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# Decision

**Matter of:** New Dominion Construction LLC

**File:** B-424227

**Date:** May 4, 2026

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## DIGEST

1. Protest alleging that a solicitation contained a latent ambiguity defining relevant corporate experience is denied where the protester's interpretation of the solicitation language is not reasonable when the solicitation is read as a whole.
  2. Protest alleging that the agency conducted misleading discussions is denied where record shows that the agency's discussion questions led the protester into the area of its proposal that required revision.
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## DECISION

New Dominion Construction, LLC (NDC), a small business of Dumfries, Virginia, protests its exclusion from the competitive range under request for proposals (RFP) No. N4008024R2396, issued by the Department of the Navy, Naval Facilities Engineering Systems Command (NAVFAC) for construction projects and services for heating, ventilation, and air conditioning (HVAC) systems at military installations. The protester alleges the agency's evaluation and decision to exclude it from the competition for failing to meet the solicitation's requirements is improper.

We deny the protest.

## BACKGROUND

The Navy issued the solicitation as a set-aside for 8(a) firms on May 23, 2024, pursuant to Federal Acquisition Regulation (FAR) part 15.<sup>1</sup> The RFP contemplates the award of firm, fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contracts for mechanical construction-type projects and related services for HVAC equipment, systems, and infrastructure at military installations. Agency Report (AR), Tab 2, RFP at 1, 4-5.<sup>2</sup> The agency intends to award approximately five IDIQ contracts with a 2-year base period and two 3-year option periods. *Id.* at 5.

The solicitation provides for award to be made on a best-value tradeoff basis, considering price and five non-price evaluation factors: (1) technical approach; (2) corporate experience; (3) management approach; (4) safety; and (5) past performance. *Id.* at 6. The solicitation states that the corporate experience, management approach, and safety factors are equal in importance, and when combined, equal in importance to the past performance factor. *Id.* All five non-price factors, when combined, are “approximately equal” to price. *Id.*

Under the RFP, the agency would evaluate offerors’ responses to the technical approach factor as either acceptable or unacceptable. *Id.* For the corporate experience, management approach, and safety factors, the Navy assigned a corresponding adjectival rating of “outstanding,” “good,” “acceptable,” “marginal,” or “unacceptable.” AR, Tab 3, Source Selection Plan at 20. An unacceptable rating under any of the non-price factors would “result in an overall rating of ‘unacceptable’ for the [non-price] factors, unless corrected through discussions.” RFP at 6. For the past performance factor, proposals were evaluated and assigned a performance confidence assessment adjectival rating of “substantial confidence,” “satisfactory confidence,” “neutral confidence,” “limited confidence” or “no confidence.” See AR, Tab 16, Source Selection Advisory Council Report at 5.

The Navy intended to evaluate proposals and award contracts without discussions, but reserved the right to conduct discussions should the agency find it necessary. RFP at 6. The RFP further provided that, in the event of discussions, the contracting officer may choose to limit the number of proposals “to the greatest number that will permit an efficient competition among the most highly rated proposals.” *Id.*

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<sup>1</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for the performance through subcontracts with socially and economically disadvantaged small business concerns. FAR 19.800. Firms participating in this program are commonly referred to as “8(a)” contractors.

<sup>2</sup> Citations to the record refer to the documents’ internal Adobe PDF pagination. The agency issued several amendments to the solicitation; reference to the RFP is to the conformed version at Tab 2 of the agency report.

The agency received proposals from 12 offerors, including NDC, by the August 5 deadline. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5; AR, Tab 5, Initial Source Selection Evaluation Board (SSEB) Report at 2. After evaluating initial proposals, the Navy determined it was necessary to conduct discussions with all 12 offerors. AR, Tab 5, Initial SSEB Report at 2. On January 14, 2025, the Navy sent NDC an evaluation notice (EN) identifying weaknesses and deficiencies assessed in the firm's proposal, specifically under the corporate experience and management approach factors. AR, Tab 8, NDC EN One at 1, 3-4. After receiving NDC's response to the first EN, the agency followed with a second EN on June 25, identifying continued concerns under the corporate experience factor. AR, Tab 13, NDC EN Two at 1, 3.

On July 10, NDC submitted proposal revisions responding to the second EN. AR, Tab 14, NDC Discussions Resp. at 3. The Navy evaluated NDC's revised proposal as unacceptable under the corporate experience factor. AR, Tab 15, Final SSEB Report at 3. Specifically, the evaluators found that NDC's proposal did not demonstrate relevant construction experience with at least one project with a final construction cost of at least \$10 million. *Id.* at 9. As a result of the unacceptable rating under the corporate experience factor, NDC's proposal was found to be unacceptable overall under the non-price factors. COS/MOL at 6; AR, Tab 15, Final SSEB Report at 3.

