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## Decision

**Matter of:** Perspecta Enterprise Solutions, LLC

**File:** B-418870.6; B-418870.7

**Date:** October 30, 2020

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Kevin J. Maynard, Esq., Kendra Perkins Norwood, Esq., Cara L. Lasley, Esq., and George Petel, Esq., Wiley Rein LLP, for the protester.

Scott F. Lane, Esq., and Katherine S. Nucci, Esq., Thompson Coburn LLP, for Missouri Higher Education Loan Authority and Texas Guaranteed Student Loan Corporation; and James C. Fontana, Esq., Jeffry R. Cook, Esq., L. James D'Agostino, Esq., and David B. Dempsey, Esq., Dempsey Fontana, PLLC, for F.H. Cann & Associates, the intervenors. Megan R. Nathan, Esq., and John W. Kim, Esq., Department of Education, for the agency.

Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that agency failed to follow the solicitation's evaluation scheme in rating the protester's proposal unacceptable under the technical approach factor, despite the proposal receiving a strength under the most important subfactor, is denied where the proposal was evaluated as creating an unacceptable risk under two technical subfactors, and the solicitation provided that a rating of unacceptable risk under one subfactor could result in the technical proposal being unacceptable.
2. Protest that agency unreasonably rated proposal as presenting an unacceptable risk under the consumer protection laws subfactor is denied where the proposal addressed adherence to federal laws generally, but not to consumer protection laws specifically, despite a solicitation requirement to address consumer protection laws.
3. Protest that agency engaged in disparate treatment is denied where the evaluation of the protester's and awardee's proposals was consistent with the solicitation.
4. Protester is not an interested party to challenge the evaluation of awardees' past performance where protester is not eligible for award.

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## DECISION

Perspecta Enterprise Solutions, LLC, of Herndon, Virginia, protests the decision by the Department of Education (DOE) to reject, as unacceptable, the proposal it submitted in response to request for proposals (RFP) No. 91003119-R-0008, which was issued for services in support of the Office of Federal Student Aid's (FSA) Business Process Operations (BPO) requirement. The protester argues that the agency improperly evaluated its proposal under the technical and past performance factors, and engaged in disparate treatment.

We deny the protest.

## BACKGROUND

DOE issued the solicitation on January 15, 2019, for proposals to provide support for FSA, which is responsible for federal financial assistance programs for post-high school students. Agency Report (AR), Tab C, RFP, at 1, 3.<sup>1</sup> The RFP explains that the agency "is embarking on a transformation known as the Next Generation Financial Services Environment (NextGen)," which "seeks to implement a flexible, efficient and effective financial solution to leverage support for our customers, school partners, and taxpayers."<sup>2</sup> *Id.* at 3. The NextGen program is intended to improve customer experiences, operational flexibility, enhance cost and operational efficiency, and "generate better outcomes for customers and taxpayers." *Id.* The BPO contractors will be required to "support efficient and effective operations, across the entire life cycle of student financing (from application for financing, to origination and disbursement, to processing and servicing and pay-off or default)." *Id.* at 7.

The RFP anticipated the award of multiple indefinite-delivery, indefinite quantity (IDIQ) contracts with base periods of 3 years and one 3-year option period. RFP at 3. The contracts will provide for the issuance of fixed-price task orders. *Id.* The maximum ordering value for the contracts is \$1.7 billion and the minimum guaranteed value for each contract is \$1.5 million. *Id.*

The solicitation advised offerors that proposals would be evaluated against the following factors: (1) technical approach, (2) past performance, (3) small business participation, and (4) price. *Id.* at 75-78. The technical approach factor included the following five subfactors, listed in descending order of importance: (1) whether the offeror can provide the staff necessary to achieve the government's objectives; can develop, train, and retain that staff; and has the expertise to perform contact center and back office processing activities (staffing); (2) the qualifications and experience of key personnel

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<sup>1</sup> Citations to the RFP are to the final version issued in solicitation amendment 9.

<sup>2</sup> The RFP explains that customers are "student[s], parent[s], [and] borrower[s]." RFP at 5.

