



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

# Decision

**Matter of:** Sterling Medical Associates, Inc.

**File:** B-418384; B-418384.2

**Date:** March 26, 2020

---

Barbara A. Duncombe, Esq., Suzanne Sumner, Esq., Brandon Dobyns, Esq., and Erin Davis, Esq., Taft Stettinius & Hollister LLP, for the protester.  
Stuart B. Nibley, Esq., Amy Conant Hoang, Esq., Erica L. Bakies, Esq., and Sarah F. Burgart, Esq., K&L Gates LLP, for Valor Healthcare, Inc., the intervenor.  
Kathleen Ellis, Esq., Department of Veterans Affairs, for the agency.  
Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Protests alleging that agency misevaluated proposals and made an unreasonable source selection decision are denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

---

## DECISION

Sterling Medical Associates (Sterling), of Cincinnati, Ohio, protests the award of a contract to Valor Healthcare, Inc. (Valor), of Addison, Texas, pursuant to request for proposals (RFP) No. 36C24219R0013, issued by the Department of Veterans Affairs (VA) for the operation of an outpatient clinic in the agency's Veteran Integrated Service Network 2 (VISN 2) region in Jamestown, New York. Sterling challenges various aspects of the agency's source selection process, including the agency's evaluation under the technical and past performance factors.

We deny the protest.

## BACKGROUND

The VA issued the RFP on July 12, 2019, under the commercial item procedures of Federal Acquisition Regulation (FAR) part 12. Contracting Officer's Statement (COS) at 1. The RFP contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for the operation of a community based outpatient clinic (CBOC) in

Jamestown, New York, for a 1-year base period and nine 1-year option periods. Agency Report (AR), Tab 3, RFP at 1, 8-10, 163.

The RFP provided for award on a best-value tradeoff basis, considering the following evaluation factors, listed in descending order of importance: (1) technical capability, (2) past performance, (3) service-disabled veteran-owned small business (SDVOSB)/veteran-owned small business (VOSB) status, and (4) cost/price. Id. at 166-170. All non-cost/price factors, when combined, were stated to be significantly more important than cost/price. Id. at 166. Proposals would be evaluated under each factor for strengths, weaknesses, and deficiencies. Id.

The technical capability factor consisted of four subfactors: (1) quality, (2) management, experience, and staffing, (3) transition/start-up plan, and (4) geographic location. RFP at 167-168. The technical capability subfactors were of equal importance to one another. Id. at 166. The RFP did not specify an adjectival rating system for the technical factor. However, the source selection plan (SSP), which was not provided to offerors, stated that proposals would be evaluated under each subfactor, and that the source selection evaluation board (SSEB) would assign each subfactor, and the overall technical capability factor, a rating of either exceptional, good, satisfactory, marginal, or unsatisfactory. AR, Tab 4, SSP, at 7.

As relevant to this protest, a “good” rating under the technical capability factor was defined as “[p]roposal demonstrates good understanding of requirements and approach that exceeds performance or capability standards. Has one or more strengths that will benefit the [g]overnment.” Id. A “satisfactory” rating under the technical capability factor was defined as “[p]roposal demonstrates acceptable understanding of requirements and approach that meets performance or capability solution. Has no significant strengths.” Id.

With regard to past performance, the agency would evaluate each offeror’s recent and relevant past performance to ascertain the probability of successful accomplishment of the work required by the solicitation. RFP at 168-169. The RFP noted that in addition to the past performance information submitted by the offerors, the agency could also consider information from its own files, electronic databases, or any other source it deemed appropriate. Id. at 169. The RFP further specified that the agency would consider each offeror’s records for “delivery, quality, past or present malpractice judgments, and proposed major subcontractors or teaming partners.” Id. The RFP did not specify an adjectival rating system for the past performance factor, but the SSP stated that the source selection authority (SSA) would assign each offeror’s past performance a rating of high confidence, significant confidence, confidence, unknown confidence, little confidence, or no confidence. AR, Tab 4, SSP, at 8.

As relevant to this protest, a “high confidence” rating under the past performance factor was defined as “[t]he offeror’s past performance record provides virtually no doubt that the offeror will successfully perform the required effort. Virtually no [g]overnment

intervention is expected to be required . . . .” Id. A “confidence” rating under the past performance factor was defined as “[t]he offeror’s past performance record includes one to two positive, recent, and relevant past performance contracts and indicates the offeror should be able to successfully perform the required effort. Some [g]overnment intervention is expected to be required . . . .” Id.

