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Decision

Matter of: CymSTAR, LLC--Reconsideration

File: B-422576.2

Date: September 10, 2024

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DIGEST

Request for reconsideration is denied where the protester fails to demonstrate that our decision contains any factual error.

DECISION

CymSTAR, LLC, of Broken Arrow, Oklahoma, requests reconsideration of our decision, *CymSTAR, LLC*, B-422576, July 31, 2024, 2024 CPD ¶ 172, wherein we denied its protest challenging the terms of fair opportunity request for proposals (FOPR) No. FA8617-24-R-B001, issued by the Department of the Air Force for the acquisition of a maintenance training system (MTS) for the agency's fleet of T-7A aircraft. CymSTAR argues that our decision contained a factual error.

We deny the request for reconsideration.

The T-7A advanced pilot training program provides student pilots with the foundational flying skills and core competencies required to transition into fourth, fifth, and future generation fighter and bomber aircraft. Agency Report (AR), Tab 7, FOPR, System Requirements Document (SRD) at 7.¹ The T-7A MTS will be used by Air Education and Training Command to train personnel on system operation, system operational theory,

¹ Where available, GAO uses the agency provided page numbers.

maintenance, troubleshooting, servicing, removal, replacement, and repair of the T-7A aircraft systems, subsystems, and components. *Id.* The MTS blends various forms of media, including a mix of maintenance training devices (MTD) and interactive multimedia instruction (IMI) products designed to accommodate maintenance training skills and proficiencies ranging from basic familiarization to advanced troubleshooting. *Id.*

MTDs consist of hardware training devices (HTD) (e.g., propulsion system trainer, crew station training, ejection seat maintenance trainer, and landing gear trainer) and digital training devices (DTD) (e.g., digital maintenance trainer, maintenance training e-tools, and extended reality devices). AR, Tab 7, FOPR, SRD at 13. The HTDs must simulate the T-7A aircraft system and replicate the form, fit, and function of the aircraft system. *Id.* at 15-17.

On March 20, 2024, the Air Force issued the FOPR under the small business pool of the Training Systems Acquisition IV indefinite-delivery, indefinite-quantity multiple-award contract. AR, Tab 4, FOPR, Cover Letter at 1. The FOPR contemplated the issuance of one delivery order with a base engineering and manufacturing development (EMD) period to last no longer than 66 months after receipt of the order, four production options, four 1-year option periods for contractor support, other “over and above,” additional devices, and additional device support options. *Id.* at 2; AR, Tab 18, FOPR, attach. 14, Total Evaluated Price (TEP) Matrix. Award will be made on a best-value tradeoff basis considering technical approach and price factors. AR, Tab 11, FOPR, Evaluation Factors at 3. Advantages under the technical approach factor may outweigh any advantage under the price factor. *Id.*

Prior to the May 10, close of the solicitation period, CymSTAR filed the underlying protest with our Office. First, CymSTAR alleged that the FOPR was ambiguous because it did not clearly articulate whether the selected contractor or the government would cover any costs of procuring the necessary technical data; as support, CymSTAR pointed out that the FOPR included Federal Acquisition Regulation (FAR) clause 52.244-2, Subcontracts, but does not include any contract line-items to reimburse such costs. Protest at 11-13. Second, CymSTAR alleged that the FOPR contained an unfair price evaluation scheme because some offerors would need to replicate technical data since they were unable to procure that data from the T-7A original equipment manufacturer (OEM) contractor. *Id.* at 14.

Third, CymSTAR alleged that the agency failed to investigate an unequal access to information organizational conflict of interest (OCI). Protest at 15-17. In so arguing, CymSTAR explained that the T-7A OEM provided exclusive pricing information to another offeror (“Offeror A”) for technical data. *Id.* at 16. Fourth, CymSTAR alleged that the FOPR was defective because it did not disclose the relative importance of the evaluation factors for purposes of conducting the tradeoff analysis. *Id.* at 16-17.

