



Decision

Matter of: DPRA, Inc.--Reconsideration

File: B-421592.2

Date: November 7, 2023

Ronald Perlman, Esq., Holland & Knight LLP, for the requester.
Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Request for reconsideration of 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

DPRA, Inc., a small business of Knoxville, Tennessee, requests reconsideration of our decision in *DPRA, Inc.*, B-421592, July 17, 2023, 2023 CPD ¶ 189. That decision dismissed or denied DPRA's challenges to the issuance of a task order to Netrist Solutions, LLC (Netrist), of Charleston, South Carolina, under request for quotations (RFQ) No. FA8730-23-Q-B004, issued by the Department of the Air Force for consolidated air mobility planning system (CAMPS) sustainment, operations and maintenance services. DPRA argues that our Office erred in dismissing or denying its protest grounds.

We deny the request for reconsideration.

BACKGROUND

The Air Force issued the RFQ on December 27, 2022, seeking quotations for sustainment, operations and maintenance services of CAMPS. Agency Report (AR), Tab 4a, RFQ at 1.¹ CAMPS is a command and control program providing the Air Force

¹ Citations to documents other than the request for reconsideration are to the record in the underlying protest.

with airlift and tanker planning, scheduling, and analysis. Contracting Officer's Statement (COS) at 2.

The RFQ was issued under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, contemplating the issuance of a single time-and-materials task order with a base period of 1 year and four 1-year option periods. RFQ at 1-2. Award would be made using a best-value tradeoff considering technical and price. AR, Tab 7c, Evaluation Criteria at 5. The technical factor included three subfactors: functional support desk; Mobility Air Forces command and control knowledge; and parallel operations and capability fielding. *Id.* The price factor would consider price reasonableness, professional employee compensation plans under FAR provision 52.222-46, and unbalanced pricing. *Id.* at 6-8.

In responding to the functional support desk technical subfactor, vendors would submit written answers to a sample problem. AR, Tab 7b, Instructions at 11-12. For example, vendors were asked to explain their troubleshooting process in light of the sample problem where CAMPS was functioning properly and also where there was a CAMPS malfunction. *Id.* Under the remaining technical subfactors, vendors would prepare and present slideshows and would engage in a question-and-answer session with the agency. *Id.* at 12-13. The presentations would describe how the vendor's team would "successfully address the technical challenges" of a sample problem. *Id.* at 13.

Each quotation would be assessed with two ratings under the technical subfactors. AR, Tab 7c, Evaluation Criteria at 8-9. The first rating would be an assessment of the vendor's technical approach, issued on a scale of: excellent, good, acceptable, marginal, or unacceptable.² *Id.* The second rating would be an assessment of technical risk, issued on a scale of: low, moderate, high, or unacceptable.³ *Id.*

DPRA's quotation received superior technical approach ratings as compared with Netrist's quotation under each technical subfactor. AR, Tab 20, Source Selection Decision Document (SSDD) at 5-6. Both quotations were assessed as presenting low risk under each subfactor. *Id.* Regarding price, both quotations were found reasonable, realistic under FAR provision 52.222-46, and balanced. *Id.* at 6. DPRA's total evaluated price was \$32,759,340; Netrist's was \$21,390,010. *Id.*

² For example, the highest possible rating--excellent--was defined as: "The [vendor's] response indicates an exceptional approach and understanding of the sample problem and [performance work statement (PWS)]. Positive aspects outweigh any negative aspects." AR, Tab 7c, Evaluation Criteria at 9.

³ For example, the highest possible technical risk rating--low--was defined in relevant part as: "The [vendor's] overarching approach and understanding demonstrates the [vendor] has a high probability of achieving all or most of the contract requirements similar to the Sample Problem with low risk or disruption of schedule, increased cost, or degradation of performance." AR, Tab 7c, Evaluation Criteria at 9.

In conducting the best-value tradeoff, the Air Force recognized DPRA's superior technical approach ratings. AR, Tab 20, SSDD at 7-8. However, in light of DPRA's higher price, the Air Force concluded that DPRA's quotation was "not sufficiently more advantageous to justify the price premium[.]" *Id.* at 8. Ultimately, the Air Force issued the task order to Netrist. *Id.*

On April 7, 2023, DPRA filed the underlying protest with our Office. DPRA's protest was signed by the firm's chief executive officer (CEO) and filed *pro se* (*i.e.*, without the assistance of counsel). In the protest, DPRA raised two issues relevant to the request for reconsideration: (1) the agency unreasonably assessed Netrist's approach as presenting low risk under the technical factor; and (2) the agency's evaluation of the awardee's quotation under FAR provision 52.222-46 was unreasonable.⁴ Protest at 2-9. DPRA also alleged that the best-value decision was flawed for failing to properly account for performance risk. *Id.* at 7-9.

