



Matter of: A P Ventures, LLC--Reconsideration

File: B-420133.5

Date: March 11, 2022

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DIGEST

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

DECISION

A P Ventures, LLC (APV), of Columbia, Maryland, asks that we reconsider our decision in *Insight Tech. Sols., Inc.*, B-420133.2 *et al.*, Dec. 20, 2021, 2021 CPD ¶ 13. In that decision, we sustained Insight's protest challenging the issuance of a task order to APV pursuant to fair opportunity proposal request (FOPR) No. 70CTD021R00000002. The FOPR was issued by the Department of Homeland Security, U.S. Immigration and Customs Enforcement, for information technology (IT) support services for the agency's student and exchange visitor program (SEVP). APV argues that our decision was based on factual and legal errors, and asserts that new information warrants reversal of the decision.

We deny the request for reconsideration.

BACKGROUND

On April 28, 2021, the agency issued the FOPR to firms holding contracts under the National Institutes of Health's chief information officer-solutions and partners 3 (CIO-SP3) small business governmentwide acquisition contract. Contracting Officer's Statement (COS) at 1. The FOPR contemplated the issuance of a task order on a best-value tradeoff basis, for a potential total of 36 months, to provide IT services in

support of the agency's student and exchange visitor information system (SEVIS) application. Agency Report (AR), Tab 6, FOPR at 1-2.¹

The FOPR provided that the agency would make its source selection decision using a tradeoff analysis considering the following four evaluation factors, in descending order of importance: (1) technical approach; (2) experience; (3) management approach; and (4) price. *Id.* at 15.

The solicitation stated that minimum qualifications for key personnel were listed in the performance work statement (PWS). *Id.* at 10. The PWS identified six key personnel, including a project operations manager. AR, Tab 7, PWS at 7-13. Among other requirements, the project operations manager was to "have a minimum of five (5) years of experience in managing projects, with a focus on business process and re-engineering projects." PWS at 9. Under the management approach factor, while the FOPR did not require the submission of resumes for proposed key personnel, it did require offerors to "clearly identify" qualifications and to identify any "unique qualifications or experience proposed that exceed the minimum qualifications." FOPR at 10. The solicitation provided that the agency would evaluate whether proposed "qualifications . . . are reasonable for successfully and efficiently performing the work." *Id.* at 14. Further, the FOPR noted that proposed "personnel that exceed the minimum requirements may be evaluated more favorably." *Id.*

As relevant here, APV's proposal included a table listing PWS key personnel requirements in one column, then describing the corresponding qualifications of their proposed key personnel in a second column. AR, Tab 29, APV Management Approach at 4. For the proposed project operations manager, APV's proposal listed the requirement to have 5 years of experience managing projects and, in the corresponding second column (titled "Unique Qualifications/Experience Exceeding") in the same row, stated "9 years of relevant experience including 5 years support and quality oversight of the SEVP Contact Center." *Id.*

The agency evaluated Insight's and APV's final proposals as follows:

	Insight	APV
Technical Approach	Exceeds the Requirements	Exceeds the Requirements
Experience	Exceeds the Requirements	Exceeds the Requirements
Management Approach	Meets the Requirements	Exceeds the Requirements
Price	\$11,658,272	\$13,579,169

AR, Tab 21, Source Selection Memorandum (SSM) at 13.

¹ Citations are to the agency report provided in response to the underlying protest filed by Insight, B-420133.2 *et al.*

In its evaluation of APV's management approach, the agency found that the proposed key personnel had "experience that exceed[s] the minimum experience requirements identified by the PWS" and noted that this added value increased the likelihood of success. AR, Tab 19, Phase II(b) Consensus Evaluation Report at 6-7. As part of the same raises-confidence observation, the report specifically cited the project operations manager's "9 years of relevant experience, including 5 [years] supporting the quality and oversight of the SEVP Contract Center." *Id.* at 7. The agency concluded that the "added experience causes the Government to have high confidence that [APV] can successfully perform the proposed requirements with enhanced expertise." *Id.*

The source selection authority (SSA) concluded that APV's proposal represented the best value to the government. AR, Tab 21, SSM at 18. The SSA found that APV's proposal was superior to Insight's under both the technical approach and management approach factors and that these advantages warranted the payment of a \$1,920,897, or 16 percent, price premium. *Id.* When comparing the proposed management approaches in its tradeoff analysis, the SSA specifically noted that APV proposed "personnel with significantly more experience than the minimum requirements." *Id.* at 17.