During development of the protest record, the agency produced a [DELETED] from Offeror A’s proposal. See AR, Tab 64, [DELETED] at 1. The [DELETED] explained

that the T-7A OEM granted Offeror A [DELETED] for this acquisition. *Id.* Specifically, the T-7A OEM provided Offeror A with [DELETED]. *Id.*

On July 31, our Office denied the protest. First, we explained that the FOPR was not ambiguous as to whether the contractor or the agency will incur the cost of acquiring the necessary technical data; in this regard, we explained that the FOPR was clear that such data would be made available to the selected contractor at no cost. *CymSTAR, supra* at 6-7.

Second, we explained that the FOPR's price evaluation scheme did not preclude offerors from competing on a common basis because the FOPR does not contemplate the contractor incurring any costs to acquire the necessary T-7A technical data. *CymSTAR, supra* at 7. We also explained that the material referenced in the [DELETED] formed a different product and was not considered part of the technical data necessary for performance of this contract. *Id.* at 7, n.14. We further emphasized that the T-7A OEM will not charge the selected contractor for the necessary technical data. *Id.*

Third, we did not object to the agency's determination that the relationship between the T-7A OEM and Offeror A did not create an unequal access to information OCI. *CymSTAR, supra* at 9. We explained that no OCI was created because Offeror A will not gain any advantage from its relationship with the T-7A OEM since all necessary technical data will be made available at no charge, and because the acquisition of such data does not form part of the price evaluation scheme. *Id.* Additionally, our decision found no basis to sustain the allegation because any information exchanged between Offeror A and the T-7A OEM was voluntarily disclosed pursuant to a private arms-length agreement between those firms. *See id.* at 8-9. Finally, we did not object to the FOPR's failure to disclose the relative importance of the evaluation factors because the silence indicated that the factors were equally important. *Id.* at 11.

On August 12, CymSTAR requested reconsideration of our decision, arguing that it includes a factual error. CymSTAR contends that our decision erroneously concluded that the material referenced in the [DELETED] was not necessary for performance. *Req. for Recon.* at 1-3.

Under our Bid Protest Regulations, to obtain reconsideration, a requesting party either must demonstrate that our prior decision contains errors of fact or law, or present new information not previously considered that would warrant reversal or modification of our earlier decision. 4 C.F.R. § 21.14(a); *Bluehorse Corp.--Recon.*, B-413929.2, B-413929.4, May 16, 2017, 2017 CPD ¶ 149 at 4.

Here, we do not find that our decision contains the error identified. The record shows that "[t]he only T-7A technical data that would not be made freely available to the MTS contractor is data the T-7A OEM generated via Internal Research and Development (IRD) independent of the [advanced pilot training (APT)] contract"--that is, data that the T-7A OEM is not contractually required to give to the Air Force under the APT contract.

Contracting Officer's Statement (COS) at 14; see also AR, Tab 59, FOPR Questions 3 at 1.

Further, the agency explains that such IRD data is not required for performance of the MTS contract. COS at 14 ("The Air Force has already paid for the generation and delivery of all pertinent technical data related to the T-7A aircraft under the APT contract."). Additionally, Offeror A, participating as an intervenor in the underlying protest, explained that the material referenced in the [DELETED] is a separate product that employs the necessary technical data but offerors do not need the material to prepare their proposals. Intervenor's Supp. Comments, exh. 1, Decl. of General Manager for Offeror A at ¶ 5. Thus, we disagree that our decision contained any error because the record supports the finding that the material referenced in the [DELETED] did not constitute necessary technical data.²

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel

² CymSTAR also argues that our decision erroneously ignored that other offerors must include the price for replicating the material referenced in the [DELETED] as part of their proposals, and therefore, will not be able to compete evenly with Offeror A. See Req. for Recon. at 3-4. This argument is derivative of its primary challenge because it relies on proving that the material referenced in the [DELETED] is necessary for performance; as a result, we conclude that it does not provide us with a basis to grant reconsideration.