DPRA's first protest ground challenged the Air Force's conclusion that Netrist's quotation presented low risk under the technical factor. *Id.* at 2-4. DPRA argued that it was "literally impossible" for a non-incumbent company like Netrist to be assessed as low risk because neither Netrist nor its proposed team had ever "seen or touched" the CAMPS software. *Id.* at 2. As support, DPRA cited the evaluation of its own quotation--found to be low risk--and its incumbent status.⁵ *Id.* at 2-4. DPRA alleged that continuous performance by an incumbent would result in the lowest degree of risk, and that it was irrational for the Air Force to rate both firms as presenting the same degree of risk since DPRA was the incumbent. *Id.* As further support, DPRA cited its own past performance on CAMPS and argued that it was unreasonable for the Air Force not to consider DPRA's past performance under the technical factor. *Id.*

DPRA's second protest ground challenged the Air Force's evaluation of Netrist's proposed professional compensation under FAR provision 52.222-46. *Id.* at 4-5. DPRA supported this ground by citing Netrist's total evaluated price of \$21,390,010 and DPRA's incumbent knowledge of the CAMPS requirements. *Id.* DPRA contended that Netrist would not be able to hire competent professionals because it was likely offering below market salaries. *Id.* at 4-5. Using the price formatting worksheet included with the solicitation, DPRA provided a detailed discussion of its own pricing strategy to illustrate this protest ground. *Id.* DPRA opined that based on its experience with CAMPS, it would be "literally impossible" to find Netrist's total evaluated price realistic for the work to be performed. *Id.* at 5.

⁴ The protest included other arguments. Because certain arguments are not relevant to the request for reconsideration, we do not address them in this decision.

⁵ The agency recognized DPRA's incumbent status but noted that the instant solicitation included certain new requirements that were not part of DPRA's contract. COS at 3.

On April 19, the Air Force filed a request for dismissal.⁶ The agency asked our Office to dismiss DPRA's protest in part as factually and legally insufficient, and in part as untimely. See Req. for Dismissal at 3-6.

First, the agency argued that DPRA's challenge to Netrist's technical risk ratings was factually and legally insufficient. *Id.* at 3-4. The agency argued that DPRA presented conclusory allegations absent any supporting evidence, and otherwise misrepresented how risk was to be assessed under the terms of the solicitation. *Id.* at 4. The agency explained that risk was to be assessed based on the vendor's responses to the sample problems and their understanding of the PWS. *Id.* The agency further explained that under the terms of the solicitation, actual experience with CAMPS and past performance information were irrelevant to the assessment of risk.⁷ *Id.*

Second, the agency asked our Office to dismiss DPRA's allegation that Netrist's professional compensation must have been unrealistic under FAR provision 52.222-46. *Id.* at 5. The agency asserted that its evaluation of the awardee's quotation under the FAR provision was proper and that the protest ground was based on guesswork. *Id.*

DPRA was given a deadline of April 24 to respond to the request for dismissal. Electronic Protest Docketing System (Dkt.) 9. On April 20, DPRA filed a notice of appearance for outside counsel, requested a protective order, and requested an extension of time to respond to the request for dismissal. Dkt. 10. In response, our Office issued a protective order and extended the submission deadline to April 26.⁸ Dkt. 12. On April 26, DPRA responded to the request for dismissal with a legal memorandum and the signed declarations of DPRA's program manager (PM) and CEO. Resp. to Req. for Dismissal; *id.*, exh. A, PM Declaration; *id.*, exh. B, CEO Declaration.

In short, DPRA argued that its incumbent knowledge formed the factual basis of its challenges and that its protest grounds were sufficient to survive a request for dismissal. Resp. to Req. for Dismissal at 2-5. DPRA acknowledged that purely speculative protest grounds may be dismissed, but argued that protest grounds based on reasonable and credible inferences are not speculative and should not be dismissed. *Id.* at 1 (citing *CDO Techs., Inc.*, B-416989, Nov. 1, 2018, 2018 CPD ¶ 370). According to the protester, its allegations were based on reasonable and credible inferences drawn from its incumbent knowledge of the CAMPS program. *Id.* 2-5.