On September 2, 2021, the agency transmitted notice to Insight that it was not the successful offeror. COS at 6. Following a debriefing, Insight filed a protest of the award arguing that APV's proposal contained a material misrepresentation and the agency had disparately evaluated proposals. Our Office sustained Insight's protest on these two bases. See *Insight Tech. Sols., Inc., supra* at 13.

With respect to the material misrepresentation, we found that Insight had misrepresented the experience of its proposed project operations manager as being relevant to the PWS requirement to have five years of project management experience. We further found that the agency had relied on this misrepresentation, resulting in competitive prejudice to the protester. Based on these findings, our Office recommended that the agency terminate the issued task order, exclude APV's proposal from further consideration, and reevaluate the remaining proposals and make a new source selection decision.

On December 29, APV requested reconsideration of our decision.²

DISCUSSION

APV argues that our decision in *Insight Tech. Sols., Inc.*, contained errors of fact and law and that new information warrants the reconsideration of our recommendation that APV's proposal be excluded from further consideration. As an initial matter, APV

² The task order at issue is valued in excess of \$10 million, and was issued under an indefinite-delivery, indefinite quantity contract established by the Department of Health and Human Services. Accordingly, our Office had jurisdiction to consider the underlying protest as well as this reconsideration request. 41 U.S.C. § 4106(f)(1)(B).

argues that its proposal's reference to the project operations manager's 9 years of relevant experience was meant to be a reference to broad categories of relevant experience set forth in the PWS. The requester therefore contends our Office erred in concluding that this statement was meant to address the PWS's specific requirement for five years of project management experience. APV further argues that GAO erred as a matter of law by conducting its own subjective determination of the proposed project operations manager's qualifications and by recommending the exclusion of APV's proposal. Last, the requester submits the resume of its proposed project operations manager as new evidence that warrants the reconsideration of 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(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; that is, but for the error, our Office would have likely reached a different conclusion as to the merits of the protest. *Department of Justice; Hope Village, Inc.--Recon.*, B-414342.5, B-414342.6, May 21, 2019, 2019 CPD ¶ 195 at 4.

The repetition of arguments made during our consideration of the original protest and disagreement with our prior decision do not meet this standard. *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Additionally, a party's assertion of new arguments or presentation of information that could have been, but was not, presented during the initial protest also does not meet the standard for granting reconsideration; a party's failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum-to produce fair and equitable decisions based on consideration of all parties' arguments on a fully developed record. *Department of the Navy--Recon.*, B-405664.3, May 17, 2012, 2013 CPD ¶ 49 at 2.

APV contends that our decision contains an error of fact because the reference in APV's proposal to the project operations manager's 9 years of "relevant experience," actually referred to relevant experience meeting a "wide variety of responsibilities" set forth in the PWS. Request for Recon. at 3 (*quoting* AR, Tab 4, PWS at 9-10 (setting forth both the position requirements and "relevant experience" that was "desired but not required")). The requester contends that our decision therefore erred by concluding that this representation referred narrowly to the requirement for five years of project management experience rather than more broadly to "relevant experience" as set forth in the PWS.

As an initial matter, we note that this argument amounts to the assertion of a new argument that could have been, but was not, presented during the initial protest. Such an argument does not meet our standard for granting reconsideration. See *Department of the Navy--Recon.*, *supra*.

In any case, we find no basis to conclude that our underlying decision contains an error of fact. In this regard, we are not persuaded that the proposal's reference to "9 years of relevant experience," was meant to apply in a broad manner rather than as a specific response to the PWS requirement for five years of experience managing projects. In this respect, we note that the representation was included on the right side of a table in APV's proposal, specifically addressing the PWS requirement, listed on the left side, to have a "[m]inimum of 5 years of experience in managing projects, with a focus on business process." AR, Tab 29, APV Management Proposal at 4 (*quoting* PWS at 9). Moreover, additional lines of the table addressed other areas of experience called for by the PWS, for example, "experience that depicts clear and detailed practical experience of all the following technologies." *Id.* The table's listing of broader experience in a different line item belies the argument advanced by APV that the representation in the first line was meant to provide broad experience rather than to specifically address the requirement for five years of project management experience.