The SDVOSB/VOSB status factor would be evaluated based on the level of proposed participation by SDVOSBs/VOSBs. See RFP at 170. As relevant here, an offeror would be rated satisfactory if it was a non-VOSB proposing to subcontract with a registered and verified SDVOSB or VOSB. Id. The RFP also provided that the agency would calculate a total evaluated cost/price using an estimated quantity multiplied by the proposed unit price for each contract line item over each 12-month period. Id.

On or before the August 12, 2019 closing date, the agency received timely proposals from three offerors, including Sterling and Valor. COS at 2. Following the evaluation of initial proposals, the agency conducted discussions and requested final proposal revisions. Id. The agency evaluated Sterling and Valor’s final proposals<sup>1</sup> as follows:

	<b>Sterling</b>	<b>Valor</b>
<b>Technical Capability</b>	Satisfactory	Good
<b>Quality</b>	Satisfactory	Good
<b>Management, Experience, and Staffing</b>	Good	Good
<b>Transition/Start Up Plan</b>	Satisfactory	Satisfactory
<b>Geographic Location</b>	Satisfactory	Satisfactory
<b>Past performance</b>	Confidence	High Confidence
<b>SDVOSB/VOSB Status</b>	Satisfactory	Satisfactory
<b>Price</b>	\$16,291,980 or \$17,875,620 <sup>2</sup>	\$18,224,820

<sup>1</sup> Valor did not timely submit a final proposal. COS at 2-3. Accordingly, the agency evaluated only Valor’s initial proposal submission. Id. at 3.

<sup>2</sup> This RFP required compliance with VA’s patient aligned care team (PACT) space module design guide. See RFP at 62, 65, 168. The PACT space module design guide includes revised physical design requirements compared to the current contract, which was awarded in July 2014. COS at 5. To comply with the revised design requirements, Sterling proposed two facility options: one proposal with significant renovations to Sterling’s existing clinic, and an alternate proposal to renovate a separate facility to move into. Id. The two different approaches resulted in Sterling proposing two different prices.

AR, Tab 6, Source Selection Decision Document (SSDD) at 11, 16-23.

In evaluating Valor's proposal as "good" under the technical capability factor, the agency evaluators identified two strengths under the quality subfactor and three strengths under the management, experience, and staffing subfactor. AR, Tab 6, SSDD at 13-14. One of the strengths under the quality subfactor was for having current Joint Commission Accreditation.<sup>3</sup> *Id.* at 13. One of the strengths assessed under the management, experience, and staffing subfactor was based on Valor providing an incentive [deleted]. *Id.* at 14. The SSEB noted that [deleted] would reduce extended periods of temporary coverage, which is not ideal for continuity of care. *Id.* In evaluating Sterling's proposal as "satisfactory" under the technical capability factor, the agency evaluators identified two strengths under the management, experience, and staffing subfactor. *Id.* at 11.

In assigning a "high confidence" past performance rating to Valor, the agency evaluated all three of Valor's submitted references as recent and relevant; considered the contracting officer and contract specialist's experience with Valor's past performance on another CBOC contract in the VISN 2 region; considered Valor's history of terminations and cure notices; and reviewed reports about Valor in the contractor performance assessment reporting system (CPARS). AR, Tab 10, Valor Past Performance Evaluation at 1-2; AR, Tab 6, SSDD at 18. In assigning a "confidence" past performance rating to Sterling, the agency evaluated all four of Sterling's submitted references as recent and relevant, considered the contracting officer's and contract specialist's experience with Sterling's past performance on an additional CBOC contract in the VISN 2 region; considered Sterling's history of terminations and cure notices; and reviewed Sterling's CPARS reports. AR, Tab 9, Sterling Past Performance Evaluation at 1-2; AR, Tab 6, SSDD at 16.

