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**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Sevatec, Inc.

**File:** B-406784

**Date:** August 23, 2012

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Holly Emrick Svez, Esq., James K. Kearney, Esq., and Steven W. Cave, Esq., Womble Carlyle Sandridge & Rice, LLP, for the protester.

John T. Lauro, Esq., and Roland Meisner, Esq., Defense Security Service, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

An agency was not required to attribute the experience of an incumbent firm to the protester where the protester acquired the rights and responsibilities of the incumbent contract under a novation agreement.

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### DECISION

Sevatec, Inc., of Falls Church, Virginia, protests the exclusion of its proposal from the competition under task order request for proposals (RFP) No. HS0021-11-R-0133, issued by the Department of Defense, Defense Security Services (DSS), for information technology support services. Sevatec primarily challenges the agency's evaluation of its experience.

We deny the protest.

### BACKGROUND

On October 31, 2011, the agency issued the RFP to vendors holding contracts under the streamlined technology acquisitions resources (STARS) contract, a multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contract awarded by the General Services Administration to participants in the Small Business Administration's section 8(a) program. The RFP provided for the issuance of a task order, on a fixed-price, level-of-effort basis, for a full range of information technology support services at multiple locations. RFP at 9-10. In this regard, vendors were informed that the agency was consolidating requirements that had previously been

procured under two separate contracts, including an information technology support contract being performed by Nova Datacom, Inc. (NDC).<sup>1</sup> AR, Tab 5b, Questions/Answer No. 3.

The RFP provided for a two-phased competition. RFP at 61-62. During the first phase, proposals were evaluated under three evaluation factors: experience, past performance, and price. Id. at 68. Experience and past performance were considered to be significantly more important than price. Vendors were informed that the agency would select up to five firms to continue to the second phase of the competition, but that the agency may select additional vendors for phase two if this was in the government's interest. RFP amend. 6, at 2.

With respect to the experience factor, vendors were instructed to provide at least one, and not more than five, contract/task order example(s) demonstrating relevant experience within the last 5 years. RFP at 62. The RFP explained that relevant experience included work that was similar in dollar value, complexity, and types of tasks to the services being procured here. Vendors were also informed that the agency would consider the experience of any significant subcontractors and joint venture partners, but that the prime contractor's own experience would be considered more relevant. RFP amend. 6, at 1.

The agency received 16 proposals by the November 28 closing date, including Sevatec's proposal. Sevatec offered to perform the contract using a teaming arrangement that included NDC and [DELETED] other firms. AR, Tab 6, Sevatec Proposal, Cover Letter. With respect to the experience factor, Sevatec provided information concerning contracts that it, [DELETED] teaming firms, and NDC performed. Id. at 4-9. One of these contracts was NDC's incumbent contract for the DSS information technology support services. Id. at 6.

On November 2, two days after the RFP was issued, the Small Business Administration (SBA) placed NDC on the excluded parties list and proposed the firm for debarment. Contracting Officer's (CO) Statement at 2. Shortly thereafter, NDC and Sevatec met with the CO and informed DSS that Sevatec was interested in executing a novation agreement, under which Sevatec would "buy" NDC's information technology support contract.<sup>2</sup> CO's Statement at 5. The CO informed

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<sup>1</sup> Shortly before issuing the RFP, DSS exercised an option in NDC's contract, such that NDC's period of performance was extended until May 14, 2012. Agency Report (AR), Tab 16d.

<sup>2</sup> A novation agreement is a "legal instrument (1) Executed by the (i) Contractor (transferor); (ii) Successor in interest (transferee); and (iii) Government; and (2) By which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government

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the SBA on several occasions that DSS supported Sevatec's proposed purchase of NDC's contract and that DSS was "deeply concerned" that NDC's personnel would leave the firm. See AR, Tab 16g, Nov. 14, 2011, CO Email to SBA; Protest, exh. B, Nov. 18, 2011, CO Letter to SBA; Protest, exh. G, Dec. 8, 2011, CO Letter to SBA. On December 23, DSS modified NDC's contract to recognize the novation agreement, and transferred NDC's contract to Sevatec effective on January 1, 2012. In pertinent part, the novation agreement provided that Sevatec was "entitled to all rights, titles, and interests of [NDC] in and to the contract as if [Sevatec] were the original party to the contract." Protest, exh. A, at 4. The novation agreement did not discuss any transfer of NDC's assets or employees to Sevatec.

After the novation of NDC's contract, DSS asked Sevatec about the percentage of work that its teaming partners would perform. On January 4, Sevatec informed the agency that Sevatec was no longer proposing to use NDC. CO's Statement at 7; AR, Tab 12b, Sevatec Email to DSS, Jan. 4, 2012.