On January 13, 2026, the Navy informed NDC that its proposal was excluded from the competitive range and further consideration because the proposal was not among the most highly-rated proposals received. AR, Tab 18, Notice of Exclusion at 1. NDC requested and received a pre-award debriefing on January 21. AR, Tab 19, Debriefing at 1. This protest followed on January 26.

## DISCUSSION

The protester challenges the agency's evaluation of NDC under the corporate experience factor and the resulting exclusion of the firm from the competitive range and further consideration for award. NDC's challenge to agency's evaluation of the firm's corporate experience is two-fold. First, NDC argues the corporate experience evaluation was improper because, according to the protester, the Navy unreasonably interpreted the terms of the solicitation with regards to the consideration of a subcontractor's experience. Protest at 15-18. Second, the protester alleges the Navy failed to conduct meaningful discussions with NDC regarding the agency's concerns with the protester's corporate experience. *Id.* at 18-23. We address these arguments in turn. While our decision does not specifically address every iteration of every argument, we have reviewed all the allegations and conclude none provides a basis to sustain the protest.

Under the corporate experience evaluation factor, firms were required to demonstrate experience in relevant HVAC projects in both construction and design. RFP at 10-12. The solicitation defines a relevant construction project as being similar in "size, scope, and complexity to the RFP," providing a \$2 million minimum threshold for size. *Id.* at 10.

With respect to size, offerors were required to provide at least one project reference with “a final construction cost of at least \$10,000,000 or greater.” *Id.* at 10, 103. The solicitation allowed for submission of “a maximum of five (5) relevant construction projects for the Offeror that best demonstrates your experience.” *Id.* at 10.

In addition, the RFP provided the following instructions for submitting construction project references:

If the Offeror is a Joint Venture (JV), relevant project experience should be submitted for projects completed by the Joint Venture entity. If the Joint Venture does not have shared experience, projects may be submitted for the Joint Venture members. If a project was performed by a JV, and not all partners from that JV are on the JV proposed for this contract, the offeror shall clearly demonstrate what portion of the work was performed by the JV member offering on this contract and shall not include work performed by the JV as a whole. . . . If an Offeror is utilizing experience information of affiliates/subsidiaries/parent/LLC/LTD member companies (name is not exactly as stated on the SF1442),<sup>[3]</sup> the proposal shall clearly demonstrate that the affiliate/subsidiary/parent firm will have meaningful involvement in the performance of the contract.

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Note: The Government will not consider any project submitted for [corporate experience] if it was performed by a firm other than the Offeror and there is no supporting partnership agreement, teaming agreement, or letter of commitment demonstrating the necessary level of meaningful involvement described in [technical approach].

The Offeror may not utilize experience of a subcontractor to demonstrate construction experience other than as prescribed in 13 CFR 125.11.<sup>[4]</sup> The Prime Offeror may submit experience where the prime offeror served as part of a joint venture or served as a first-tier subcontractor under [corporate experience].

*Id.* at 11.

In its proposal, NDC explained the firm would “not be entering into a joint venture agreement,” but had “entered into a teaming agreement with Southland Industries,” to

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<sup>3</sup> SF1442 refers to Standard Form 1442, the Solicitation, Offer, and Award Document included in the solicitation that identifies the name and address of the Offeror.

<sup>4</sup> The referenced regulation pertains to the evaluation of past performance of certain small business concerns that have experience as members of joint ventures or have been first-tier subcontractors. 13 C.F.R. § 125.11.

which Southland would be a subcontractor and serve as the primary architect and engineer and designer of record (DOR). AR, Tab 4, NDC Initial Proposal at 6-7. In the firm's initial proposal, NDC submitted five projects for construction experience, identifying two as meeting the requirement for a final construction cost of \$10 million or greater: "Sabey Data Center, Building C" and "Project Cast Iron," both performed by Southland. *Id.* at 26.

Following discussions, NDC revised its proposal, but continued to identify two Southland projects to meet the size requirement: Sabey Data Center and Fort Riley Energy Savings Performance Contract. AR, Tab 14, NDC Discussions Resp. at 3. The Navy acknowledged that the Southland projects exceeded the \$10 million minimum, but found the projects were "[n]ot [r]elevant because the DOR is claiming experience under construction, the DOR and the prime are not a JV entity," noting that, "[p]er the RFP, the Offeror may not utilize experience of a subcontractor to demonstrate construction experience other than as prescribed in 13 CFR 125.11." AR, Tab 15, Final SSEB Report at 9. As a result, the evaluators determined that NDC's proposal did "not demonstrate relevant construction experience with at least one project with a final construction cost of at least \$10 [million]." *Id.*

#### Subcontractor Experience

The protester challenges the agency's conclusion that its proposal did not demonstrate relevant construction experience with at least one project with a final construction cost of at least \$10 million. Specifically, NDC maintains that the solicitation allowed an offeror to rely on its subcontractor's experience to meet the requirement. Comments at 3-7. NDC contends that, at worst, the solicitation contains a latent ambiguity regarding reliance on a subcontractor's experience. Protest at 15; Comments at 6.

