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Decision

Matter of: Taylor Made Transportation Services, Inc.

File: B-423117.3

Date: May 28, 2025

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DIGEST

Protest challenging the agency's termination of protester's awarded contract is denied where, upon reevaluation, the agency reasonably found the protester's proposal to be technically unacceptable.

DECISION

Taylor Made Transportation Services, Inc., a small business of Baltimore, Maryland, protests the reevaluation of its proposal, its elimination from competition, and the termination of its award for the convenience of the government under request for proposals (RFP) No. 36C24524R0044, issued by the Department of Veterans Affairs (VA) for van shuttle transportation services. The protester argues that the agency unreasonably reevaluated its proposal as technically unacceptable, and thus, the agency's decision to terminate the protester's contract for convenience was improper.

We deny the protest.

BACKGROUND

The agency issued the solicitation on May 14, 2024, using the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, as a small business set-aside.¹

¹ The solicitation anticipated a tiered evaluation approach. The VA sought to award a contract to a service-disabled veteran-owned small business (SDVOSB). However, "[i]f no proposals were submitted by SDVOSB concerns, or if none of the proposals would
(continued...)"

Contracting Officer's Statement (COS) at 1; Agency Report (AR), Exh. 16, RFP at 152.² The VA sought shuttle transportation services for VA beneficiaries and employees within the VA Maryland healthcare system. RFP at 175. The agency anticipated award of a fixed-price contract for one base year and four option years. *Id.* at 79.

Award was to be made on a lowest-priced, technically acceptable (LPTA) basis, considering the following evaluation factors: technical, past performance, and price. *Id.* at 151. The technical factor was comprised of four subfactors: (1) large scale shuttle transportation experience; (2) company stability/longevity; (3) company safety record/program; and (4) personnel. *Id.*

The VA initially made award to Taylor Made on October 9, 2024, which resulted in a protest to our Office filed by RTW Management, an unsuccessful offeror. Memorandum of Law (MOL) at 3; COS at 1. RTW challenged the acceptability of Taylor Made's proposal. AR, Exh. 6, First RTW Protest. In response, the agency notified our Office of its intent to take corrective action by reevaluating Taylor Made's proposal. MOL at 4. Relevant here, the agency did not terminate the contract to Taylor Made but suspended performance pending completion of the reevaluation. As a result of the agency's proposed corrective action, we dismissed that protest as academic on November 20, 2024. *RTW Management*, B-423117.1, Nov. 20, 2024 (unpublished decision).

On November 27, the VA reevaluated Taylor Made's proposal and found it, again, to be technically acceptable. MOL at 4; AR, Exh. 2, Revised Source Selection Decision (SSD) at 3. That award decision resulted in a second protest by RTW. AR, Exh. 8, Second RTW Protest; MOL at 4. On January 24, 2025, the VA notified our Office that it intended to take corrective action in response to the second protest. MOL at 5. The VA explained that as a result of GAO's request for additional information following submission of the agency report, the contracting officer reevaluated Taylor Made's proposal and found that the proposal did not, in fact, meet the RFP's requirements and was, therefore, technically unacceptable. AR, Exh. 10, Contracting Officer's Reevaluation Determination at 1; MOL at 5. Based on this finding, the VA advised that it would take corrective action by terminating Taylor Made's contract and evaluating the proposal of the next lowest-priced offeror (RTW) to determine whether that proposal

result in award at a fair and reasonable price that offers best value to the Government, then the SDVOSB set-aside will be withdrawn and the agency will review quotes from the next tier." RFP at 151. The agency then sought to prioritize proposals submitted by veteran-owned small businesses (VOSBs). If no proposals were submitted by VOSBs, or if none of the proposals would result in award at a fair and reasonable price, then the agency would review proposals from small businesses. *Id.* Within the small business tier, preference was given to Historically Underutilized Business Zone (HUBZone) small business concerns and 8(a) participants. *Id.*

² References to the RFP are to the conformed version, provided at exhibit 16 of the agency report. Unless otherwise noted, citations to the record are to the pages in the Adobe PDF documents.

met the RFP's technical requirements. *RTW Management*, B-423117.2, Jan. 30, 2025 (unpublished decision) at 1. As a result, we dismissed the protest as academic. *Id.*

On February 13, the VA notified Taylor Made that its contract would be terminated because the firm's proposal had been deemed technically unacceptable upon reevaluation. AR, Exh. 11; Termination for Convenience. Taylor Made, subsequently, filed this protest with our Office on February 24.

