



**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:** Semper Valens Solutions, Inc.

**File:** B-417028.4

**Date:** September 17, 2019

---

William K. Walker, Esq., Walker Reausaw, for the protester.  
Matthew P. Moriarty, Esq., Ian P. Patterson, Esq., Shane J. McCall, Esq., Nicole D. Pottroff, Esq., and Robert D. Kampen, Esq., Koprince Law LLC, for NavQSys, LLC, the intervenor.

Wade L. Brown, Esq., and Thomas L. Clark, Esq., Department of the Army, and Kevin R. Harber, Esq., Small Business Administration, for the agencies.

Louis A. Chiarella, Esq., Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest that contracting agency improperly referred awardee to the Small Business Administration (SBA) for consideration under certificate of competency (COC) procedures does not fall within exceptions that allow for review by our Office; protest that the SBA failed to consider vital information bearing on the awardee's responsibility when granting the issuance of a COC is denied where there is no evidence the contracting agency provided incorrect information to, or withheld information from, the SBA.

2. Protest challenging contracting agency's best-value tradeoff decision is denied where the agency reasonably considered offerors' total evaluated costs in accordance with the solicitation; protester's assertion that agency should have considered other costs amounts to a challenge to the terms of the solicitation and is untimely.

---

## DECISION

Semper Valens Solutions, Inc. (SVS), of Canyon Lake, Texas, protests the award of a contract to NavQSys, LLC, of Aberdeen Proving Ground, Maryland, under request for proposals (RFP) No. W56KGY-17-R-0020, issued by the Department of the Army, Army Materiel Command, for systems engineering and technical assistance (SETA) support services. SVS argues that the Army improperly found NavQSys to be nonresponsible for lack of a facility security clearance, and improperly referred the awardee to the Small Business Administration (SBA) for a certificate of competency (COC) review. SVS also

argues that the SBA's issuance of a COC to NavQSys was in error, and that the Army conducted a flawed best-value determination.

We deny the protest.

## BACKGROUND

The RFP was issued on July 17, 2017, as a small business set-aside, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15.<sup>1</sup> Agency Report (AR), Tab 3, RFP at 1-2; Contracting Officer's Statement (COS)/Memorandum of Law (MOL) at 1. The solicitation contemplated the award of a cost-plus-fixed-fee (CPFF) contract for the required SETA services for a base year with four 1-year options.<sup>2</sup> RFP at 2. The RFP established that contract award would be made a best-value tradeoff basis, based on three evaluation factors in descending order of importance: technical; past performance, and cost/price (hereinafter cost).<sup>3</sup> Id. Additionally, as relevant to this protest, the RFP stated that "[o]fferors must have a valid TOP SECRET facility clearance in order to respond to this RFP." RFP, attach. 4, Department of Defense Contract Security Classification Specification, at 3.

Five offerors, including NavQSys and SVS, submitted proposals by the August 23 closing date. The agency evaluated proposals using the following adjectival rating schemes set forth in the RFP: outstanding, good, acceptable, marginal, and unacceptable for the technical factor; and substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence (neutral) for the past performance factor. The final evaluation ratings and evaluated costs of the NavQSys and SVS proposals were as follows:

---

<sup>1</sup> The RFP was subsequently amended two times. Unless stated otherwise, all citations are to the final version of the solicitation.

<sup>2</sup> The RFP established that the contract line item numbers (CLIN) for material, travel, and other direct costs (ODC) were cost-reimbursement (no fee) in nature, and provided offerors with "plug" numbers (totaling approximately \$5.3 million) to be used for these items.

<sup>3</sup> The RFP specified the technical factor was significantly more important than the past performance factor, which was significantly more important than the cost factor. RFP amend. 1 at 21. Thus, the non-cost factors, when combined, were significantly more important than cost. Id.

	NavQSys	SVS
<b>Technical</b>	Good	Outstanding
<b>Past Performance</b>	Substantial Confidence	Satisfactory Confidence
<b>Evaluated Cost</b>	\$94,653,370	\$96,358,332

AR, Tab 13, Source Selection Decision Document (SSDD) at 5-14.

On September 29, 2018, the agency source selection authority (SSA) selected the NavQSys proposal for contract award. Id. at 14-16; COS/MOL at 7-8.

On October 18, SVS filed a protest with our Office challenging the award to NavQSys and arguing that the agency should have disqualified NavQSys for failing to hold a top secret facility clearance at the time of proposal submission. AR, Tab 23, SVS Protest (B-417028) at 2. On December 10, the Army advised our Office that it intended to take corrective action by terminating the contract with NavQSys and making award to SVS. COS/MOL at 8; AR, Tab 25, Notice of Corrective Action at 1. We dismissed the SVS protest as academic in light of the agency's proposed corrective action. Semper Valens Sols., Inc., B-417028, Dec. 11, 2018 (unpublished decision).