In addition, we note that APV's proposal stated that "[a]ll staff including key personnel exceed qualification/experience requirements based on extensive and unique SEVIS Level II experience." AR, Tab 29, APV Management Proposal at 3. APV's proposal further stated that the proposed project operations manager had "5 years supporting SRC." *Id.* at 6. These statements were misrepresentations because, as discussed in our prior decision, the proposed individual only had 4 years and 7 months of experience supporting SRC and did not have five years of experience managing projects. See *Insight Tech. Sols, Inc., supra* at 8-9.

With respect to managing projects, our decision found that the intervenor failed to adequately support its representation that the proposed project operations manager's prior experience involved "managing projects, with a focus on business process and re-engineering projects." *Id.* at 8 (*quoting* PWS at 9). This included prior experience as a "Team Lead/Senior Help Desk Analyst Level II" on the SEVIS contract, a position as chief executive officer (CEO) for a non-profit organization, and various positions with other employers, including customer service representative, salesperson, and accounting technician. *Id.* at 8-9. Accordingly, based on our review of the record, we see no basis to question our finding that APV's proposal contained a material misrepresentation.

APV also argues that a resume provided to the agency on December 22, 2021, for the proposed project operations manager, is new information that warrants modification of our recommendation. We disagree.

In order to provide a basis for reconsideration, additional information not previously considered must have been unavailable to the requesting party when the initial protest was being considered. *Timberline Helicopters, Inc.--Recon.*, B-414507.2, Aug. 1, 2017, 2017 CPD ¶ 251 at 2. Failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of all parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. *Id.*

Here, we find that the resume information in question was known to the intervenor during the course of the initial protest and could have been presented during that protest. Indeed, our Office asked the intervenor to provide the project operations manager's resume, but was instead provided with a declaration from that individual. See GAO Req. for Info. & Intervenor Resp. to GAO Inquiry. Accordingly, this resume does not constitute new information warranting the reconsideration of our protest decision.³

APV further argues that our decision contained multiple errors of law. In this regard, the requester contends that the decision improperly ventured outside the evaluation record by crediting information found in the project operations manager's LinkedIn entry.⁴ APV asserts that GAO substituted its own judgment for that of the agency's to determine that the proposed operations manager did not meet the solicitation's key personnel requirements.

We find that both contentions repeat arguments made in the underlying protest.⁵ See Intervenor Resp. to GAO Inquiry at 4-6 (arguing that LinkedIn entry was outside the administrative record and not appropriate for GAO consideration). Our decision considered these arguments and rejected them, finding that consideration of evidence not reasonably known to evaluators was appropriate where a protest alleged a material misrepresentation. See *Insight Tech Sols., Inc.*, *supra* at 7 (citing *Patricio Enters., Inc.*, B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 8-9 and *Johnson Controls*

³ We note, at any rate, that the resume did not demonstrate "experience in managing projects, with a focus on business process," PWS at 9, when describing the proposed project operations manager's experience as a non-profit CEO, or as a customer service representative, salesperson, or accounting technician. See Req. for Recon., exh. A, Resume at 4-6.

⁴ LinkedIn is a social networking website for people in professional occupations; it is mainly used for professional networking.

⁵ Similarly, we find that APV repeats another argument raised in the underlying protest, when it asserts that Insight was not competitively prejudiced by the misrepresentation in APV's proposal. In this regard, the agency previously argued that the protester was not competitively prejudiced because the agency's evaluation and source selection determination did not materially rely upon the misrepresentation. See Agency Resp. to GAO Inquiry at 3. Our decision considered and rejected this argument, finding that "had [APV] been eliminated from the competition or less favorably evaluated under the management approach factor, Insight would have had a substantial chance of receiving the award." *Insight Tech. Sols., Inc.*, *supra* at 11.

Sec. Sys., B-296490, B-296490.2, Aug. 29, 2005, 2007 CPD ¶ 102 at 11-12).⁶ We see no basis to question this conclusion.