⁶ The Air Force filed its request for dismissal in two formats; one as a protected version not accessible to the *pro se* protester, and the second as a redacted version which was accessible to the *pro se* protester.

⁷ The Air Force further argued that any challenge asserting past performance information should have been considered under the technical factor was an untimely solicitation challenge. Req. for Dismissal at 4 (citing 4 C.F.R. § 21.2(a)(1)). We agreed with the agency. *DPRA, Inc., supra* at 5.

⁸ DPRA's outside counsel was admitted to the protective order on April 21. Dkt. 16.

In a signed declaration, DPRA's PM detailed several instances that they viewed as establishing a factual basis for protest. Resp. to Req. for Dismissal, exh. A, PM Declaration. For example, the PM detailed an episode where DPRA's program knowledge was critical in addressing an issue allegedly cause by a Netrist subcontractor. *Id.* at 2. According to the PM, this supported the firm's challenge that DPRA's quotation represented the lowest risk solution to the government. *Id.* at 8. In addition, the PM detailed the reasons why, in their view, Netrist's proposed professional compensation would not be sufficient to properly staff the requirement. *Id.* at 2-5. For example, the PM stated that based on the projected timeline, Netrist would not have sufficient time to become familiar with CAMPS. *Id.* at 3-5. According to the PM, the only way for Netrist to mitigate certain risks stemming from the project timeline would be for Netrist to hire engineers already familiar with CAMPS. *Id.* at 5. Based on the PM's understanding of Netrist's total evaluated price, they opined that Netrist would not be able to offer professional compensation sufficient to attract such individuals. *Id.*

On May 2, our Office filed a notice to the parties regarding the agency's request for dismissal. In that notice, we stated that we intended to dismiss DPRA's protest ground challenging the technical evaluation of the awardee's quotation.⁹ Notice of Partial Dismissal. Our notice stated that we found this protest ground insufficient to meet the requirements of our Bid Protest Regulations which require protest grounds to include a detailed statement of the factual and legal grounds of protest, and that the grounds be legally sufficient. *Id.* (citing 4 C.F.R. §§ 21.1(c)(4), (f)). We instructed the agency to file an agency report responding only to the protest grounds challenging the evaluation of professional compensation and the best-value decision. *Id.*

In accordance with our instructions, the Air Force's agency report responded to the merits of DPRA's protest ground challenging the evaluation of professional compensation under FAR provision 52.222-46, and its protest ground challenging the best-value tradeoff. See e.g., Memorandum of Law at 6-12. DPRA filed comments responding to the agency's position on those protest grounds. See Comments at 2-6. Following the receipt of comments on the agency report, no further briefing was received.

We issued our decision on the underlying protest on July 17. *DPRA, Inc., supra.* In that decision, we addressed two primary issues: (1) the challenge to the evaluation of professional compensation under FAR provision 52.222-46; and (2) the challenge to the best-value decision. *Id.* at 6-10. We denied both challenges. *Id.* We also provided a discussion on the protest grounds which we dismissed as a result of the agency's April 19 request for dismissal. *Id.* at 4-6. Ultimately, we denied the protest. On July 27, DPRA filed the instant request for reconsideration.

⁹ Our notice indicated that we intended to dismiss other grounds as well. See Notice of Partial Dismissal. As certain other grounds are not relevant to the instant request for reconsideration, we do not discuss them all here. For a detailed discussion of the protest grounds, refer to our underlying protest decision. See *DPRA, Inc., supra.*

DISCUSSION

DPRA argues that in dismissing or denying its protest grounds, our decision ignored relevant facts and the solicitation's evaluation criteria. Req. for Reconsideration at 1-2. The requester asks us to reconsider our decision on the protest grounds challenging the technical evaluation of the awardee's quotation, the evaluation of the awardee's quotation under FAR provision 52.222-46, and the best-value decision. *Id.* at 4-9. As discussed below, we deny the request in part and dismiss it in part.

