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Decision

Matter of: Synergy Business Innovation & Solutions, Inc.--Reconsideration

File: B-419812.3

Date: December 15, 2021

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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 is dismissed where the requesting party fails either to demonstrate that our prior decision contains errors of fact or law, or to present new information not previously considered that would warrant reversal or modification of prior decision.

DECISION

Synergy Business Innovation & Solutions, Inc., an 8(a) small business of Reston, Virginia, requests that we reconsider our decision in *Alpha Omega Integration, LLC*, B-419812, B-419812.2, Aug. 10, 2021, 2021 CPD ¶ 302. In that decision, we sustained Alpha Omega's protest of the issuance of a task order to Synergy, under request for quotations (RFQ) No. 12314421Q0006, issued by the United States Department of Agriculture (USDA) for Enterprise Application Systems (EAS) Information Technology Support Services. Synergy contends that our decision contains an error of law because it failed to address evidence in the record that demonstrates Alpha Omega is ineligible for award.

We dismiss the request for reconsideration.

On February 3, 2021, the agency issued the solicitation for USDA EAS, under the provisions of Federal Acquisition Regulation subpart 16.5, to firms holding Chief Information Office-Solutions and Partners 3 (CIO-SP3) governmentwide acquisition contracts (GWAC), as an 8(a) set-aside. *Alpha Omega Integration, LLC, supra* at 2. The solicitation anticipated the issuance of a fixed-price, labor-hour task order under the CIO-SP3 small business GWAC for one base year and four 1-year option periods. *Id.*

Award was to be made using a best-value tradeoff, considering past performance, technical, and oral presentations (listed in descending level of importance), and price. *Id.* The RFQ stated that non-price factors, when combined, were more important than price. *Id.* at 2-3.

The RFQ stated that the evaluation would involve two phases. *Id.* at 3. Under phase 1, the agency would evaluate past performance references for vendors, along with past performance references for major subcontractors, teaming partners and/or joint ventures. *Id.* Past performance would be evaluated with regard to magnitude, complexity, and similarity compared to the EAS requirement, and assigned overall past performance confidence ratings, as follows: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. *Id.* In phase 2, the agency would perform an advisory “down-select,” and evaluate the remaining quotations under the technical approach, oral presentations, and price factors. *Id.* The RFQ stated that the agency planned to invite three vendors to participate in phase 2 and inform the remaining vendors that they were unlikely to be a viable competitor for award. *Id.*

The agency received eight quotations in response to the RFQ, including quotations from Alpha Omega and Synergy. *Id.* at 4. The agency performed the phase 1 evaluation of past performance and invited three vendors--including Alpha Omega and Synergy--to participate in phase 2. *Id.* Alpha Omega and Synergy submitted phase 2 quotations, and the agency’s final evaluation of the quotations was as follows:

	Alpha Omega	Synergy
Past Performance	Substantial Confidence	Substantial Confidence
Technical Approach	High Confidence	High Confidence
Oral Presentation	Some Confidence	Some Confidence
LCAT Pricing (CLINs 1, 2, 12)^[1]	\$72,802,130	\$71,246,022
Team-Based Pricing (1, 2, 12)	\$56,799,778	\$59,175,418
Team-Based Pricing (3-11)	\$47,461,255	\$48,014,505

Id. The contracting officer, who also served as the source selection authority, selected Synergy for the task order award. *Id.* at 5-6.

On May 3, Alpha Omega filed a protest with this Office. Among other things, the firm argued that the agency’s best-value tradeoff decision was unreasonable, inadequately documented, and failed to justify the agency’s conclusion that Synergy’s quotation

¹ The agency’s price evaluation used labor category (LCAT) and team-based pricing to assess quotations in twelve functional areas identified by contract line item numbers (CLINs). The agency evaluated both LCAT and team-based pricing for three of the functional areas (CLINs 1, 2, and 12) consisting of preselected current EAS projects, and evaluated team-based pricing for the remaining nine functional areas (CLINs 3-11). *Alpha Omega Integration, LLC, supra* at 3.

warranted paying a price premium. On August 10, our Office sustained the protest because we concluded that the source selection authority failed to provide an adequate rationale for the tradeoff determination, and thus, we could not conclude that the selection decision was reasonable. *Id.* at 7. We recommended that the agency conduct and document a new best-value tradeoff analysis, consistent with our decision. *Id.* at 9.

On August 18, Synergy requested that we reconsider our decision to sustain Alpha Omega's protest. Req. for Recon. at 1. Synergy contends that evidence in the record "confirms" that Alpha Omega was ineligible for award because its proposal failed to comply with the RFQ's past performance submission requirements, evidence which our Office failed to address when sustaining the protest. *Id.* at 1-2. Synergy argues that this omission constitutes an error of law because Alpha Omega's ineligibility for award eliminates any possibility of prejudice to Alpha Omega despite the flaws our Office identified in the best-value tradeoff decision. *Id.* at 4.

