



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Veteran Technologists Corporation

File: B-413614.3; B-413614.5

Date: November 29, 2016

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GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the record shows that the agency evaluated the protesters' past performance and corporate experience reasonably and consistent with the solicitation's evaluation criteria.

DECISION

Veteran Technologists Corporation (VTC) of Baltimore, Maryland, protests the decision by the Department of Homeland Security (DHS) not to award a contract to the firm under request for proposals (RFP) No. HSHQDC-14-R-00009 for Program Management, Administrative, Operations (Clerical) and Technical Services (PACTS II). The protester challenges the agency's evaluation of VTC's corporate experience and past performance.

We deny the protest.

BACKGROUND

The RFP was issued on June 10, 2014, under Federal Acquisition Regulation (FAR) part 15 and set aside for service-disabled veteran-owned small business (SDVOSB) concerns. RFP §§ A, B.1, M.2. The solicitation provided for the award of multiple, indefinite-delivery, indefinite-quantity (IDIQ) contracts for 2 base years and 3 option years, under two broad functional categories (FC): FC1--program management and technical services, and FC2--administrative and operations services. RFP amend. 4, §§ C, Statement of Work (SOW); F.5, L.2. According to the RFP, the PACTS II procurement is designed to establish a portfolio of DHS-wide IDIQ

contracts (for non-information technology support services) that will enable DHS business and program units to accomplish their mission objectives. Id. § B.1.

The solicitation stated that awards would be made on the basis of a best-value tradeoff among five evaluation factors (listed in descending order of importance): corporate experience, program management, organizational staffing approach, past performance, and price.¹ Offerors could compete under one or both functional categories, but were to submit only one proposal with separate volumes corresponding to each evaluation factor. RFP amend. 4, §§ L.4, L.9.

With respect to corporate experience, offerors were to identify--for each functional category under which the offeror was competing--at least five, but no more than seven, recent and relevant projects.² Id. § L.13. For each project, offerors were to describe the services provided and their relevance to the PACTS II functional category, using a relevant experience form provided with the RFP. Id.; RFP amend. 7, § J, attach. J-6, Relevant Experience (Exp.) Form. With respect to past performance, offerors were to submit a customer past performance questionnaire (PPQ) for each project, using a PPQ form provided with the RFP.³ RFP amend. 4, §§ J, attach. J-7, PPQ; L.16. Offerors were also to provide a statement either confirming the distribution and number of PPQs, or confirming that the offeror has no past performance or relevant past performance. Id. § L.16(1). Corporate experience and past performance could be from the offeror itself or a proposed team member or subcontractor, but the RFP required that more than half of the projects submitted had to have been performed as an SDVOSB. See id. §§ L.13, L.16. The RFP's evaluation provisions are discussed in relevant part below.

¹ RFP amend. 4, §§ M.3-M.4. The RFP stated that the non-price factors, when combined, were significantly more important than the price factor. Id. § M.4.

² The RFP defined recent as projects performed within 3 years from the date of the RFP (June 10, 2014) and defined relevant as work similar in breadth, depth, and complexity to the SOW. RFP amend. 4, §§ L.13, M.4.1. The RFP stated that for purposes of the solicitation, breadth was the extent to which corporate experience corresponded to the array of SOW efforts; depth was the extent to which corporate experience fully addressed an individual type of SOW effort (e.g., program management and technical services); and complexity was the degree to which a corporate experience had tasks that were interrelated in multiple ways. Id.

³ To be clear, offerors themselves were to complete and submit the relevant experience forms (RFP form J-6) describing the relevance of each project, while an offeror's customer was to submit the PPQ (RFP form J-7) directly to DHS describing the quality of the offeror's performance of that project.

DHS received 256 proposals by the July 17, 2014, submission deadline, including one from VTC, which was evaluated as follows:⁴

	Corporate Experience	Program Management	Organizational Staffing Approach	Past Performance	Price
<i>FC1</i>	Acceptable with a significant weakness	Acceptable	Acceptable	Unsatisfactory	\$19,506,506
<i>FC2</i>	Marginal	Acceptable	Acceptable	Satisfactory	\$12,757,997

See AR, Tab 15, FC1 BV Rep. at 6, 12, 17, 19; FC2 BV Rep. at 6, 13-16.⁵ Evaluations, cost/technical tradeoffs, and source selection decisions were conducted separately at the functional category level. See generally *id.*; Tab 16, Source Selection Decision (SSD). A technical evaluation panel (TEP) evaluated proposals under the non-price factors and documented its assessment of strengths, weaknesses, and deficiencies, as well as its assignment of ratings, in detailed consensus evaluation reports prepared for each offeror. See AR, Tab 14.3, 14.5 VTC Evaluation (Eval.) Reps.