On December 20, NavQSys filed a protest with our Office challenging the Army's planned corrective action as both unreasonable and inadequately documented. AR, Tab 26, NavQSys Protest (B-417028.3) at 8-16. On March 27, 2019, we sustained the NavQSys protest because the agency failed to adequately document the basis for its decisions and our Office was unable to conclude that the agency had a reasonable basis for its corrective action. NavQSys, LLC, B-417028.3, Mar. 27, 2019, 2019 CPD ¶ 130 at 4-5. We also recommended that the Army document the basis for its decision to reject the proposal submitted by NavQSys. Id. at 5.

On May 6, the contracting officer determined NavQSys did not meet the RFP's facility clearance requirement at the time of proposal submission, which the contracting officer considered to be a special responsibility standard. AR, Tab 28, Non-Responsibility Determination of NavQSys at 1, citing FAR § 9.104-2. The contracting officer thereafter determined the matter should be referred to the SBA under its COC procedures. COS/MOL at 9; AR, Tab 29, SBA Referral (NavQSys) at 1-2.

On May 28, the SBA issued a COC for NavQSys, indicating that the firm was considered responsible to perform the proposed procurement. AR, Tab 30, COC Determination Letter (NavQSys) at 1. In its affirmative findings, the SBA found that the NavQSys joint venture, as well as the two firms that make up the joint venture, "ha[d] now secured Top-Secret facility clearances." Id.

On May 31, the contracting officer affirmed the initial contract award to NavQSys. COS/MOL at 9. This protest followed.

## DISCUSSION

SVS alleges that, for various reasons, the SBA's issuance of a COC to NavQSys was in error. SVS also contends the Army conducted a flawed best-value tradeoff when selecting NavQSys for contract award.<sup>4</sup> We have considered all of the SVS assertions and find no basis on which to sustain the protest.

### COC Issuance to NavQSys

SVS first challenges the SBA's issuance of a COC to NavQSys.<sup>5</sup> The protester takes no exception to the Army's determination that NavQSys did not meet the RFP's facility clearance requirement at the time of proposal submission. Rather, SVS alleges that the contracting officer's belief that this was a matter of responsibility, as well as the resulting referral of NavQSys to the SBA for a COC, was in error.<sup>6</sup> SVS also contends the Army failed to provide vital information to the SBA as part of the COC referral, and that the SBA failed to follow its own regulations when issuing a COC to NavQSys. Protest at 2-12; Comments at 1-5.

The Army argues that it properly referred NavQSys to the SBA for a COC, insofar as the offeror was found not to have met a special responsibility standard, *i.e.*, the possession of a Top Secret facility clearance at the time of proposal submission. COS/MOL at 10-11, citing, *e.g.*, Waterfront Techs., Inc.--Protest and Costs, B-401948.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 6 (noting that the ability to obtain a facility security clearance generally is a matter of responsibility); Ktech Corp.; Physical Research, Inc., B-241808, B-241808.2, Mar. 1, 1991, 91-1 CPD ¶ 237 at 3 (finding that whether a contractor has the ability to obtain any necessary security clearances concerns the firm's ability to perform and is therefore a matter of responsibility). The Army also asserts it provided all vital information to the SBA as part of its COC referral letter regarding NavQSys. COS/MOL at 9-10. We agree.

Under the SBA's COC program, agencies must refer to the SBA a determination that a small business is not responsible if that determination would preclude the small business from receiving an award. 15 U.S.C. § 637(b)(7); 13 C.F.R. § 125.5;

---

<sup>4</sup> SVS also initially protested the Army's evaluation of NavQSys' past performance. Protest at 3, 9-10. SVS subsequently elected to withdraw this protest ground. Comments at 6.

<sup>5</sup> NavQSys is a joint venture comprised of Navigant Systems, LLC, and QED Systems, LLC, and participates in the SBA's mentor-protégé program. NavQSys obtained its Top Secret facility clearance on June 5, 2018. Protest, exh. 5b, Defense Security System Verification (NavQSys).

<sup>6</sup> In this regard, SVS argues that had the Army instead found the NavQSys proposal to be unacceptable, then the referral to the SBA would not have occurred and no COC would have been issued. Comments at 3.

FAR subpart 19.6. Additionally, the Small Business Act, 15 U.S.C. § 637(b)(7), gives the SBA, not our Office, the conclusive authority to review a contracting officer's determination that a small business concern is not responsible. Our Bid Protest Regulations set forth certain challenges in this area that we will not review, as follows:

Referrals made to the SBA pursuant to sec. 8(b)(7) of the Small Business Act, or the issuance of, or refusal to issue, a certificate of competency under that section will generally not be reviewed by GAO. The exceptions, which GAO will interpret narrowly out of deference to the role of the SBA in this area, are protests that show possible bad faith on the part of government officials, or that present allegations that the SBA failed to follow its own published regulations or failed to consider vital information bearing on the firm's responsibility due to the manner in which the information was presented to or withheld from the SBA by the procuring agency. 15 U.S.C. 637(b)(7).