DISCUSSION

Taylor Made argues that the VA improperly found the protester's proposal to be technically unacceptable, and thus, the VA's termination of Taylor Made's contract was improper. Protest at 4-7. The protester also argues that any subsequent award to RTW is unreasonable because RTW, itself, does not meet the solicitation requirements. *Id.* at 8. The agency responds that the contracting officer erred in initially finding Taylor Made's proposal technically acceptable, that the protester was improperly awarded the contract, and as such, termination of the protester's contract was warranted. MOL at 7. Although we do not specifically address every issue raised, we have considered all of the protester's arguments and conclude none furnishes a basis on which to sustain the protest.³

As an initial matter, our Office generally will not review the termination of contracts because such actions are matters of contract administration that fall outside of GAO's bid protest jurisdiction. 4 C.F.R. § 21.5(a); *Phenix Rsch. Prods.*, B-292184.2, Aug. 8, 2003, 2003 CPD ¶ 151 at 3. Our Office will, however, consider the termination of a contract where the agency's decision to terminate the contract flows from a defect the contracting agency perceived in the award process. *Optimum Servs., Inc.*, B-401051, Apr. 15, 2009, 2009 CPD ¶ 85 at 2. Here, there is no dispute between the parties that the agency's decision to terminate Taylor Made's award for convenience arose from an alleged defect in the VA's evaluation process. See MOL at 6-7; Protest at 1-2. In cases

³ For example, the protester argues that RTW's second protest was untimely, and "the VA's decision to terminate the Contract for convenience is based on an improperly considered protest and should be retracted for that reason alone." Protest at 8. The agency substantively responded to this allegation in the agency report. MOL at 8 n.2. The protester neither refuted the agency's response nor did it pursue this allegation in its comments to the agency report. See Comments. Where, as here, an agency provides a detailed response to a protester's assertions and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper. 4 C.F.R. § 21.3(i)(3); *C2C Innovative Sols., Inc.*, B-416289, B-416289.2, July 30, 2018, 2018 CPD ¶ 269 at 6. As such, we consider this allegation to be abandoned and do not discuss it further. *DigiFlight, Inc.*, B-419590, B-419590.2, May 24, 2021, 2021 CPD ¶ 206 at 4.

such as these, we will examine the award procedures that underlie the termination action for the limited purpose of determining whether the initial award was improper, and, if so, whether the corrective action taken is proper. *Phenix Rsch. Prods.*, *supra*. We will not object to an agency's proposed corrective action where the agency concludes that the award, because of perceived flaws in the procurement process, was not necessarily made on the basis most advantageous to the government, so long as the corrective action taken is appropriate to remedy the impropriety. *Fisher-Cal Indus., Inc.*, B-285150.2, July 6, 2000, 2000 CPD ¶ 115 at 3.

Prior Experience

Taylor Made primarily contends that the agency unreasonably found the protester's proposal to be technically unacceptable. Protest at 5-7. The VA responds, explaining that the protester's proposal was found to be technically unacceptable, in part, because Taylor Made's prior experience references were not completed within five years of solicitation issuance. AR, Exh. 10, Contracting Officer's Reevaluation Determination at 1. The protester argues that the solicitation did not require *all* prior experience references to be completed within five years of the issuance of the RFP. Protest at 6.

Relevant here, the RFP's first technical subfactor (large scale shuttle transportation experience) required the following:

The Offeror shall demonstrate proof of experience as the sole contractor for at least 8 separate and concurrent routes on a single contract. Included in these routes[,] specific criteria need to be submitted as proof of experience:

- Proof of operating at least one shuttle on a continuous basis along a designated route
- Proof of operating at least one shuttle on a 24 hour basis
- Proof of operating at least two concurrent shuttle routes having a minimum passenger capacity of 18 or greater.
- Proof of operating at least one shuttle with handicap or non-ambulatory access equipment

RFP at 152. Additionally, offerors were asked to provide the "[l]ocation and brief description of the work[,] including the building use (i.e. Medical Facility) and contracting method within the last five (5) years." *Id.*

Taylor Made submitted two prior experience references with its proposal, one performed for the Centers for Medicare and Medicaid Services (CMS), and one performed for the VA. AR, Exh. 7, Protester's Proposal at 20. Taylor made does not challenge the agency's conclusion that the CMS contract did not meet all route requirements listed in the RFP. MOL at 9 n. 3; *see generally* Protest. Instead, the gravamen of the protester's arguments focuses on challenging the agency's determination that the VA contract reference did not meet the requirements of the technical subfactor.