The agency responds that the RFP is clear that an offeror like NDC, which is not a JV, must meet all the construction experience requirements with its own projects, rather than any work of its subcontractor. COS/MOL at 8-10. According to the Navy, the RFP cautioned offerors that they "may not utilize the experience of a subcontractor to demonstrate construction experience other than as prescribed in 13 CFR 125.11." *Id.* at 8 (quoting RFP at 11). The agency explains that this warning was reinforced later in the RFP's questions and answers (Q&A). Specifically, the Navy cites to Q&A No. 23:

Q: Please confirm that the government will consider a project submitted for [corporate experience] if it was performed by the offeror's subcontractor as long as a teaming agreement is also submitted which demonstrates the necessary level of meaningful involvement described in [technical approach.]

A: The Offeror **may not** utilize experience of a subcontractor to demonstrate construction experience other than as prescribed in 13 CFR

125.11. The Prime Offeror **may** submit experience where the prime offeror served as part of a joint venture or served as a first-tier subcontractor under [] Construction Experience.

RFP at 99, 101 (providing essentially same response to Q&A No. 26).

Where 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. *Alluviam LLC*, B-297280, Dec. 15, 2005, at 2. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Colt Def., LLC*, B-406696, July 24, 2012, at 8. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. *WingGate Travel, Inc.*, B-412921, July 1, 2016, at 7. If the solicitation language is unambiguous, our inquiry ceases. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, at 5.

Here, in the context of construction experience, the RFP repeatedly indicated that, for an offeror like NDC (not a JV), only the firm's corporate experience was acceptable. RFP at 10, 99, 101. The RFP also reinforced that the experience should be from the offeror itself, by defining what was acceptable in the context of JV offerors. *Id.* at 11 ("If the Offeror is a Joint Venture (JV), relevant project experience should be . . ."). Further, the solicitation also provided specific parameters under which the experience of affiliate, subsidiary, or parent companies--none of which applied to NDC--may be used in meeting the RFP requirements. *Id.* ("If an Offeror is utilizing experience information of affiliates/subsidiaries/parent/LLC/LTD member companies . . ."). Finally, without reservation, the solicitation explicitly states: "The Offeror may not utilize experience of a subcontractor" for its proposal. *Id.*

In short, the solicitation clearly placed firms on notice that offerors should submit their own experience to satisfy the corporate experience requirements, and firms "may not utilize the experience of a subcontractor to demonstrate construction experience other than as prescribed in 13 C.F.R. 125.11." RFP at 11. To the extent section 125.11 provided for consideration of subcontractor experience, this specific regulation pertains only to work the *offeror* performed as a first-tier subcontractor. See 13 C.F.R. § 125.11 (stating that "agencies are required to consider the past performance of certain small business offerors that . . . have been first-tier subcontractors"). Thus, NDC's submitted experience of its proposed subcontractor does not fall under the plain terms of section 125.11 because it does not relate to NDC's own experience as a first-tier subcontractor.

In this context, NDC's interpretation that using the experience of its proposed subcontractor was permissible under the solicitation's corporate experience factor cannot withstand scrutiny given the RFP's explicit language and the agency's responses to the Q&As, reiterating the same. Because we do not find NDC's interpretation to be reasonable, we find no ambiguity here; that is, the relevant

solicitation terms are not susceptible to two or more reasonable interpretations. *Desbuild Inc., supra*. Consequently, we find no basis to question the agency's conclusion that NDC did not meet all of the solicitation's corporate experience requirements.

## Discussions

In the alternative, the protester alleges that the agency's discussions with NDC were misleading or, at best, not meaningful regarding the use of the subcontractor's experience under the corporate experience factor. Comments at 7. According to NDC, the discussions failed to disclose the Navy's true concern with NDC's construction experience projects: that they were performed by a subcontractor rather than NDC itself. *Id.* at 7-12. The agency asserts the discussions with NDC were meaningful and that the protester's failure "to correct its deficiency does not per se make the Agency's evaluation unreasonable or its discussion questions misleading." COS/MOL at 11.

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, the discussions must be sufficiently detailed and identify the deficiencies and significant weaknesses found in an offeror's proposal that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. FAR 15.306(d)(3); *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, at 6. Further, an agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns, or misinform the offeror concerning a problem with its proposal or the requirements. *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, at 5-6.