Last, APV argues that our decision erred as a matter of law by recommending the exclusion of APV's proposal from further consideration due to the misrepresentation. The requester asserts that this recommendation exceeds GAO's statutory authority under the Competition in Contracting Act (CICA), 31 U.S.C. § 3554(b)(1). Section 3554(b)(1) enumerates seven specific recommendations GAO can provide when it determines that a solicitation, proposed award, or award does not comply with a statute or regulation. In addition, section 3554(b)(1)(H) states that GAO can "implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations." APV contends that sections (A) and (G) do not mention exclusion as a remedy and that section (H) does not apply because excluding APV from the competition was not made to promote compliance with any specific procurement statute or regulation. APV further argues that the exclusion recommendation was contrary to our prior decisions because our Office did not make a finding of intentionality or "disregard for the truth," and ignored the agency's own finding concerning materiality. *Req. for Recon. at 7 (quoting XYZ Corp., B-413243.2, Oct. 18, 2016, 2016 CPD ¶ 296 at 6).*

In limited circumstances, our Office will recommend that an offeror be excluded from competition as the result of a misrepresentation. *Insight Tech. Sols., Inc., B-417388, B-417388.2, June 19, 2019, 2019 CPD ¶ 239 at 4.* Our Office has stated that exclusion of an offeror from a competition is warranted where the offeror made a material misrepresentation in its proposal and where the agency's reliance on the misrepresentation had a material effect on the evaluation results. *Patricio Enters. Inc., supra* at 15; *see also Johnson Controls Sec. Sys., supra* at 11-12 (sustaining protest and recommending exclusion of awardee from further consideration where the awardee made material misrepresentations regarding arrangements for its personnel to receive mandatory training and certifications prior to award). As our Office has stated, where an offeror's material misrepresentation has a material effect on a competition, the integrity of the procurement system "demands no less" than the remedy of exclusion. *Patricio Enters. Inc., supra*; *see also ACS Gov't Servs., Inc., B-293014, Jan. 20, 2004, 2004 CPD ¶ 18 at 11.*

In this instance, we conclude that our Office's recommendation to exclude an offeror's proposal falls within our statutory authority and does not constitute an error law. In this respect, we are tasked under CICA with reviewing alleged violations of procurement laws and regulations to ensure that the statutory requirements for full and open competition are met. 31 U.S.C. § 3552(a). To do this, our Office must be able to issue recommendations for corrective action needed when the competitive procurement

⁶ We note that our decision did not solely rely on the LinkedIn profile to conclude that a misrepresentation had taken place. Instead, we sought evidence and briefing from the intervenor and the agency, including the proposed project operations manager's resume, and considered all of the evidence presented.

system is threatened. Such a threat can arise from multiple circumstances, including, as relevant here, when a proposal misrepresentation has a material effect on an agency's evaluation. See *Patricio Enters. Inc., supra*. Accordingly, when the integrity of the competitive procurement system is threatened as a result of misrepresentations found in an offeror's proposal, we find that our Office possesses the authority under CICA to recommend exclusion as a necessary corrective remedy.

Finally, we do not agree with the requester that our Office was obligated to make a specific finding of intentionality before recommending the exclusion of APV's proposal. In this respect, our prior decisions have stated that we will "consider such factors as the degree of negligence or intentionality associated with the offeror's misrepresentations, as well as the significance of the misrepresentation to the evaluation." *XYZ Corp., supra* at 6. Our decisions do not, however, identify a finding of intentionality as a prerequisite before we will recommend the exclusion of an offeror's proposal. See *ACS Govt. Servs., Inc., supra* at 11 (recommending disqualification of a quotation, without examining intentionality, where vendor's misrepresentation of the commitment of incumbent personnel materially influenced the agency's evaluation); *Patricio Enters. Inc., supra* at 15 (same). Nor do we conclude that such a finding was required here.

Instead, we find to be reasonable the decision to exclude APV's proposal based upon the finding that the misrepresentation "had a material effect on the evaluation results." *Insight Tech. Sols., Inc., supra*.

The request is denied.

Edda Emmanuelli Perez
General Counsel