As noted above, in reevaluating the protester's proposal, the contracting officer determined that the protester had failed to meet the solicitation's prior experience requirements, as Taylor Made's "[t]echnical proposal did not provide the location and brief description of the work including the building use and contracting method within the last five (5) years . . . in its proposal to demonstrate its large-scale shuttle transportation experience." AR, Exh. 10, Contracting Officer's Reevaluation Determination at 1; see RFP at 152. We address, first, the protester's challenge to the requirement that the submitted prior experience be performed within the last five years.

Mandatory Language

In arguing that its proposal met the solicitation's prior experience requirements--and thus was not technically unacceptable--Taylor Made contends that the agency's interpretation of the solicitation is unreasonable. In this regard, the protester makes a multi-prong challenge. First, Taylor Made argues that the solicitation did not "mandate that all experience must be limited to the past 5 years" because the RFP did not use the "type of mandatory language [like] 'must' in limiting the types of experience that could be considered under Subfactor 1." Protest at 6. We find this contention to be without merit because the protester conveniently disregards the word "shall" in the subfactor's requirement. See RFP at 152 ("The Offeror *shall* demonstrate proof of experience as the sole contractor for at least 8 separate and concurrent routes . . .") (emphasis added). As our decisions have explained, the use of the term "shall" is mandatory, and not permissive in nature. *Arora Grp., Inc.*, B-288127, Sept. 14, 2001, 2001 CPD ¶ 154 at 6; *Aldevra*, B-406205, Mar. 14, 2012, 2012 CPD ¶ 112 at 5. As such, the solicitation expressly mandated that an offeror submit a prior experience reference that met the solicitation requirements, provide the location and brief description of work for that experience, and that the reference be completed within the last five years.

Reasonable Interpretation

Next, the protester argues that the only reasonable interpretation of the term "within the last five (5) years" is that *some*--rather than all--referenced projects needed to be completed within five years of the issuance of the solicitation. Protest at 6 ("The only reasonable interpretation is just that a bidder must provide *some* information to satisfy Section 1.1. A reasonable bidder would not understand this to be a blanket, 5-year cutoff of experience . . ."). Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Sikorsky Aircraft Corp.*, B-416027, B-416027.2, May 22, 2018, 2018 CPD ¶ 177 at 11. When a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *PAE Aviation & Tech. Servs., LLC*, B-418828.3, Mar. 17, 2021, 2021 CPD ¶ 153 at 9.

Here, we find the agency's interpretation of the solicitation reasonable, and the protester's interpretation not reasonable. The RFP stated: "Provide location and brief description of the work including the building use (i.e. Medical Facility) and contracting method within the last five (5) years." RFP at 152. The solicitation clearly advised offerors that they should provide the location and description of work for the experience references submitted. *Id.* at 152. The only reasonable reading of this language is that the agency intended offerors to submit those location and work descriptions for *each* reference submitted. Further, we find that the only reasonable reading of the phrase "within the last five (5) years," is that the phrase modifies what comes before it in the sentence. See *Kevcon, Inc.*, B-406024.3, June 18, 2012, 2012 CPD ¶ 221 at 6-7 (finding that term at end of sentence modified the whole sentence). As such, we find that the provision is most reasonably read as requiring an offeror to submit references, each performed within the last five years, that detailed the location of performance and a description of the work performed.

When read as a whole, it is clear from the requirements of this technical subfactor (large scale shuttle transportation services) that the agency wanted offerors to demonstrate prior experience that was both relevant and recent. With respect to relevance, the subfactor required offerors to demonstrate experience performing "as the sole contractor for at least 8 separate and concurrent routes on a single contract," that met the specified criteria (e.g., "operating at least one shuttle with handicap or non-ambulatory access equipment"). RFP at 152. For recency, the subfactor required relevant prior experience to have been performed "within the last five (5) years." *Id.* Under the protester's interpretation, offerors would be able to meet the subfactor's requirement by submitting one experience reference that was relevant--i.e., met the listed criteria such as "operating at least one shuttle on a 24 hour basis"--and another experience reference that met the recency requirement of being within five years. Even if we agreed with the protester's interpretation--which we do not--this interpretation would require giving no effect to the requirement that the demonstrated experience be "on a single contract." RFP at 152. Accordingly, we find the protester's interpretation to be unreasonable when the solicitation is read as a whole and giving effect to the plain language of the provision. *PAE Aviation & Tech. Servs., LLC, supra* at 9-10.

Well-Written Proposal

Finally, the protester argues that its proposal did, in fact, demonstrate that performance was completed within the 5-year timeframe. Taylor Made alleges that there had been modifications and extensions made to contracts it held with the VA for transportation services, and as result, performance had been extended beyond March of 2019. Protest at 5-6.