(key personnel); (3) the adequacy of quality control processes (quality control); (4) the provision of acceptable physical and information security (security); and (5) how the offeror will ensure and maintain compliance with applicable federal consumer protection laws and regulations (consumer protection laws). *Id.* at 75. The solicitation provided that the awards would be made on the basis of a best-value tradeoff considering the non-price factors. *Id.* at 74. The past performance factor was considered significantly more important in the trade-off assessment, followed by technical approach, then small business participation. *Id.*

Under the technical approach factor, the agency was to assess how well the offeror's solution demonstrated an approach that would achieve the government's objectives for business process operations. *Id.* at 75. The agency was to evaluate proposals on the level of inherent risk and any strengths in the technical approach. *Id.* In its evaluation, the agency assigned each technical approach subfactor a performance risk rating.<sup>3</sup> See AR, Tab J, Consensus Evaluation Perspecta. The agency then assigned an overall adjectival rating to the technical approach factor.<sup>4</sup> *Id.*; RFP at 75. The solicitation warned that a technical proposal that was deficient or represented an unacceptable level of risk in one or more subfactors may be found technically unacceptable. *Id.* Unacceptable proposals were ineligible for award. *Id.* at 74, 75.

With respect to past performance, offerors were required to identify no more than three recent efforts that were similar to the services described in the statement of work, as well as a 5-year historical performance history for key measurable outcomes. *Id.* at 71. In addition, offerors were required to address their record of adhering to consumer protection laws by detailing relevant legal and administrative proceedings that were ongoing, or that reached a final disposition in the past five years. *Id.* at 71-72.<sup>5</sup>

The agency received 12 proposals in response to the solicitation. AR, Tab A, Contracting Officer's Statement (COS) at 13. The agency evaluated Perspecta's proposal as follows:

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<sup>3</sup> The performance risk ratings were assigned based on evaluated strengths, weaknesses, significant weaknesses, and strengths. See RFP at 75. While the solicitation does not specify the possible risk ratings, the record indicates that these were low, acceptable, and unacceptable. See AR, Tab J, Consensus Evaluation Perspecta.

<sup>4</sup> Ratings for the technical approach factor were exceptional, very good, satisfactory, marginal, and unacceptable. RFP at 75.

<sup>5</sup> Past performance was assigned one of the following confidence ratings: substantial, satisfactory, neutral, limited, or low. RFP at 77.

<b>FACTOR</b>	<b>RATING</b>
<b>Technical Approach</b>	<b>Unacceptable</b>
<b>Staffing</b>	<b>Low risk</b>
<b>Key Personnel</b>	<b>Low risk</b>
<b>Quality Control</b>	<b>Low risk</b>
<b>Security</b>	<b>Unacceptable Risk</b>
<b>Consumer Protection Laws</b>	<b>Unacceptable Risk</b>
<b>Past Performance</b>	<b>Substantial Confidence</b>
<b>Small Business Subcontracting</b>	<b>Satisfactory</b>

AR, Tab J, Consensus Evaluation Perspecta at 11, 13, 14, 21, 23, 24; Tab K, Past Performance Evaluation Panel Consensus Report at 3. Perspecta’s proposal was assigned one strength and one weakness under the staffing subfactor; two significant weaknesses under the security subfactor; and one significant weakness under the consumer protection laws subfactor. AR, Tab J, Consensus Evaluation Perspecta at 8, 19, 21, and 22. Perspecta’s proposal was not assigned any other strengths, weaknesses, or significant weaknesses. See AR, Tab J, Consensus Evaluation Perspecta.

Following the evaluation of proposals, the agency conducted a best-value tradeoff and selected the following five offerors for award: (1) Edfinancial Services, LLC; (2) F.H. Cann & Associates, Inc., (3) MAXIMUS Federal Services, Inc., (4) Missouri Higher Education Loan Authority (MOHELA), and (5) Texas Guaranteed Student Loan Corporation (TGSLC). COS at 1. Since Perspecta’s proposal was evaluated as unacceptable, it was ineligible for award. Perspecta filed this protest following a debriefing.

## DISCUSSION

Perspecta argues that in rating its proposal unacceptable under the technical approach factor, the agency ignored the solicitation evaluation criteria and rating scheme. Perspecta also challenges the weakness and each significant weakness assigned to its proposal. In addition, Perspecta argues that the agency unreasonably evaluated the past performance of the awardees, and engaged in multiple instances of disparate treatment. We have reviewed all of Perspecta’s arguments and find that none provide a basis to sustain the protest. We discuss several issues below.