Based on the SSEB's evaluation, as well as the SSA's own analysis, the SSA concluded that Valor's proposal was the most advantageous and presented the best overall value under the terms of the RFP. AR, Tab 6, SSDD at 23-26. In comparing Valor and Sterling's proposals, the SSA noted Valor's evaluated technical superiority and the advantages of Valor's past performance over Sterling's. *Id.* Based on these considerations, the SSA concluded that Valor's proposal was worth the \$1,932,840 price premium over the course of 10 years and represented the best value to the government. *Id.* at 26.

The agency subsequently notified Sterling of the award to Valor. COS at 10. The agency then provided Sterling with a debriefing, and this protest followed. *Id.*

---

<sup>3</sup> The Joint Commission is an independent standards-setting and accrediting body that evaluates more than 22,000 health care organizations and programs in the United States. See <https://www.jointcommission.org/about-us/facts-about-the-joint-commission/history-of-the-joint-commission/> (last visited March 20, 2019).

## DISCUSSION

Sterling challenges various aspects of the agency's selection decision, including the evaluation of proposals under the technical and past performance factors, and maintains that the best-value decision was unreasonable. For the reasons that follow, we find no basis on which to sustain the protest.<sup>4</sup>

### Technical Evaluation

Sterling presents multiple allegations regarding the agency's technical evaluation of both Sterling and Valor's proposals. As discussed below, we reject all of Sterling's assertions.

First, Sterling challenges the agency's evaluation of the technical proposals under the quality subfactor. Comments & Supp. Protest at 14-16. Sterling argues that the agency treated offerors unequally when it assessed Valor's proposal a strength for demonstrating current Joint Commission accreditation while not also assessing Sterling's proposal a strength for providing a detailed description of Sterling's knowledge of applicable Joint Commission regulations and its ability to meet requirements. *Id.* at 16. Specifically, Sterling contends that the agency improperly applied the solicitation's evaluation criteria because compliance with the Joint Commission standards was only a performance requirement and not an explicit evaluation criterion. Protester's Supp. Comments at 6.

The agency responds that the solicitation required that the awardee comply with the Joint Commission standards, but did not require an offeror to hold a Joint Commission accreditation. Supp. Memorandum of Law (MOL) at 6; *see* RFP at 65. The agency further notes that the solicitation provided for the evaluation of whether an offeror was Joint Commission accredited. RFP at 167. If an offeror was not Joint Commission accredited, the agency was to evaluate a detailed description of their working knowledge of Joint Commission regulations and the offeror's ability to meet such requirements. *Id.* The agency argues that Joint Commission accreditation is not equal to an offeror providing such a detailed description in its proposal. Supp. MOL at 7.

With regard to the agency's judgment that Valor's proposal exceeded the solicitation requirements, the agency states that Joint Commission accreditation is the "gold standard" for understanding and complying with joint commission requirements. *Id.* The SSA agreed with the SSEB's assessment of a strength, stating:

This is viewed as a strength because [Joint Commission] accreditation isn't required (only compliance with [Joint Commission] requirements) and this is beneficial to the Government as it increases the likelihood of successful [Joint

---

<sup>4</sup> Sterling raises other collateral issues. While our decision does not address every issue, we have considered the arguments and find that none provides a basis to sustain the protest.

Commission] compliance, as well as increases the likelihood of meeting VA quality standards due to the robust quality improvement plans required to maintain this accreditation, therefore meeting the definition of a strength (“...an aspect of the proposal that increases the likelihood of successful contract performance. It represents a significant benefit to the Government.”). Sterling is not [Joint Commission] accredited, however, their proposal did show documentation that supports their familiarity and compliance with [Joint Commission] requirements and was therefore Satisfactory.

AR, Tab 6, SSDD at 15.

In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Rather, we will review the record to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. AECOM Mgmt. Servs., Inc., B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester’s disagreement with the agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. Vertex Aerospace, LLC, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

On this record, we find no basis to question the agency’s assessment of a strength with regard to Valor’s Joint Commission accreditation. As noted above, the record established that the agency identified specific benefits flowing to the government from an offeror being Joint Commission accredited, and the agency identified the evaluation subfactors under which assessment of this benefit was appropriate. While Sterling may disagree with the agency’s judgments, it has failed to establish that those judgments were unreasonable. Accordingly, this protest ground is denied.