With respect to FC1, VTC's corporate experience rating reflected, among other things, the TEP's assessment of a significant weakness in VTC's proposal because one of the seven projects offered for consideration was not performed within 3 years of the issuance of the RFP. AR, Tab 14.3, VTC Corp. Exp. Eval., at 1, 5. VTC's past performance rating for FC1 reflected the TEP's assessment of a deficiency in VTC's proposal, because the agency only received four PPQs from VTC's customers and only two of those PPQs were for projects performed as an SDVOSB. AR, Tab 14.3, VTC Past Performance (Perf.) Eval., at 1-2. As stated above, the

⁴ 156 offerors competed under FC1; 100 offerors competed under FC2. See Agency Report (AR), Tab 15, FC1 Best Value (BV) Rep. at 12; FC2 BV Rep. at 13. Among the 256 PACTS II offerors, 86 (including VTC) competed under both FC1 and FC2. See id.

⁵ The RFP stated that under the past performance evaluation factor, proposals would be assigned an adjectival rating of exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. RFP amend. 4, § M.5. The RFP stated that under each of the remaining non-price evaluation factors, proposals would be rated as outstanding, good, acceptable, marginal, or unsatisfactory. Id. The RFP's rating scheme and the TEP's assignment of ratings are explained in relevant part below.

RFP required that more than half of the past performance information be from an SDVOSB concern.⁶

With respect to FC2, VTC's corporate experience rating reflected the TEP's assessment of a deficiency, because VTC only demonstrated relevant experience in some, but not all, SOW areas. See AR, Tab 14.5, VTC Corp. Exp. Eval, at 1. The TEP also assessed a number of weaknesses under the corporate experience factor, because five of VTC's seven projects failed to substantiate all the services claimed. Id.

The contracting officer performed cost/technical tradeoffs, prepared detailed best-value reports for each functional category, and made award recommendations to the source selection authority. See AR, Tab 15, FC1 BV Rep. at 21-45; FC2 BV Rep. at 17-31.⁷

On July 28, 2016, DHS awarded 12 contracts under FC1 that ranged in price from \$16,100,000 to \$33,900,000, and awarded 18 contracts under FC2 that ranged in price from \$11,900,000 to \$16,400,000. AR, Tab 15, FC1 BV Rep. at 14; FC2 BV Rep. at 14; see Tab 16, SSD. VTC was not selected for award under either functional category, and filed this protest following receipt of a written debriefing.⁸

DISCUSSION

VTC protests the evaluation of its FC1 proposal under the past performance and corporate experience factors. VTC also protests the evaluation of its FC2 proposal under the corporate experience factor. Although our decision does not specifically address each of the protester's arguments, we have considered all of its assertions and find none furnishes a basis for sustaining its protest.⁹

⁶ The TEP otherwise found, under the corporate experience factor, that five of VTC's seven projects (including the non-recent project) met the requirement that more than half of the offeror's projects be from an SDVOSB concern. AR, Tab 14.3, VTC Corp. Exp. Eval., at 1.

⁷ VTC was not represented by counsel who could obtain access to non-public information (such as the Best Value Report or Source Selection Decision) pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

⁸ In its debriefings, VTC was provided an unredacted copy of its consensus evaluation report under the non-price evaluation factors.

⁹ For example, VTC raises, for the first time in its comments on DHS' agency report, a number of challenges to the agency's price evaluations and cost-technical

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Corporate Experience (FC1)

VTC disputes the TEP's assessments of VTC's corporate experience under FC1, and argues that its assigned rating was inconsistent with the RFP's definition of an acceptable rating, which did not provide for an assessment of "acceptable with a significant weakness."¹⁰ Comments B-413614.3 at 1-2; Protest B-413614.3 at 4. Regardless, VTC asserts that, even if one of its seven projects was not recent, VTC's proposal did not merit an assessment of a significant weakness, and instead should have received an "acceptable" rating, because it otherwise met or exceeded the RFP's requirement that more than half of an offeror's experience be from an SDVOSB concern. Comments B-413614.3 at 5. VTC claims that it should have been awarded an FC1 contract because it satisfied the RFP's SDVOSB requirements and offered a better value to DHS than most of the awardees. Protest B-413614.3 at 6.

DHS contends that it evaluated VTC's FC1 proposal reasonably. Memorandum of Law (MOL) B-413614.3 at 18. DHS maintains that it properly assessed a significant weakness in VTC's corporate experience because the proposal did not meet the RFP's requirements. Id. at 15. Nevertheless, DHS argues that VTC was not prejudiced by its corporate experience rating, because the TEP evaluators assigned VTC a more favorable rating (i.e., higher than marginal) than the proposal warranted under that evaluation factor.¹¹ See id. at 15-16. Moreover, DHS asserts that VTC would not have received an award, because its proposal was also assessed a deficiency for not meeting the RFP's past performance requirements, as discussed below.¹² See id. at 16-17.