To obtain reconsideration, our Bid Protest Regulations require the requesting party to 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); *Monbo Grp. Int'l--Recon.*, B-420976.2, Oct. 17, 2022, 2022 CPD ¶ 261 at 3. The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. 4 C.F.R. § 21.14(c); *Action Staffing Sols., Inc.--Recon.*, B-420585.2, July 20, 2022, 2022 CPD ¶ 186 at 4 (dismissing a request for reconsideration that simply repeated arguments made in the underlying protest and disagreed with GAO's decision); *Epsilon Sys. Sols., Inc.--Recon.*, B-414410.3, Sept. 20, 2017, 2017 CPD ¶ 292 at 3.

Technical Challenge of the Awardee's Quotation

As indicated above, DPRA requests reconsideration of our decision to dismiss its protest ground challenging the technical evaluation of the awardee's quotation. According to the requester, this challenge was based on reasonable and credible inferences drawn from DPRA's incumbent experience with CAMPS. Req. for Reconsideration at 4-6. DPRA further contends that our decision ignored relevant facts in the record such as the declaration of DPRA's PM, and ignored the solicitation's evaluation criteria stating that vendors' expertise would be considered under the technical subfactors. *Id.* As discussed below, we deny the request.

Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *Metasoft, LLC--Recon.*, B-402800.2, Feb. 17, 2011, 2011 CPD ¶ 47 at 3. Our decisions explain that the piecemeal presentation of evidence, information, or analysis supporting allegations previously made is prohibited. *E.g., Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3-4 (protest ground filed without supporting evidence was dismissed as failing to state a valid basis of protest; the subsequent filing of an employee declaration did not cure the insufficiency of the unsupported protest ground).

First, our Office did not unreasonably ignore the declarations of DPRA's PM and CEO when analyzing the request for dismissal. The declarations were filed in an improper piecemeal fashion. In this regard, the protest was filed on April 7. It was not until April 26 that the declarations were filed in the record, as exhibits to DPRA's response to

the agency's request for dismissal. The piecemeal presentation of DPRA's protest ground was not permissible. See *Raytheon Blackbird Techs., Inc., supra*; *Metasoft, LLC--Recon., supra*. On these facts, we conclude that our Office properly excluded from consideration the declarations signed by DPRA's PM and CEO. See *Raytheon Blackbird Techs., Inc., supra* at 4 (excluding from consideration an employee declaration that should have been filed with the initial protest but was not filed until after the agency requested dismissal).

Second, our decision did not ignore the terms of the solicitation as argued by DPRA. In this regard, the request for reconsideration argues that our decision ignored solicitation language stating that quotations would be evaluated to determine the vendor's expertise. See Req. for Reconsideration at 4-6. DPRA suggests that its challenge was that Netrist did not have expertise in CAMPS, and that the protest was supported by examples of DPRA's performance on CAMPS to show this gap in expertise between the competitors. See *id.* at 4-6.

As an initial note, DPRA's protest ground as filed by the firm's CEO was fundamentally different than what is represented in the request for reconsideration. Compare Protest at 2-4 (arguing that Netrist's technical risk rating of low was unreasonable because DPRA also earned a technical risk rating of low), with Req. for Reconsideration at 4-6 (arguing that Netrist's technical risk rating of low was unreasonable because of Netrist's alleged lack of expertise). More salient here is that the protest ground was at odds with the express terms of the solicitation. To illustrate, the protest argued in relevant part:

The Awardee received inferior technical ratings in every sub-factor. Yet, they were assigned the best possible ['Low'] risk assessment. This was identical to [DPRA's] own assessment. However, it is literally impossible to conclude that a company with no experience in the CAMPS Software has the same ['Low'] risk profile as a company that has worked on the CAMPS Software for many years. (This was arbitrary and irrational and has no factual basis whatsoever.).

* * * * *

The final responses from the [contracting officer] to our questions [] stated that '[i]n accordance with the RFQ documents, the Government did not consider past performance in its evaluation.' This statement is at fundamental odds with the basic premise of a 'Best Value' competition, which requires an examination of factors other than price in order to determine what is in the government's best interest. That means that Quality and Expertise both have to be considered, along with Price, in

order to make a 'best value' decision. It is impossible to ignore past experience in some way in a 'best value' competition.

* * * * *

Continued execution by the incumbent results in lower risk. It is irrational to find that a team with no experience with CAMPS code and environment would not be a higher Risk than the incumbent.

Protest at 2-4.