Next, Sterling challenges the agency’s evaluation of the management, experience, and staffing subfactor. Comments & Supp. Protest at 16-19. Specifically, Sterling contends that it was unreasonable for the agency to assess a strength to Valor’s proposal for providing a financial incentive [deleted]. Id. at 17-18. Sterling argues that Valor’s proposal did not provide sufficient detail regarding the amount of the incentive or its effectiveness, but does not point to anything which requires such detail in the solicitation. Id. at 18. In response, the agency explains that it viewed the [deleted] as a significant benefit because it could minimize the impact of medical provider turnover, and notes that nothing in the solicitation required a specific assessment of the value of the financial incentive or its statistical effects on Valor’s [deleted]. Supp. MOL at 11-12.

Again, we find no basis here to question the reasonableness of the agency’s evaluation. The RFP required offerors to submit their average personnel turnover rate, describe the capability to recruit adequate staffing, and “[e]xplain how continuity of care will be maintained during periods of vacancy.” RFP at 167. The agency found that an incentive [deleted] could cut down on extended temporary medical provider coverage in the clinic, which it noted “isn’t ideal for continuity of care for patients.” AR, Tab 6, SSDD

at 15-16. While Sterling may disagree with the agency's judgment, it has failed to establish that those judgments were unreasonable or contrary to the stated evaluation criteria. Accordingly, this protest ground is also denied.

Sterling also challenges the agency's evaluation of the offerors' transition plans, arguing that, as the incumbent, its transition/start-up plan is "inherently less risky" than that of other offerors. Comments & Supp. Protest at 6. Sterling contends that it was unreasonable for the agency to assess the offerors with equal transition plan ratings when it was the only offeror that could provide staff who were already credentialed by the VA for the Jamestown CBOC. *Id.* In response, the agency argues that there is no requirement that an offeror be given additional credit for its status as an incumbent. MOL at 17. The agency also argues that its evaluation was reasonable as no offeror's transition plan was without risk. The agency points out that in order to meet the RFP's requirement to comply with the VA's PACT space module design requirements, Sterling would have to either move the Jamestown CBOC to a new site or undergo renovations on their current space while continuing to provide care. COS at 5; see also RFP at 65.

We have consistently stated that there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that an agency assign or reserve the highest rating for the incumbent offeror. Integral Consulting Servs., Inc., B-415292.2, B-415292.3, May 7, 2018, 2018 CPD ¶ 170 at 7. While the protester contends that the agency's arguments constitute post-hoc rationalizations not documented in the evaluation record, see Comments & Supp. Protest at 8, we note that an agency is not required to document every single aspect of its evaluation or explain why a proposal did not receive a strength for a particular feature. 22nd Century Techs., Inc., B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 5; InnovaSystems Int'l LLC, B-417215 et al., Apr. 3, 2019, 2019 CPD ¶ 159 at 10.

Here, the agency found that there was nothing in any of the proposals that warranted a higher rating under the transition/start-up plan subfactor. AR, Tab 6, SSDD at 16. We find the agency's post-protest explanations regarding the new requirements to the Jamestown CBOC to be consistent with the contemporaneous evaluation record. Accordingly, the protester's contention that its proposal's transition plan deserved a higher rating than the other offerors does not provide a basis to conclude that the agency's evaluation was unreasonable, and this protest ground is denied.

#### Past Performance

Sterling also challenges the agency's past performance evaluation, arguing that the agency unreasonably assessed a high confidence rating to Valor's proposal and a confidence rating to Sterling's proposal. Protest at 13-16; Comments & Supp. Protest at 10-13, 19-27. The agency responded to each of Sterling's multiple arguments, explaining why the agency's assessments of past performance were reasonable. MOL at 21-26; Supp. MOL at 17-36. We have considered, and reject, all of Sterling's assertions that the agency's evaluation of past performance was flawed.

As a representative example, Sterling contends that the agency unreasonably failed to assign Sterling a past performance rating of high confidence, arguing that its performance on the incumbent Jamestown CBOC contract should have warranted a higher rating.<sup>5</sup> Protest at 13-16; Comments & Supp. Protest at 10-13. Specifically, Sterling argues that the agency should ignore prior negative past performance from the current Jamestown CBOC contract because Sterling's "recent performance improvements" have resulted in no current problems at Jamestown and Sterling "had specifically responded to the [a]gency's request to remove personnel." Comments & Supp. Protest at 13.

The agency responds that Sterling's past performance evaluation was reasonable, referencing multiple discriminators reflected in the contemporaneous evaluation record, and argues that the protester's assertions amount to disagreement with its conclusions. MOL at 21-26; Supp. MOL at 17-36. Specifically, the agency argues that it assessed the overall past performance of the protester "based on the references it provided, including its work as the incumbent for the Jamestown CBOC requirement, as well as from other available sources." MOL at 21.

The record here shows that the contracting officer and the contract specialist assigned to this procurement<sup>6</sup> have "extensive experience with Sterling at the Jamestown" CBOC. AR, Tab 9, Sterling Past Performance Evaluation at 1; COS at 6. Considering this experience, the contract specialist noted that while the staffing at the Jamestown CBOC had been "stable" for the last 12-18 months, "there have been some issues with provider and staff turnover and extended vacancies leading to continuity of care concerns." AR, Tab 9, Sterling Past Performance Evaluation at 1. The agency also noted that "Government involvement has been required at their contract sites" and that while communication has improved, "there are times when multiple follow-ups are required to obtain information, particularly regarding staffing/vacancies." Id.

---

<sup>5</sup> Sterling originally protested that the agency failed to consider relevant past performance information it possessed regarding the current Jamestown CBOC contract. Protest at 16. After receiving the agency report, Sterling instead argues that the agency's evaluation of its past performance on the current Jamestown CBOC is unreasonable. Comments and Supp. Protest at 10-13.

<sup>6</sup> Notably, the contract specialist provided as the point of contact in Sterling's past performance reference for the current Jamestown CBOC contract is the same contract specialist assigned to this procurement. See AR, Tab 9, Sterling Past Performance Evaluation at 1-2.

The record further shows that the SSA considered the entire past performance evaluation, and concluded with regard to Sterling:

[T]here was a common theme that historically there have been some issues with communication/responsiveness and staffing/turnover and that implementation of monthly meetings and increased Government involvement was necessary to see improvement.

AR, Tab 6, SSDD at 19. Accordingly, the agency assigned Sterling a past performance rating of confidence, noting that some government intervention was expected to be necessary in achieving the required level of performance. Id.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. Metropolitan Interpreters & Translators, Inc., B-415080.7, B-415080.8, May 14, 2019, 2019 CPS ¶ 181 at 10; see also SIMMEC Training Sols., B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. In addition, the relative merits of an offeror's past performance information is generally within the broad discretion of the contracting agency. See Paragon Tech. Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7. Further, while an agency may properly consider past corrective actions, an agency is not required to ignore instances of negative past performance. Dehler Mfg. Co., Inc., B-416819, B-416189.2, Dec. 19, 2018, 2019 CPD ¶ 45 at 4 (citing The Bionetics Corp., B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7).

Here, we find no basis to question the agency's evaluation of Sterling's past performance. In accordance with the RFP, the agency considered Sterling's past performance information, and specifically its performance on the incumbent Jamestown CBOC contract, as it related to the probability of successful accomplishment of the work required by the solicitation. See RFP at 169. Based on the information it gathered, the agency concluded that Sterling's past performance indicated it could successfully perform the contract but some government intervention would likely be required. AR, Tab 6, SSDD at 19. The protester's argument that its negative past performance at the Jamestown CBOC should be ignored due to subsequent corrective actions is no more than disagreement with the agency's judgement. Accordingly, we deny this basis of protest.

#### Best-Value Tradeoff Decision

Finally, Sterling contends that the agency's best-value decision was defective because it was based on alleged evaluation errors. Protest at 17-18; Comments & Supp. Protest at 13-14; Protester's Supp. Comments at 14-15. Based on our review of the record, and as discussed above, we conclude that the agency's evaluation and source selection

decision were reasonable and in accordance with the terms of the solicitation. Here, the record shows that the SSA provided a well-reasoned basis for a tradeoff that identified discriminators between the proposals and justified paying Valor's higher price. See AR, Tab 6, SSDD at 23-26. As such, this allegation is also denied. Laboratory Corp. of America, B-414896.3, B-414896.4, July 13, 2018, 2018 CPD ¶ 264 at 12-13 (agency's best-value tradeoff decision is unobjectionable where all of the protester's evaluation challenges are denied).

The protest is denied.

Thomas H. Armstrong  
General Counsel