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tradeoff. See Comments B-413614.3 at 2, 10. These arguments--many of which VTC acknowledges are based on its debriefing--are untimely because they were filed more than 10 calendar days after VTC knew, or should have known, of the basis for protest, whichever is earlier. See id. at 3; 4 C.F.R. § 21.2(a)(2).

¹⁰ The RFP stated that a proposal with no significant weaknesses would be assigned an acceptable rating, and that a proposal with one or more significant weaknesses would be assigned a marginal rating. RFP amend. 4, § M.5.

¹¹ According to the evaluation record, a rating of "acceptable with a significant weakness" reflected a proposal that was otherwise acceptable, but had a significant weakness precluding it from being strictly rated as stated in the RFP. See AR, Tab 14, FC1 BV Rep., at 20.

¹² The record indicates that all FC1 and FC2 offerors recommended for award received not lower than a satisfactory rating under the past performance factor and not lower than an acceptable rating under the remaining non price factors. See AR, Tab 15, FC1 BV Rep. at 21-45; FC2 BV Rep. at 17-31; Tab 16, SSD, at 2.

Based on our review of the contemporaneous record, we find that DHS evaluated VTC's corporate experience reasonably and consistent with the RFP's evaluation criteria under FC1. Where a protester challenges an agency's evaluation of experience or past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. See MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. The evaluation of an offeror's experience and past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based evaluation ratings. MFM Lamey Group, LLC, *supra*.

We note, as an initial matter, that VTC's protest stems from the protester's mistaken belief that DHS' evaluation under FC1 reflected the agency's conclusion that VTC was not a qualified SDVOSB. According to VTC, "the nature of [its] protest focuses on the Corporate Experience references and [its PPQs'] ability to prove that the Offeror is a valid SDVOSB concern." Protest B-413614.3 at 2; see, e.g., Comments B-413614.3 at 6 (DHS unreasonable in suggesting VTC is not a qualified SDVOSB because agency did not receive PPQ). The protester's focus in this regard is misplaced, as our review of the record does not indicate that VTC's status as an SDVOSB was a concern to DHS in its evaluation. Rather, what is really at issue here is whether VTC's proposal demonstrated the level of experience required by the RFP. Moreover, VTC's disagreement with its corporate experience rating is similarly misplaced, since the essence of an agency's evaluation is reflected in the evaluation record itself, not adjectival ratings.¹³ See HK Consulting, Inc., B-408443, Sept. 18, 2013, 2013 CPD ¶ 224 at 3 n.4.

In our view, DHS' evaluation of VTC's corporate experience was unobjectionable. Significantly, VTC does not dispute that it submitted a project that was not recent, contrary to the RFP's express requirements. See Protest B-413614.3 at 4-6; Comments B-413614.3 at 4-5. In this respect, the RFP stated that DHS would evaluate the breadth, depth, and complexity of the offeror's recent corporate experience and its degree of relevance to the proposed functional category. See RFP amend. 4, § M.4.1. Consistent with this provision, the evaluation record shows that the TEP found that six of VTC's projects were recent and relevant; that they demonstrated VTC's ability to perform the requisite range of skills; and that they showed that VTC was competent, knowledgeable, and capable of meeting SOW requirements. See AR, Tab 14.3, VTC Corp. Exp. Eval., at 1. The RFP also stated

¹³ Our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11.

that DHS would evaluate whether more than half of an offeror's projects were performed by an SDVOSB concern. RFP amend. 4, § M.4.1. Accordingly, the TEP found that five of VTC's seven projects were performed by an SDVOSB concern, and rated VTC's corporate experience as acceptable with a significant weakness.¹⁴ AR, Tab 14.3, VTC Corp. Exp. Eval., at 1. While VTC disagrees with that rating, it has not shown that the evaluation was inconsistent with the RFP provisions above.

Past Performance (FC1)

We also find unobjectionable DHS' evaluation of VTC's past performance under FC1. Significantly, VTC, again, does not dispute that the agency received four PPQs on VTC's behalf and that only two of the PPQs were for efforts performed as a SDVOSB. As stated above, the RFP instructed offerors to submit a PPQ for each project and required that more than half of the PPQs be for work performed as an SDVOSB. See RFP amend. 4, §§ L.13, 16. In this respect, the RFP expressly warned offerors that they were responsible for ensuring that each customer receives, completes, and returns its PPQ. Id. § L.16(2). The RFP stated that DHS would evaluate, among other things, if more than half of the offeror's past performances was from an SDVOSB concern. Id. § M.4.4. The RFP also advised that the agency may evaluate publicly available reports and/or data from the Past Performance Information Retrieval System (PPIRS) if the information received is not adequate to make a determination concerning past performance. Id. With regard to VTC's evaluation, the record states that, for the missing PPQs, the TEP searched PPIRS, but that no contractor performance assessment reports (CPARS) were available for those projects.¹⁵ VTC does not dispute that CPARS were not available for those projects. Here, too, VTC has not shown that DHS's evaluation of VTC's past performance as unsatisfactory, was inconsistent with the RFP's evaluation criteria.

To the extent that VTC argues that it should have been assigned a neutral past performance rating for any PPQ that was not submitted by VTC's customers, we agree with DHS that such a rating was not appropriate here.¹⁶ Protest B-413614.3

¹⁴ The contracting officer points out that the TEP counted VTC's non-recent project towards the SDVOSB corporate experience requirement. Contracting Officer's Statement (COS) B-413614.3, at 12.

¹⁵ AR, Tab 14.3, VTC Past Perf. Eval., at 2. The record also states that the agency contacted (via email and/or phone) VTC's three references to request the remaining three PPQs, but that they were not received by the commencement of the evaluations. Id.

¹⁶ The FAR requires that, "[i]n the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance." FAR § 15.305(a)(2)(iv).

at 6; Comments B-413614.3 at 6-8; see MOL B-413614.3 at 17. First, the RFP, as stated above, required that offerors submit at least five, but no more than seven, PPQs. VTC's proposal did not meet this requirement. Second, as DHS points out, VTC's proposal did not claim that the offeror lacked relevant past performance, but certified that VTC was submitting seven PPQs. See MOL B-413614.3 at 17; AR, Tab 12.3, VTC Tech. Proposal, Vol. VI, Past Perf., at VI-1 (confirming distribution of seven PPQs). Finally, the record shows that, with the exception of the one project that was found not recent, the TEP found that VTC's six other projects were relevant to FC1.¹⁷ AR, Tab 14.3, VTC Corp. Exp. Eval., at 1-16.

Corporate Experience (FC2)

VTC also protests the evaluation of its corporate experience under FC2. Specifically, VTC disputes the agency's conclusion that VTC's project no. 7 was not relevant to the SOW. See Protest B-413614.5 at 2-3. VTC does not otherwise challenge the TEP's assessment of weaknesses in VTC's other projects.

This aspect of VTC's protest also lacks merit. As described above, the RFP stated that DHS would evaluate the breadth, depth, and complexity of the offeror's recent corporate experience and its degree of relevance to the proposed functional category. See RFP amend. 4, § M.4.1. With respect to FC2, the SOW requires the offeror to provide administrative and operations services, such as financial planning and billing and recordkeeping. SOW at 8.

According to VTC's proposal, project No. 7 involved all FC2 SOW areas, including administrative and operations services, as well as court reporting and stenotype services. See AR, Tab 12.5, VTC Prop., Relevant Exp. Form No. 7. However, the TEP found that VTC did not, in fact, demonstrate that the project involved administrative services, such as billing and recordkeeping. AR, Tab 13.5, VTC Corp. Exp. Eval., at 7. Moreover, the TEP found that the project did not involve court reporting and stenotype services, but involved media coverage services that were unrelated to the SOW. Id.

Significantly, VTC does not identify any aspect of the project that involves administrative and operations services, or any aspect of its proposal that describes services such as financial planning or billing and record keeping. To the extent that VTC disagrees with DHS's assessment that the services provided were not relevant to the required court reporting and stenotype services under the SOW, an agency

¹⁷ To the extent that VTC objects that the TEP reached inconsistent conclusions under the corporate experience and past performance evaluation factors, regarding the relevance of VTC's projects, that objection is untimely, because it was first raised in VTC's comments, even though the agency made VTC aware of the evaluation findings at the time of its debriefing. See supra nn.7, 9.

has broad discretion, when evaluating experience, to determine whether a particular contract is relevant to an evaluation of experience. See All Phase Envtl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 3. Accordingly, because VTC did not demonstrate that project no. 7 involved the requisite administrative services, we find DHS's evaluation unobjectionable.

In short, the evaluation of experience and past performance is, by its very nature, subjective, and VTC's disagreement with DHS's evaluation judgments does not demonstrate that those judgments are unreasonable. See Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7; Citywide Managing Servs. of Port Washington, Inc., supra, at 10-11.

The protest is denied.

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