As demonstrated by the language above, DPRA's protest ground challenged the agency's evaluation of Netrist's quotation on the basis of DPRA's own risk ratings--nothing more. In bringing its challenge, DPRA did not cite any relevant facts or solicitation language nor did it explain how the agency's evaluation somehow violated any term of the solicitation. Rather, DPRA's protest inaccurately framed the solicitation as requiring consideration of past performance and complained that it should have received special treatment because of its incumbent status. Neither of those complaints formed valid bases of protest under the terms of the RFQ. Accordingly, we conclude that DPRA's challenge to the technical risk ratings assessed to Netrist's quotation was properly dismissed as failing to state a valid basis of protest. See *DPRA, Inc., supra* at 5. While DPRA's request for reconsideration attempts to shoehorn a new argument to remedy the insufficiency of the protest ground, the attempt is unavailing.

In sum, DPRA fails to set out factual and legal grounds upon which reversal or modification of the decision is warranted. DPRA has not demonstrated that our Office made any errors of law, nor has it presented any information not previously considered. Accordingly, the request for reconsideration is denied. *Monbo Grp. Int'l--Recon., supra*.

Remaining Bases for Reconsideration are Dismissed

DPRA requests reconsideration of our decision to deny its protest grounds challenging the agency's evaluation of Netrist's quotation under FAR provision 52.222-46, and the best-value decision. Req. for Reconsideration at 7-9. As explained below, we dismiss the request as it relates to these two protest grounds.

In its protest, DPRA argued that the agency's evaluation of Netrist's quotation under FAR provision 52.222-46 was flawed. Protest at 4-6; see *also* Comments at 2-4. As previously discussed, DPRA contended that based on Netrist's total evaluated price, Netrist would not be able to hire competent professionals because it was likely offering below market salaries. Protest at 4-5.

DPRA also argued that the best-value decision was flawed for failing to properly account for performance risk and inappropriately considering price as more important than technical. *Id.* at 7-9 (arguing that performance risk was not properly considered); Comments at 4-6 (arguing that performance risk was not properly considered and that

the agency improperly elevated the importance of the price factor). DPRA opined that moving forward with a new company would introduce risk based on the new company's lack of familiarity with CAMPS, and that assuming such increased risk was not in the best interest of the Air Force. Protest at 8-9. DPRA supported this contention with specific instances where, in its own opinion, DPRA was able to quickly solve issues during performance of its CAMPS contract where a new company would have failed or struggled. *Id.* at 8. DPRA also submitted a second declaration signed by its PM detailing their opinion of the importance of CAMPS and the risks associated with transitioning to a new contractor. Comments, attach. 1, PM Declaration.

Our underlying protest decision analyzed both of these issues. See *DPRA, Inc., supra* at 6-9. Our decision explained that we found no basis to sustain DPRA's challenge to the evaluation of professional compensation under FAR provision 52.222-46. *Id.* In short, we found that the record demonstrated a reasonable evaluation of Netrist's professional compensation. *Id.* With respect to Netrist's challenge to the best-value decision, we concluded that the decision was reasonable and sufficiently documented. *Id.* at 10. We explained that contrary to the protester's challenge, the best-value decision included a discussion of the technical merits of the competing quotations and reasonably concluded that DPRA's technically superior quotation was not "sufficiently more advantageous to justify the price premium[.]" *Id.* We further explained that while DPRA had alleged underlying technical evaluation errors, the record did not support those allegations. *Id.*

In the request for reconsideration, DPRA relitigates its challenges to the agency's evaluation of professional compensation and the best-value decision. Req. for Reconsideration at 7-9. In this regard, DPRA's request argues that Netrist's total evaluated price is "too low for the work needed to be done under the solicited CAMPS contract." *Id.* at 7. DPRA asserts that its protest was based on incumbent knowledge of CAMPS and clearly demonstrated the flaws in the Air Force's evaluation of professional compensation. *Id.* at 7-8. DPRA's request also asserts that the best-value decision improperly put price before technical and was the flawed product of underlying evaluation errors. *Id.* at 8-9.

Netrist's request fails to specify any errors of fact or law made and does not specify any information not previously considered for both of these protest grounds. Rather, the request repeats the arguments made in the underlying protest and expresses disagreement with our decision. Such a request does not meet the standard for granting a request for reconsideration. See *Monbo Grp. Int'l--Recon., supra*; *Action Staffing Sols., Inc.--Recon., supra*. Accordingly, it is dismissed. 4 C.F.R. § 21.14(c).

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel