAC) instructors to teach the resident and mobile training team JFO courses, based at Fort Sill, Oklahoma. RFQ at 43-44.² The RFQ established instructor qualification and certification requirements that vendors were required to meet. *Id.* at 44-47.

The RFQ identified price as the only evaluation factor and stated that the Army would issue a task order to the vendor whose quotation would be most advantageous to the government considering price alone. *Id.* at 88. With respect to evaluation of price, the RFQ stated:

The Government will evaluate contractor's prices for reasonableness using price analysis techniques. Prices evaluated as incomplete, unbalanced, unrealistically high or low, incomplete, inaccurate, or any combination thereof, may be grounds for eliminating a quote from further consideration. The Government will evaluate the price reasonableness of the contractor's quoted price and fee/profit. The Contracting Officer may consider comparing the prices received on quotes received, comparison of the proposed prices to historical prices paid, or comparing the prices received to the Independent Government cost estimate, or market research to evaluate reasonableness.

Id. at 89. Additionally, the RFQ contained FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* at 107-108. This FAR provision sets forth procedures for evaluating whether a vendor's compensation plan for professional employees "reflect[s] a clear understanding of work to be performed and . . . the capability of the proposed compensation structure to obtain and keep suitably qualified personnel." FAR provision 52.222-46(b). This provision also provides for potential rejection of quotes that propose "unrealistically low" compensation. FAR provision 52.222-46(c).

The RFQ instructed vendors to submit a quotation that addressed only the price factor. RFQ at 86-87. Vendors were further instructed to prepare their quotations using a baseline of 1,920 labor hours per year so the agency would have a common basis for comparing the relative prices of quotations. *Id.* at 87.

The Army received four quotations in response to the RFQ, including one from PTP. Contracting Officer's Statement (B-418781.4) at 2. On February 11, 2021, the Army issued a task order to a vendor other than PTP. *Id.* at 3.

On February 21, 2021, PTP protested the award to another vendor with our Office, arguing that the RFQ's language regarding evaluation of "unrealistically high or low" prices required the agency to conduct a price realism evaluation, and that the agency had not done so. Protest (B-418781.3). The Army initially took the position that the

² Citations to the RFQ are to the conformed copy through amendment 5, included as Tab 5 in the agency report in protest B-418781.4.

RFQ did not require a price realism analysis. See Req. for Dismissal (B-418781.3) at 4-7. Ultimately, however, the Army informed our Office that it intended to take corrective action by reevaluating the price of all quotations received and making a new award decision. Notice of Corrective Action (B-418781.3) at 1. The Army further explained that it would perform a “FAR 52.222-46 price realism evaluation” by “evaluat[ing] each offeror’s professional compensation in accordance with FAR 52.222-46.” Amended Notice of Corrective Action (B-418781.3) at 4. As a result, we dismissed PTP’s protest as academic. *People, Tech. & Processes, LLC*, B-418781.3, Apr. 2, 2021 (unpublished decision).

On March 29, 2021, PTP filed a new protest challenging the Army’s proposed corrective action as unreasonable. Protest (B-418781.4). PTP asserted that the RFQ contained a latent ambiguity regarding the need for a price realism evaluation, and that the Army was therefore required to amend the solicitation and to allow vendors to submit revised quotations. *Id.* at 2-5; Comments (B-418781.4) at 8-9. PTP further argued that the Army’s proposal to evaluate only professional compensation pursuant to FAR provision 52.222-46 did not satisfy the RFQ’s requirement for a full price realism analysis conducted pursuant to FAR section 15.404-1(d)(3). Comments (B-418781.4) at 4-8.

On July 2, 2021, our Office denied the protest. *People, Tech. & Processes, LLC*, B-418718.4, July 2, 2021, 2021 CPD ¶ 252. We found that the solicitation did not contain a latent ambiguity, but in fact unambiguously required the agency to evaluate quotations for price realism. *Id.* at 5 n.4. We also found that the agency’s proposed corrective action was reasonable, because the agency was purchasing only the services of specified professionals, and evaluation of those professionals’ compensation pursuant to FAR provision 52.222-46 would adequately assess vendors’ understanding of and ability to perform the RFQ’s requirements. *Id.* at 5-6. Finally, we found that PTP had not demonstrated competitive prejudice because the firm could not explain what a price realism analysis would examine for this particular acquisition other than professional compensation, which the agency had already agreed to evaluate. *Id.* at 7.

On July 12, 2021, PTP requested reconsideration of our decision.