Here, the VA issued the solicitation on May 14, 2019. COS at 1. As such, any prior experience references submitted by offerors were required to be completed after May 14, 2019, to be considered completed "within the last five (5) years." The only information Taylor Made presented in its proposal, however, demonstrates the last possible date of completion of its VA shuttle transportation contract was March of 2019.

See AR, Exh. 7, Protester's Proposal at 20. Specifically, Taylor Made's proposal clearly states that "Contract End" for the VA contract was "03/2019."⁴ *Id.* Further, none of the contract numbers associated with performance of the VA contract that were explicitly identified in the proposal indicated that performance extended beyond March of 2019. *Id.* at 17; MOL at 11. While the protester also cites to multiple examples of contract extensions in its protest, the record demonstrates that such references were not included in Taylor Made's proposal, nor did those references pertain to the protester's shuttle transportation experience. MOL at 11 (noting, among others, that modification of contract cited in protest pertained to the provision of sedan services, rather than shuttle transportation services, and was not evaluated by contracting officer because reference was not included in protester's proposal).

In reviewing protests of alleged evaluations and source selections, our Office examines the record to determine whether the agency judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. *T-C Transcription, Inc.*, B-401470.2, Feb. 16, 2010, 2010 CPD ¶ 50 at 4. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. In this regard, an offeror must affirmatively demonstrate the merits of its proposal, which is at risk of rejection if the offeror fails to do so. *Id.*

On the record before us, we find nothing on the face of the protester's proposal informed the agency that the listed VA contracts were performed within five years of solicitation issuance. Agencies are not required to consider outside information when evaluating an offeror's technical approach. *Johnson Controls Sec. Sols.*, B-418489.3, B-418489.4, Sept. 15, 2020, 2020 CPD ¶ 316 at 7; *Assessment & Training Sols. Consulting Corp.*, B-421575.3, B-421575.4, July 16, 2024, 2024 CPD ¶ 177 at 14. Therefore, we find unobjectionable the agency's determination that the protester's proposal was technically unacceptable because Taylor Made failed to demonstrate that its prior experience references met the requirements of the technical subfactor. As such, the agency was reasonable in terminating the contract that was initially awarded to Taylor Made, because an unacceptable proposal cannot form the basis for award.⁵

⁴ Although Taylor Made submitted two prior experience references (CMS and VA) to meet the first technical subfactor requirements, the protester listed several contract numbers as part of its VA experience reference. AR, Exh. 7, Protester's Proposal at 17.

⁵ The protester also challenges the agency's finding that Taylor Made's proposal "did not provide proof of operating at least *two concurrent shuttle routes* having a minimum *passenger capacity of 18 or greater*." AR, Exh. 10, Contracting Officer's Reevaluation Determination at 1. We need not resolve this allegation because Taylor Made has suffered no competitive prejudice. Competitive prejudice is an essential element of every viable protest. *Computer Cite*, B-400830, Feb. 3, 2009, 2009 CPD ¶ 40 at 3. We will not sustain a protest where the record does not demonstrate that the protester would have had a reasonable chance of receiving award but for the agency's actions. *Panther Brands, LLC*, B-409073, Jan. 17, 2014, 2014 CPD ¶ 54 at 7-8. In light of the
(continued...)

Trailboss Enters., Inc., B-419209, Dec. 23, 2020, 2020 CPD ¶ 414 at 8-9; *Fisher-Cal Indus., Inc.*, *supra*.

RTW's Proposal

Taylor Made also challenges the agency's evaluation of RTW's technical proposal. Protest at 8. The agency explains, however, that award has yet to be made for the current requirement. MOL at 8 n.2 ("[T]he reevaluation contemplated in the corrective action is still ongoing."); COS at 2 ("The evaluators and I have not completed our evaluations of RTW Management's proposal to determine whether it meets all of the RFP's technical acceptability standards."). We view Taylor Made's assertions of improper evaluation of another offeror's proposal as premature, given that an award decision has not yet been made. See *Quotient, Inc.*, B-416473.4, B-416473.5, Mar. 12, 2019, 2019 CPD ¶ 106 at 5 (finding evaluation challenge to be premature when no award decision had been made); *Advisory Tech. Consultants*, B-416981.3, June 4, 2019, 2019 CPD ¶ 209 at 6 n.6. Consequently, we need not resolve this allegation at this juncture.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

reasonableness of the agency's evaluation that found Taylor Made's proposal to be technically unacceptable--and therefore ineligible for award--we conclude that the asserted evaluation error regarding shuttle passenger capacity presents no reasonable possibility of prejudice, because the proposal remains ineligible for award. *Geotech Env't. Servs., Inc.*, B-415035, Nov. 8, 2017, 2017 CPD ¶ 347 at 5.