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## Decision

**Matter of:** Access Interpreting, Inc.

**File:** B-413990

**Date:** January 17, 2017

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Daniel S. Koch, Esq., and Michael E. Samuels, Esq., Miles & Stockbridge PC, for the protester.

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### DIGEST

Protest challenging an agency's evaluation of an awardee's proposal and the agency's best-value selection decision are denied where the record demonstrates that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

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### DECISION

Access Interpreting, Inc. (Access), of Washington, D.C., protests the award of a contract to Vital Signs LLC, of Silver Spring, Maryland, under request for proposals (RFP) No. DTOS5916R00005 issued by the Department of Transportation (DOT) for sign language interpreter services. Access challenges the agency's evaluation of the awardee's proposal and the best-value determination.

We dismiss the protest in part and deny the protest in part.

### BACKGROUND

On May 23, 2016, DOT issued the RFP, which contemplated the award of a labor-hours, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base year and four one-year option periods, using the procedures in Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items. RFP at 1. The RFP contemplated award on a best-value basis, using a tradeoff between price and non-price factors. *Id.* at 29. In an amendment to the RFP, the agency advised that although the RFP was issued as a total small business set-aside, businesses of any size were invited

to submit a proposal.<sup>1</sup> RFP, Amend. 1 at 1. The RFP stated that offerors' proposals would be evaluated based on five evaluation factors: (1) technical approach; (2) personnel/staffing; (3) past performance; (4) management approach; and (5) price. RFP at 28-29. The RFP advised that all non-price factors were of equal importance, and were more important than price. Id. at 28.

As relevant to past performance, the RFP required an offeror to identify at least three companies and/or government agencies with which it had conducted a significant amount of business<sup>2</sup> within the last three years. Id. at 29. Offerors were required to use past performance questionnaires to submit reference information. Id. An offeror would be evaluated on its knowledge and experience along with its capability and capacity to effectively deliver high-quality and timely service solutions. Id.

As relevant here, the management approach required offerors to demonstrate, among other things, an offeror's ability to manage the size and scope of all the requirements set forth in the RFP. Id. at 30. Proposals would be evaluated on how well the offeror's overall program management approach would meet or exceed the requirements of the solicitation, including, for example, its business relations, personnel management, and subcontractor utilization. Id.

On July 27, the agency received 16 proposals. The technical evaluation panel (TEP) evaluated proposals and assigned consensus adjectival ratings and a point score to the non-price factors.<sup>3</sup> AR, Tab 8, Source Selection Decision (SSD), at 5. The TEP assigned both Access's and Vital Signs's proposals all 100 of the available points and adjectival ratings of excellent for the non-price factors.<sup>4</sup> Id. at 6, 7.

As relevant here, the contracting officer (CO), acting as the source selection authority (SSA), noted in the SSD that although the RFP stated that the four non-price evaluation factors would be considered equal in importance, "during the

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<sup>1</sup> The source selection decision (SSD) states that the decision to proceed in this manner, which is not challenged in this protest, was vetted and approved by the Small Business Office. Agency Report (AR), Tab 8, SSD, at 1.

<sup>2</sup> The RFP did not define what constituted a "significant amount of business."

<sup>3</sup> The SSD stated that adjectival ratings, from highest to lowest, were excellent, good, satisfactory, marginal, and unsatisfactory. AR, Tab 8, SSD, at 5. The point score ranged from 0 to 100. Id.

<sup>4</sup> An excellent rating represented a proposal that demonstrated an excellent understating of the requirements and capability standards, and that had exceptional strengths that would significantly benefit the government. Id. at 5. A score range of 90 to 100 corresponded to an excellent adjectival rating. Id.

evaluation process, each evaluation factor [was] not equal in importance and carried varying weights.” Id. at 4. The record shows that the non-price factors were assigned the following point scores: technical approach and personnel/staffing were each assigned 30 of the available 100 points; past performance was assigned 5 of the available 100 points; and management approach was assigned 35 of the available 100 points. Id. at 5.

The SSA determined that Vital Signs’s proposal represented the best value, based on the SSA’s consideration of the TEP’s evaluation and the SSA’s review of the record. Id. at 10. In this regard, the SSA noted that while the TEP found no weaknesses in the proposals of Access and Vital Signs, the SSA concluded that Access’s past performance questionnaires showed a minor weakness in Access’s ability to stay within schedule and resolve system-operations performance problems. Id. at 4. In determining the best value, the SSA considered that both offerors scored 100% on their technical proposals, and that Access’s price of \$8,308,192 was 3% higher than Vital Signs’s price of \$8,066,454. Id. at 10. The SSA stated that “based on the nature of the services provided, the [g]overnment could not justify paying the increased price for a same or similar technical quality.” Id.

On September 24, the agency notified Access that Vital Signs had been selected for award. Following the request and receipt of a debriefing, Access protested to our Office.

## DISCUSSION

Access contends that the agency’s evaluation of Vital Signs’s past performance and management approach, and its best-value determination, were flawed.<sup>5</sup> We have reviewed the protester’s arguments and find that none provides a basis to sustain the protest.

In reviewing an agency’s evaluation, we will not reevaluate technical proposals; instead, we will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation factors. RMS Info. Sys., Inc., B-280521.3, Oct. 21, 1998, 98-2 CPD ¶ 113 at 9. A protester’s disagreement with the agency’s conclusions does not render the evaluation unreasonable. INFICON, Inc., B-410502, Jan. 5, 2015, 2015 CPD ¶ 24 at 5.