### Failure to Follow the Solicitation’s Evaluation Criteria and Rating Scheme

Perspecta argues that in assigning its proposal a rating of unacceptable under the technical approach factor, the agency ignored the solicitation’s evaluation criteria and rating scheme. Protest at 8-9; Comments & Supp. Protest at 3-6. Perspecta explains that staffing was the most important subfactor, and security, and consumer protection laws were the least important subfactors. Protest at 9; Comments & Supp. Protest at 3-4. Perspecta notes that it was assigned a strength under staffing based on its ability to [DELETED]. Perspecta reasons that given this assigned strength under the

most important subfactor, it was unreasonable for the agency to conclude that its proposal represented a risk of unacceptable performance based on the assignment of significant weaknesses under security and consumer protection laws, the two least important subfactors. Protest at 8-9; Comments & Supp. Protest at 5-6.

This basis of protest is without merit. First, while Perspecta's proposal was assigned a strength under staffing, it was also assigned a weakness under this most important subfactor. The technical evaluation team found that the overall performance risk under this subfactor was low, but concluded that the strength did not offset the weakness. AR, Tab J, Consensus Evaluation Perspecta at 8. More importantly, Perspecta's proposal was assigned two significant weaknesses under the security subfactor, and one significant weakness under the consumer protection laws subfactor, and evaluated as unacceptable risk under both subfactors. *Id.* at 19, 21, 22. While these might be the least important subfactors, the rating scheme that Perspecta complains the agency ignored specifically provides that a proposal may be evaluated as technically unacceptable where it is evaluated with an unacceptable risk under *one* subfactor; it did not specify that the subfactor had to be the most important subfactor. RFP at 75 ("Proposals whose Technical Approach is deficient or represents an unacceptable level of risk in one or more subfactors below may be found technically unacceptable."). Here, since Perspecta's proposal was evaluated with an unacceptable risk under two subfactors, the agency reasonably assigned Perspecta's proposal a rating of unacceptable under the technical approach factor, and therefore the proposal was ineligible for award. *Id.* Accordingly, we deny this protest allegation.

#### Technical Approach--Consumer Protection Laws Subfactor

The solicitation explains that one of the agency's four goals for the future of BPO operations is the measure of its success based in part on how well the agency improves customer outcomes and facilitates compliance with federal consumer protection standards and other legal requirements across the full life cycle of student financing. RFP at 5. The solicitation required offerors to submit a performance work statement which addressed, at a minimum, how their proposed solution would "ensure and maintain compliance with applicable Federal consumer protection laws and regulations (including, but not limited to, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, the Privacy Act of 1974, etc.)." *Id.* at 70. Under the consumer protection laws subfactor of the technical approach factor, the agency was to evaluate how the offeror "will ensure and maintain compliance with applicable Federal consumer protection laws and regulations." *Id.* at 75.

The solicitation also set forth general operating requirements, which included adherence to all federal rules, laws, regulations, agency guidelines or court mandates applicable to FSA operations (section C.3.2.i). Under these general operating requirements, the contractor must establish a process for monitoring new or pending changes to applicable laws and regulations, and proactively partner with FSA to determine the implication to technical design and/or operational procedures and policies. *Id.* at 9.

The agency reviewed Perspecta’s proposal under the consumer protection laws subfactor and concluded as follows:

The Offeror’s proposal does not describe a process by which they will ensure and maintain compliance with federal laws and regulations related to consumer protection. In section 3.1.9 [of the proposal], the Offeror describes adherence to and monitoring for changes in laws and regulations. The Offeror indicates that its team “is fully cognizant of the current Federal rules, laws, regulations, and agency guidelines applicable to the FSA operating environment.” The Offeror describes how it monitors and maintains compliance with various laws to achieve [authority to operate], maintain compliance with privacy laws, and federal security standards; and goes on to discuss how it will remain flexible in adapting to changes to laws and regulations . . . . The Offeror does not specifically mention a plan to ensure and maintain compliance with federal consumer protection laws and regulations. *Note:* The Offeror’s only mention of “federal consumer protections” standards is in section 3.1.7 on page 3-61 of its proposal where they detail the quality control responsibilities of their proposed Quality Manager. Having a key employee in place does not provide sufficient information for the team to determine if a plan exists to ensure compliance with federal consumer protection laws and regulations (*Significant Weakness*).