That said, even in a negotiated procurement conducted pursuant to FAR part 15, to satisfy the requirement for meaningful discussions, the agency need only lead an offeror into the areas of its proposal requiring amplification or revision. *MAXIMUS Fed. Servs., Inc.*, B-419487.2, B-419487.3, Aug. 6, 2021, at 15. An agency need not "spoon-feed" an offeror as to each and every item that could be revised to improve an offeror's proposal. *L-3 Sys. Co.*, B-404671.2, B-404671.4, Apr. 8, 2011, at 15. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and we generally limit our review of the agency's judgments to a determination of whether they are reasonable. *Creative Info. Tech., Inc.*, B-293073.10, Mar. 16, 2005, at 7.

Here, in the first round of discussions, the Navy notified NDC of three deficiencies and one uncertainty it assessed under the corporate experience factor. AR, Tab 8, NDC EN One at 3. For the uncertainty, the agency asked for clarifying information regarding the

role of NDC's subcontractor, Southland, in three of the five project references.<sup>5</sup> *Id.* With respect to one of the deficiencies, the EN identified that NDC's proposal "did not provide a relevant construction project with a final construction cost of at least \$10 [million]." *Id.* In the second round of discussions, the agency assessed two deficiencies and one uncertainly to NDC's revised proposal. AR, Tab 13, NDC EN Two at 3. For the uncertainty, the Navy requested "additional clarifying information for the role of Southland in Construction Projects 3, 4 and 5 in order for these to be considered for Construction experience." *Id.* Relevant here, the same assessed deficiency from the first EN was repeated in the second EN--*i.e.*, the proposal did not "provide a relevant construction project with a final construction cost of at least \$10 [million]." *Id.*

According to NDC, these ENs, taken together, were misleading or not meaningful. The protester contends that these discussions did not communicate the agency's true concern--that NDC was prohibited from relying on its subcontractor's experience to satisfy the solicitation's requirements. Comments at 7-12. We disagree.

While the evaluation notices were not a model of clarity, the record shows that the Navy identified the specific aspect of NDC's proposal that was a deficiency through two rounds of discussions--that is, despite providing Southland projects that exceeded \$10 million in construction costs, NDC did not provide a project that exceeded \$10 million in construction costs that qualified for consideration under the solicitation. The Navy accurately conveyed to the protester the assessed deficiency, and left it to NDC's discretion on how to respond. As noted above, an agency is only required to lead an offeror into the areas of its proposal requiring amplification or revision. *MAXIMUS Fed. Servs., Inc., supra.* Accordingly, the protest is without merit.

In any event, we find NDC has failed to demonstrate that it was prejudiced by any alleged error in the conduct of discussions. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement were found. *Tyonek Eng'g & Agile Mfg., LLC, B-419775 et al.*, Aug. 2, 2021, at 12 n.12. Although we resolve doubts about prejudice in the favor of the protester, in the case of discussions, the focus of our inquiry is on whether the protester, had it been afforded meaningful discussions, could have revised its proposal

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<sup>5</sup> Specifically, the EN stated:

The narrative provided indicates that the services performed [by Southland] were in AE [Architect and Engineer] capacity. The Government also notes the same three projects were submitted under Design Experience. The Government is uncertain whether Southland performed as the DOR on these projects or as the Prime Construction Firm and In-House designer. The projects were considered Not Relevant for purposes of Construction experience evaluation.

AR, Tab 8, NDC EN One at 3.

in a manner that would result in a substantial chance of the protester receiving the award. See *Gemini Tech Servs., LLC*, B-422620, Sept. 5, 2024, at 8.

In this context, the protester only musters a general representation that the alleged misleading discussions “deprived NDC of the ability to address--or to contest--the Agency’s actual view of NDC’s Proposal” and the agency’s interpretation that the solicitation did not permit subcontractor experience to satisfy the corporate experience requirements. Resp. to GAO Req. at 2. Such a generalized contention that the protester might have revised its proposal during further discussions is, without more, insufficient to show competitive prejudice. See, e.g., *Deloitte Consulting, LLP*, B-422094, B-422094.2, Jan. 18, 2024, at 10 (finding agency’s conduct of unequal discussions did not provide basis to sustain protest where protester’s “unspecific statement” that it would have revised its quotation was insufficient to establish a presumption of prejudice); *Unispec Enters., Inc.*, B-407937, B-407937.2, Apr. 16, 2013, at 12 (denying protest alleging unequal discussions where protester failed to explain how it would have changed its proposal had agency conducted discussions in areas of concern). The protester does not, for example, identify any projects that it would or could have substituted for any of the four Southland projects it offered under corporate experience. See AR, Tab 4, NDC Initial Proposal at 26, 41 (listing projects); AR, Tab 14, NDC Discussions Resp. at 5-16. Accordingly, we have no basis to sustain this aspect of NDC’s protest.

This protest is denied.

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General Counsel