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, Synergy's request for reconsideration repeats arguments made during our consideration of Alpha Omega's protest and disagrees with our decision. In its comments on the agency report, Synergy argued that the protester was ineligible for award because Alpha Omega's past performance proposal did not include the required minimum of five references for the prime contractor and its major subcontractors, teaming partners, and/or joint ventures. Intervenor Comments at 2-9. According to Synergy, Alpha Omega's quotation included only four of the five required references because Alpha Omega's fifth reference was for an ostensible parent company of Alpha Omega's sole major subcontractor. *Id.* at 5.

On this basis, Synergy argued that the protest should be denied because "had the Agency recognized this shortcoming in [Alpha Omega's quotation], USDA would have rejected the [quotation] outright or, at a minimum, assigned [Alpha Omega] a lower rating under the RFQ's most important evaluation factor, precluding any possibility of prejudice." *Id.* at 9; see also Intervenor Supp. Comments at 3 ("[Alpha Omega's quotation] should have been found non-responsive and never made it past the first phase of the evaluation."). Despite this argument, our decision concluded as follows: "Based on this record, we find that the agency failed to conduct an adequate tradeoff and that this failure competitively prejudiced Alpha Omega, given that its quotation had

the lowest evaluated price and possibly could have been viewed as the best value quotation on that basis.” *Alpha Omega Integration, LLC, supra* at 8.

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. Likewise, although our review of protests necessarily includes the consideration of arguments made by an intervenor permitted to participate in the protest, see 4 C.F.R. § 21.3(c), our decisions also frequently do not address these arguments. Here, we dismiss Synergy’s request for reconsideration because the repetition of its argument made during our consideration of the underlying protest, and disagreement with our decision, do not meet our standard for granting the request. See *Gunnison Consulting Grp., Inc.--Recon.*, *supra*.

Citing our decision in *VS2, LLC*, B-418942.4, B-418942.5, Feb. 25, 2021, 2021 CPD ¶ 108, Synergy additionally argues that our failure to address its argument constitutes an error of law “because GAO has previously instructed that intervenors must proactively identify flaws in a protester’s proposal that would defeat a showing of prejudice, or else are deemed to have waived such arguments.” Req. for Recon. at 4. We disagree with this characterization.

VS2, LLC presented a unique set of facts where the solicitation announced a low-cost/price, technically acceptable basis for award to the offeror that was found technically acceptable under the technical and small business participation plan factors, and received a substantial confidence rating under the past performance factor. *VS2, LLC, supra* at 2; see also *Vectrus Mission Solutions Corp.*; *Vanquish Worldwide, LLC*, B-418942 *et al.*, Oct. 27, 2020, 2021 CPD ¶ 87 at 2 n.3 (indicating that the solicitation expressly stated that cost/technical tradeoffs would not be made). As stated there, we sustained Vectrus’s protest against the initial award to *VS2* because the agency improperly applied an upward most probable cost adjustment that resulted in Vectrus’s proposal not having the lowest cost/price; but for this error, Vectrus was entitled to award under the express terms of the solicitation, thus we recommended that the agency award the task order to Vectrus if otherwise proper. *VS2, LLC, supra* at 2-3.

We later dismissed *VS2*’s protest of the agency’s subsequent award to Vectrus as untimely, in part, because *VS2* for the first time raised arguments challenging the agency’s evaluation of Vectrus’s past performance that, if made during Vectrus’s protest, would have constituted a timely procedural challenge to Vectrus’s status as an interested party with standing to file its protest. *Id.* at 4-5. We further concluded that *VS2*’s protest was an untimely request for reconsideration of our decision to sustain Vectrus’s protest and recommend that Vectrus receive the award. *Id.* at 6.

Unlike *VS2, LLC*, here the solicitation states that the basis for award will be a best-value tradeoff where the non-price factors are more important than price. More importantly, in sustaining Alpha Omega’s protest, our Office did not recommend that the agency make

an award to Alpha Omega. In any event, the contemporaneous record filed by the agency did not support Synergy's argument. To the contrary, the record showed that the agency considered five past performance references included in Alpha Omega's quotation, assigned a rating of substantial confidence, and invited the firm to participate in phase 2 of the procurement. *Alpha Omega Integration, LLC, supra* at 4; Agency Report, Exh. 24, Evaluation Team Recommendation Memo at 10. Indeed, Synergy's argument represents its disagreement with the agency's evaluation of the protester's quotation, namely, the agency's acceptance of one of the past performance references included in Alpha Omega's quotation for its major subcontractor under the terms of the RFQ.

Since we have sustained Alpha Omega's protest and recommended that the agency conduct and document a new best-value tradeoff analysis--as opposed to recommending award to the protester, as in the *Vectrus* decision--our Office will not opine on the propriety of the agency's evaluation of Alpha Omega's quotation at this time. As the agency has yet to implement its corrective action, any challenge to the agency's evaluation of Alpha Omega's quotation is premature.² However, in light of Synergy's request for reconsideration, the agency may choose to address its acceptance of Alpha Omega's quotation under the terms of the RFQ in its corrective action, as appropriate.

The request for reconsideration is dismissed.

Edda Emmanuelli Perez
General Counsel

² If at the conclusion of its corrective action the agency selects Alpha Omega for award, Synergy may again raise this argument in a protest filed consistent with our Bid Protest Regulations.