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<sup>5</sup> Access initially challenged the agency’s evaluation of Vital Signs’s technical approach. Protest at 6. The agency provided a substantive response to this challenge, which Access failed to rebut in its comments. Accordingly, we consider this challenge abandoned and will not address it further. See Remington Arms Co., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4.

## Evaluation of Vital Signs's Proposal

Access contends that Vital Signs's past performance rating should have been lower. For example, the protester argues that Vital Signs's "de minimus" federal contracting experience could not satisfy the RFP requirement to identify references with which Vital Signs conducted a "significant amount of business."<sup>6</sup> See Protest at 8. The protester argues that in this circumstance, the agency could consider only the past performance questionnaires returned by three federal agency references. Comments at 6. The gravamen of the protester's arguments in this regard is that the agency should have evaluated only Vital Signs's federal contracting experience. In response, the agency asserts that since the RFP did not limit relevant past performance to federal experience, the protester is incorrect in its premise. Joint Legal Memorandum and CO Statement (LM/COS) at 9. We agree with the agency.

Our Bid Protest Regulations require a protest to set forth a detailed statement of the legal and factual grounds of protest, and contemplate the dismissal of any allegation that fails to state a legally sufficient basis for protest. 4 C.F.R. §§ 21.1(f), 21.5(f).

The RFP required an offeror to identify "at least three companies and/or government agencies with which [it had] conducted a significant amount of business within the last three years." RFP at 29 (emphasis added). Despite the protester's assertions to the contrary, the plain terms of the RFP show that the agency was not required to rely only on federal contracting experience in evaluating past performance. Accordingly, this challenge fails to state a legally sufficient basis of protest and is dismissed. See 4 C.F.R. § 21.5(f).

Access also argues that Vital Signs's proposal should have received a lower rating under the management approach factor. In the protester's view, Vital Signs's "extremely limited prior federal contracting experience, both in dollar value and in geographical scope" should have led the agency to conclude that Vital Signs lacked the ability to demonstrate that it could manage a project of the "size and scope" contemplated by the RFP. Protest at 9-10. We find no merit to this argument.

First, the agency points out that Vital Signs's proposal provided a detailed breakdown of its management plan, structure, and staff utilization, which the TEP concluded met the RFP's criteria. LM/COS at 11, citing Vital Signs's Technical Proposal, at 15-23.<sup>7</sup> Further, the TEP particularly noted Vital Signs's ability to

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<sup>6</sup> The protester acknowledges that the RFP did not define the term "significant amount of business." Protest at 8.

<sup>7</sup> The agency assigned this tab sequential Bates numbers, which we use in our decision.

manage the size and scope of the contract at issue here, considering the size of its staff and the number of interpreters it had available. Id.

Moreover, Access's argument is again premised on the protester's belief that the only experience that could be considered--both in the context of past performance and management approach--was experience obtained through federal contracting. As explained above, we find this argument unavailing. See RFP at 30. Accordingly, we also find no merit to Access's argument that Vital Signs could not manage a project of this scope and size based on its allegedly limited federal contracting experience. The record shows that the agency reasonably concluded that Vital Signs's proposal addressed the requirements for the management approach factor, and warranted an excellent rating and all 35 of the available points under this factor. AR, Tab 8, SSD, at 6. The protester's disagreement does not show that the agency's evaluation was unreasonable.

The protester also contends that the agency erred by failing to assign the non-price evaluation factors the weight contemplated by the terms of the RFP. Comments at 4. In this regard, the protester relies on the SSA's statement in the SSD that although the RFP indicated that the non-price evaluation factors would be equal in importance, the agency's evaluation accorded these evaluation factors unequal weights. See AR, Tab 8, SSD, at 4. While we agree with the protester that the agency failed to accord the non-price evaluation factors the weight contemplated by the RFP, the protester has not shown that Access was competitively prejudiced thereby, or otherwise shown that the agency's evaluation and best-value determination were unreasonable. 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. See e.g., G4S Gov't. Servs., B-401694, B-401694.2, Nov. 4, 2009, 2009 CPD ¶ 236 at 4.

Since the two proposals received identical ratings under each factor and the protester's proposal was priced higher than the awardee's, we conclude that the protester has failed to show that it was competitively prejudiced by the manner in which the agency weighted the non-price factors in its evaluation and best-value determination. No matter what weighting was assigned to the individual factors used to assess these two proposals, the relative standing of the two identically-scored proposals would be the same, i.e., technically equal.

#### Best-Value Determination

Access also argues that the agency's best-value determination was flawed because the agency failed to properly evaluate Vital Signs's technical proposal and to determine whether Access's proposal offered real benefits for a "very modest price increment." Protest at 11, 12.

We disagree, and find the agency's best-value tradeoff unobjectionable. In this regard, the TEP assigned Access's and Vital Signs's proposals the maximum available point score and an excellent adjectival rating, and, more importantly, looked beyond those labels and concluded that the proposals were technically equal. AR, Tab 8, SSD, at 6, 7. Once the SSA determined the proposals to be essentially technically equal, price properly became the determinative factor. See e.g., ProActive, LLC, B-403545, Nov. 18, 2010, 2011 CPD ¶ 56 at 7. On this record, we have no basis to question this determination.

To the extent the protester is challenging the best-value determination based on the agency's evaluation of Vital Signs's proposal, as explained above, we concluded that the agency reasonably evaluated Vital Signs's proposal and that Access's allegations constitute no more than disagreement with the agency's conclusions, which does not provide a basis to sustain the protest.

We dismiss the protest in part and deny the protest in part.

Susan A. Poling  
General Counsel