AR, Tab J, Consensus Evaluation Perspecta at 22. The agency further concluded that maintaining compliance with applicable consumer protection laws and regulations is a key requirement for the BPO environment and lack of performance represents a compliance risk for the government and impacts the customer’s legal rights and privacy. *Id.* at 23. As noted, the agency assigned Perspecta’s proposal a significant weakness under this subfactor because the proposal did not describe how it would ensure and maintain compliance with federal consumer protection laws and regulations. *Id.*

Perspecta protests that the agency unreasonably assigned its proposal a significant weakness and found its overall risk for the consumer protection laws subfactor unacceptable. According to Perspecta, it explained in detail how it would maintain compliance with the broad scope of federal, rules, laws, regulations, agency guidelines, and court mandates applicable to FSA operations. Specifically, explains Perspecta, it described a [DELETED] approach to maintaining compliance with all applicable rules and regulations, which involved [DELETED]. Protest at 27-29; Comments & Supp. Protest at 25. Perspecta explains that although its proposal “does not specifically identify each and every law (such as the various federal consumer protection laws) that its compliance plan addresses, its proposal in no way qualifies its plan to exclude federal consumer protection laws.” Comments & Supp. Protest at 25.

In reviewing a protest challenging an agency’s technical evaluation, our Office will not reevaluate proposals; rather, GAO will examine the record to determine whether the agency’s evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Alutiiq Tech. Servs. LLC*,

B-411464, B-411464.2, Aug. 4, 2015, 2015 CPD ¶ 268 at 4. A protester's disagreement with the agency's evaluation does not demonstrate that the evaluation was unreasonable. *Lanmark Tech., Inc.*, B-410214.3, Mar. 20, 2015, 2015 CPD ¶ 139 at 5. Further, the agency's evaluation is dependent on the information furnished; it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *Flairsoft, Ltd.*, B-415716.37, Oct. 21, 2019, 2020 CPD ¶ 117 at 4 n.10; *International Med. Corps.*, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8.

Here, the solicitation specifically instructed offerors to address how they would adhere to, and maintain compliance with, federal consumer protection laws. RFP at 70. The solicitation also advised that the agency would evaluate, as a separate subfactor, how the offeror would ensure and maintain compliance with these laws. *Id.* at 75. The agency explains that it highlighted consumer protection laws in response to a Congressional mandate which requires the agency to contract with servicers who are held accountable for, and have demonstrated a history of, compliance with applicable consumer protection laws.<sup>6</sup> AR, Tab R, Supp. COS at 11-12. The agency specifically notes that the Consolidated Appropriations Act of 2018 mandated the agency evaluate new NextGen servicers on their history of compliance with applicable consumer protection laws. *Id.* at 12 (*quoting* Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, div. H, title III, 132 Stat 348, 747 (2018)). In addition, the agency notes that two years later the Consolidated Appropriations Act of 2020 mandated the agency hold NextGen contractors accountable for their compliance with applicable consumer protection laws. *Id.* (*quoting* Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, div. A, title III, 133 Stat. 2592 (2020)).

Perspecta indicated in addressing the quality control subfactor that its quality control manager would be responsible for achieving compliance with all program and federal consumer protection standards. AR, Tab D, Perspecta Technical Proposal Clean at 3-61. Further, in addressing the general operating requirements of the solicitation (section C.3.2.i), Perspecta cited to this section of the solicitation concerning adhering to federal laws generally, and discussed its adherence to applicable federal laws in general. *Id.* at 3-62. Given that the solicitation specifically required offerors to address, and the agency to evaluate, the plan to adhere to and maintain compliance with federal consumer protection laws, the agency reasonably concluded that Perspecta's discussion of general federal laws was insufficient. The agency therefore reasonably

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<sup>6</sup> Perspecta asserts that the congressional mandate does not provide a reason why the information it provided in its proposal was insufficient to comply with the solicitation. Supp. Comments, Sept. 30, 2020, at 22. We agree; however, we do not view this as the agency's justification for the rating. Rather, it is the agency's explanation of why the issue is important and merited a separate subfactor.

assigned Perspecta's proposal a significant weakness and concluded that the performance risk under this subfactor was high.<sup>7</sup>

### Disparate Treatment

Perspecta argues that there are numerous instances in which the agency treated it disparately from one or more of the awardees. For example, Perspecta asserts that the agency engaged in disparate treatment as compared to awardee F.H. Cann with respect to the overall conclusion that its proposal was unacceptable under the technical approach factor. Comments & Supp. Protest at 6-7; Supp. Comments, Sept. 30, 2020, at 23-24. According to Perspecta, its proposal was rated unacceptable under the technical approach factor even though its proposal was assigned a strength under staffing, the most important subfactor. *Id.* at 7. Perspecta complains that in contrast, F.H. Cann's proposal was rated marginal under the technical approach factor even though under the staffing subfactor its proposal was assigned two weaknesses with no offsetting strengths. *Id.* at 6.