PTP contends that the agency’s anticipated price realism analysis is unreasonable because it does not consider technical competency or risk.³ Req. for Recon. at 1-2. For instance, PTP explains that the acquisition requires ongoing instructor qualification and accreditation, as well as schedule coordination and course evaluation. *Id.* PTP asserts that it proposed an adequate method for managing these requirements, and that any price realism analysis should assess whether other vendors’ proposed approaches to these requirements increase the risk of unsuccessful performance. *Id.* at 2. As

³ PTP does not appear to request reconsideration of our conclusion that the RFQ did not contain a latent ambiguity. See Req. for Recon. at 1-3.

support, PTP attaches a Memorandum of Agreement (“MOA”) that it alleges sets forth the training requirements for JFO instructors. *Id.*, exh. 1.⁴

PTP also argues that our decision incorrectly determined that the firm would not suffer any competitive prejudice from the agency’s anticipated price realism analysis. Req. for Recon. at 2. Specifically, PTP asserts that the firm would have a technical advantage and present a lower risk of unsuccessful performance due to its history of performance as the incumbent contractor. *Id.* According to PTP, the Army’s decision not to consider technical risk or past performance as part of the price realism evaluation unreasonably negated this advantage. *Id.*

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); *see also The i4 Group Consulting, LLC--Recon.*, B-418842.2, Oct. 8, 2020, 2020 CPD ¶ 326 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. *Gunnison Consulting Grp., Inc.--Recon.*, B-418876.5, Feb. 4, 2021, 2021 CPD ¶ 101 at 3. Our Office will summarily dismiss a request for reconsideration that does not meet this standard. 4 C.F.R. § 21.14(c). *See, e.g., AeroSage, LLC--Recon.*, B-417247.4, July 9, 2019, 2019 CPD ¶ 251 at 3. Here, we conclude that PTP’s request for reconsideration fails to meet our Office’s standard for reconsideration, and therefore dismiss the request.

First, as to PTP’s argument concerning the agency’s anticipated price realism analysis, PTP repeats arguments previously raised in the underlying protest. As noted above, PTP’s protest complained that the agency did not intend to conduct a full price realism evaluation with an analysis of risk. Specifically, PTP argued that “[w]hile the current corrective action conducts a price realism analysis under 52.222-46, it does not conduct a full price and cost realism analysis with an assessment of risk ensuring that each offeror understands the nature of the work and can assure the government it can meet the government’s concerns about performance, recruiting and retention.” Comments (B-418781.4) at 8. Here, PTP raises the same argument, stating that the agency did not conduct a “technical competency and risk evaluation analysis in selecting an appropriate company for this contract.” Req. for Recon. at 2. Thus, PTP’s request does not provide a valid basis for reconsideration because the request only repeats arguments that our Office previously considered. *See Gunnison Consulting--Recon.*, *supra*.

⁴ This document is titled “Memorandum of Agreement between Director, Joint Staff J-6” and various officials within the armed services branches of the United States and several other nations. It has an original publication date of 28 July 2016, and the version that PTP attached to its request is labeled “Change 3 – 29 November 2018.” Req. for Recon., exh. 1.

Next, we reject PTP's contention that the proffered MOA provides us with a basis to reconsider our decision. Our Regulations do not permit a piecemeal presentation of evidence, information, or analysis, since a piecemeal presentation could disrupt the procurement process indefinitely; accordingly, where a party raises, in its request for reconsideration, an argument that it could have raised during the protest, but did not, the argument does not provide a basis for reconsideration. *AeroSage, LLC--Recon.*, B-419113.6, B-419113.7, Mar. 15, 2021, 2021 CPD ¶ 120 at 5 n.4. Therefore, our Office considers new information on reconsideration only when it was not available to the protester when the initial protest was filed. *Aljucar, Anvil-Incus & Co.--Recon.*, B-408936.2, Mar. 20, 2014, 2014 CPD ¶ 102 at 3. Here, the MOA was clearly available to PTP at the time it filed its initial protest. Indeed, the MOA that PTP attached to its request is dated November of 2018, and PTP referred to the MOA in its quotation and comments. Comments (B-418781.4) at 6. Accordingly, PTP may not rely on this document now as a basis for reconsideration.⁵

Finally, with respect to PTP's argument that the firm established that it would suffer competitive prejudice, we likewise dismiss this argument because it repeats legal arguments previously raised. PTP argues that the agency's failure to conduct a price realism analysis will negate the firm's technical advantage from its incumbent experience. Req. for Recon. at 2. PTP made this argument in the underlying protest, and our office considered it. See, e.g., Comments (B-418781.4) at 6-7 (discussing the low risk from PTP's incumbency and positive past performance evaluations).⁶ Accordingly, this argument also repeats arguments that our Office has already considered, and fails to state a valid basis for reconsideration of our decision. See *Gunnison Consulting--Recon.*, *supra*.

The request for reconsideration is dismissed.

Edda Emmanuelli Perez
General Counsel

⁵ PTP also provides information about the content of its proposal regarding staffing and past performance. PTP's proposal was part of the record in the underlying protest (B-418781.4), and our Office considered it in our decision.

⁶ To the extent that PTP argues that the agency should have evaluated non-price factors such as past performance, corporate experience, staffing plan, or technical approach, this is an untimely challenge to the terms of the RFQ, which expressly provided that the agency would make award considering price alone. See 4 C.F.R. § 21.2(a)(1) (protests based on alleged improprieties in a solicitation must be filed prior to the time set for receipt of initial proposals).