The vendors' phase one proposals were evaluated as follows:

| Rank      | Offeror        | Experience            | Past Performance       | Price               |
|-----------|----------------|-----------------------|------------------------|---------------------|
| 1         | [DELETED]      | [DELETED]             | [DELETED]              | [DELETED]           |
| 2         | [DELETED]      | [DELETED]             | [DELETED]              | [DELETED]           |
| 3         | [DELETED]      | [DELETED]             | [DELETED]              | [DELETED]           |
| 4         | [DELETED]      | [DELETED]             | [DELETED]              | [DELETED]           |
| 5         | Offeror A      | Marginal <sup>3</sup> | High Confidence        | \$62,515,167        |
| 6         | [DELETED]      | [DELETED]             | [DELETED]              | [DELETED]           |
| 7         | Offeror B      | Good                  | Moderate Confidence    | \$39,918,051        |
| 8         | Offeror C      | Good                  | Low Confidence         | \$34,724,242        |
| 9         | Offeror D      | Marginal              | High Confidence        | \$42,282,693        |
| 10        | Offeror E      | Marginal              | Moderate Confidence    | \$47,270,152        |
| 11        | Offeror F      | Marginal              | Moderate Confidence    | \$73,944,946        |
| 12        | Offeror G      | Marginal              | Low Confidence         | \$55,875,966        |
| 13        | Offeror H      | Very Good             | Low Confidence         | \$40,924,439        |
| <b>14</b> | <b>Sevatec</b> | <b>Marginal</b>       | <b>High Confidence</b> | <b>\$74,253,887</b> |
| 15        | Offeror I      | Unacceptable          | Neutral                | \$35,893,734        |
| 16        | Offeror J      | Unacceptable          | Neutral                | \$38,286,285        |

AR, Tab 17a, Phase One Source Selection Decision, March 26, 2012, at 4.

(...continued)

recognizes the transfer of the contract and related assets." Federal Acquisition Regulation (FAR) § 2.101.

<sup>3</sup> According to the best value determination document, the agency's evaluators mistakenly gave offeror A a "Good" rating under this evaluation factor. AR, Tab 17a, Phase One Source Selection Decision, March 26, 2012, at 4.

The adjectival evaluation ratings were supported by a narrative discussion that identified the respective strengths, weaknesses, significant weaknesses, and deficiencies found in each firm's proposal.<sup>4</sup> As relevant here, Sevatec's marginal rating under the experience factor reflected the evaluators' determination that Sevatec had several significant weaknesses, including a lack of experience with Department of Defense information technology support services and with full-time, on-site support in multiple locations. The evaluators also found that Sevatec's experience was with smaller dollar work and of low complexity as compared to the task order work. See AR, Tab 17d, Phase One Technical Evaluation Report, at 29; Tab 17e, Tradeoff Comparison.

The CO selected the proposals of five vendors ([DELETED]) to continue to phase two based upon their evaluated technical merit and price. AR, Tab 17a, Phase One Source Selection Decision, March 26, 2012, at 1. Sevatec's proposal was rejected, given its marginal experience rating and higher price.

After receiving a debriefing, Sevatec filed an agency-level protest, complaining that DSS did not credit Sevatec with NDC's experience under the novated contract. The agency denied the protest, and this protest to our Office followed.

## DISCUSSION

Although Sevatec raises a number of arguments challenging the agency's evaluation, the essence of Sevatec's complaint is that the DSS improperly failed to credit the protester with NDC's experience given that Sevatec assumed all rights and responsibilities for NDC's contract under the novation agreement.<sup>5</sup> Protest at 8. Sevatec also points out that it hired a "majority" of the incumbent NDC employees following the establishment of the novation agreement. Protester's Comments at 7. Sevatec contends that, if the agency had credited the firm with NDC's experience, its proposal would have been selected for further competition in phase two.

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<sup>4</sup> A significant weakness was defined as a flaw in the proposal that appreciably increases the risk of unsuccessful contract performance. AR, Tab 17c, Source Selection Plan, at 4.

<sup>5</sup> In its comments on the agency's report, the protester complained for the first time that DSS did not provide Sevatec with an opportunity to substitute another subcontractor for NDC, although the agency allowed Sevatec to remove NDC from its proposal. This concern was not raised in Sevatec's agency-level protest or in its protest to our Office, and is untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2) (2012)

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4.

Here, the record provides no basis to conclude that the evaluation of the protester's experience was unreasonable or not in accordance with the solicitation's experience factor. As noted above, the agency found a number of significant weaknesses in Sevatec's experience, including a lack of experience with Department of Defense information technology support services. See AR, Tab 17d, Phase One Technical Evaluation Report, at 29. Sevatec does not contend that it has such experience, but argues that under the terms of the novation agreement it entered into with DSS the agency was required to credit Sevatec with NDC's experience under the terms of that agreement. We disagree. Neither the express terms of the agreement, nor any other authority of which we are aware, provides for the legal fiction that Sevatec was entitled to claim as its own the experience of another unrelated entity.

To the extent Sevatec also claims that its having incumbent personnel from the NDC contract should have allowed Sevatec to claim NDC's experience, the RFP did not provide for consideration of personnel experience under this factor. Rather, the solicitation stated that the agency would evaluate the experience of the offeror and any significant subcontractors or joint venture partners.<sup>6</sup> See RFP amend. 6, at 1.

In short, Sevatec has not demonstrated that the agency's evaluation of its experience was unreasonable. Given its marginal experience rating and higher price, there is no basis to object to the agency's decision not to include Sevatec's proposal in phase two of the competition.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>6</sup> Given that the agency did not conduct discussions with the offerors, it is not clear from the record how Sevatec was allowed to remove NDC, a significant subcontractor, from its proposal. However, Sevatec was not prejudiced by the agency's actions, since Sevatec generally could not have been considered for award with NDC as a significant subcontractor where NDC was on the excluded parties list and proposed for debarment. See FAR § 9.405-2(a).