Perspecta has not demonstrated that the agency engaged in disparate treatment. First, while Perspecta's proposal was assigned a strength under the staffing subfactor, the proposal was also assigned a weakness. AR, Tab J, Consensus Evaluation Perspecta at 8. The agency concluded that the assigned strength did not offset the weakness. *Id.* Perspecta also ignores that its proposal was assigned two significant weaknesses under the security subfactor, and one significant weakness under the consumer protection laws subfactor. *Id.* at 19, 21, 22. The agency concluded that the proposal represented an unacceptable performance risk under each of these subfactors. *Id.* The solicitation stated the agency would assign an unacceptable technical rating to a proposal when it did not meet the requirements or the risk of unsuccessful performance was unacceptable; contained one or more deficiencies; contained one or more significant weaknesses that were not offset by strengths; or contained multiple weaknesses not offset by strengths. RFP at 75. Further, as noted above, if a proposal represented an unacceptable level of risk under one or more subfactors, it could be

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<sup>7</sup> As noted above, under the past performance factor offerors were required, among other things, to address their record of adhering to consumer protection laws and regulations by detailing relevant legal and administrative proceedings that were ongoing, or that reached a final disposition in the past five years. RFP at 72. Perspecta reported no past or ongoing litigation, and the agency concluded that based on Perspecta's past performance, there would likely be no violations. AR, Tab K, Past Performance Evaluation Panel Consensus Report at 28. Perspecta argues that in evaluating the consumer protection laws subfactor the agency ignored this information, and that the agency's conclusion under the technical approach factor was inconsistent with the evaluation under the past performance factor. Protest at 29; Comments & Supp. Protest at 26. The agency, however, was not required to use past performance information to evaluate Perspecta's technical approach. How an offeror performed in the past is not a substitute for addressing a solicitation requirement to provide a plan for future performance under the contract to be awarded.



found technically unacceptable. *Id.* The agency concluded that Perspecta's proposal was unacceptable.

In contrast, F.H. Cann's proposal was assigned two weaknesses and no strengths under the staffing subfactor, and the agency concluded that the performance risk under this subfactor was acceptable. AR, Tab L, Price Negotiation Memorandum at 7-8. F.H. Cann's proposal was not assigned any additional weaknesses under any of the other technical subfactors. *Id.* The solicitation advised that the agency would assign a marginal rating to a proposal when it met the requirements and the risk of unsuccessful performance was acceptable; the proposal contained no deficiencies; and the proposal contained weaknesses that were not offset by strengths. RFP at 75. The agency concluded that F.H. Cann's technical proposal was marginal. The evaluation of both proposals was consistent with the solicitation, and not disparate.

#### Other Issues

Perspecta also protests that the agency unreasonably evaluated the past performance of four of the awardees (Maximus, MOHELA, TGSLC, and F.H. Cann) as substantial confidence. According to Perspecta, if the agency had properly considered the history of consumer protection litigation these awardees were involved in, the agency would not have assigned them a substantial, or even satisfactory confidence rating under the past performance factor. In order for a protest to be considered by our Office, a protester must be an interested party, which means that it must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. §§ 21.0(a)(1), 21.1(a). A protester is generally an interested party to challenge a proposal evaluation where there is a reasonable possibility that the protester's proposal would be in line for selection if its protest were sustained. *Executive Protective Sec. Serv.*, B-299954.3, Oct. 22, 2007, 2007 CPD ¶ 190 at 3. n.3. Here, even if the awardees were rated limited confidence for past performance, they would be eligible for award. See RFP at 77 (offerors rated low confidence would be ineligible for award). Since Perspecta is not eligible for award, Perspecta is not an interested party to challenge the past performance evaluation of these awardees.

Thomas H. Armstrong  
General Counsel