4 C.F.R. § 21.5(b)(2); see Lawson Envtl. Servs. LLC, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 4-5 (finding the protest raised none of the exceptions that would allow our Office to review the contracting agency's actions); Bluehorse Corp.--Recon., B-413929.2, B-413929.4, May 16, 2017, 2017 CPD ¶ 149 at 2 (concluding dismissal of underlying protest was proper "because we do not generally review COC referrals to the SBA").

Here, while SVS argues the Army erroneously found NavQSys to be nonresponsible rather than its proposal unacceptable, and the resulting COC referral improper, SVS does not raise any of the exceptions that would allow our Office to review this contracting agency action. Specifically, SVS fails to establish, or even assert, that the Army acted in bad faith when undertaking the COC referral of NavQSys.<sup>7</sup>

---

<sup>7</sup> As the Army asserts, our Office has explained that the ability to obtain a security clearance is generally a matter of responsibility, absent an express requirement in the solicitation to demonstrate the ability prior to award. Waterfront Techs., Inc.--Protest and Cost, *supra*; Ktech Corp.; Physical Research, Inc., *supra*. We also recognize that, depending on its terms, an express requirement in the solicitation that an offeror demonstrate a security clearance prior to award has been deemed a definitive responsibility criterion in certain instances and a matter of technical acceptability in others. Compare MT & Assocs., LLC, B-410066, Oct. 17, 2014, 2014 CPD ¶ 326 at 5; Rohmann Servs., Inc., B-405171, B-405171.2, Sept. 8, 2011, 2011 CPD ¶ 177 at 8; Waterfront Techs., Inc.--Protest and Costs, *supra*, with ProTech Servs. USA, LLC, B-417484, July 19, 2019, 2019 CPD ¶ 260 at 4. We need not resolve that issue here, however, as the protester has not demonstrated the bad faith required for our Office to review the contracting agency's action. Our decisions have consistently explained that government officials are presumed to act in good faith. Athena Scis. Corp., B-409486, B-409486.2, May 14, 2014, 2014 CPD ¶ 154 at 9. A possible defect in an agency's actions--as SVS alleges here--generally is not sufficient in itself to establish that the

(continued...)

SVS also alleges the Army omitted vital information from the SBA as part of the COC referral of NavQSys. Specifically, the protester contends “[t]he Agency failed to inform SBA that the [NavQSys] proposal was inadequate and required rejection for that reason.” Comments at 4. We find no merit to SVS’s assertion.

The record here reflects the Army’s COC referral letter provided the SBA with all necessary information: that the RFP contained a mandatory solicitation requirement that “[o]fferors must have a valid TOP SECRET facility clearance in order to respond to the RFP”; that NavQSys did not possess at the time of proposal submission the Top Secret facility clearance clearly required by the RFP; and that the contracting officer found NavQSys to be non-responsible because it did not meet this solicitation requirement. AR, Tab 29, SBA Referral (NavQSys) at 1, citing RFP, attach. 0004, Department of Defense Contract Security Classification Specification, at 3. Moreover, SVS is wrong about the vital information SVS contends the Army omitted—that NavQSys’ proposal was allegedly inadequate. In sum, the information which SVS alleges the Army omitted from the NavQSys COC referral did not exist, and the essential information regarding NavQSys which did exist was accurately conveyed by the contracting agency to the SBA.

Finally, SVS has not shown that the SBA failed to follow its own regulations when issuing a COC to NavQSys. The protester argues that while SBA’s rules permit the agency to make responsibility determinations, they do not permit the SBA to review an unacceptable proposal. Comments at 5. The protester here essentially disagrees with the SBA’s judgment that possession of a facility clearance here was an issue of contractor responsibility. Such disagreement with the SBA’s judgment, however, does not constitute a showing that the SBA failed to follow its own regulations in reaching its conclusion regarding NavQSys’ responsibility. See Bullard-Lindsay Contracting Co., Inc., B-252027, May 18, 1993, 93-1 CPD ¶ 392 at 5; Tar Heel Canvas Prods., Inc., B-211537, May 6, 1983, 83-1 CPD ¶ 481 at 2.

#### Best-Value Tradeoff Decision

SVS also challenges the Army’s best-value tradeoff decision. Specifically, the protester argues the SSA failed to adequately consider the costs the agency was likely to incur associated with each offeror’s proposal when making the award decision.<sup>8</sup>

---

(...continued)

agency acted in bad faith; the protester also must present facts reasonably indicating, beyond mere inference and suspicion, that the actions were motivated by a specific and malicious intent to harm the protester. Lawson Envtl. Servs. LLC, supra, at 5 n.5.

<sup>8</sup> SVS also initially asserted the best-value decision was flawed because the agency improperly relied on assigned adjectival ratings and did not consider the underlying strengths and weaknesses within the offerors’ proposals. Protest at 11-15. As the Army addressed this assertion in its report to our Office, COS/MOL at 15-16, and SVS did not respond in its comments, see Comments, passim, we consider this issue to  
(continued...)

Source selection officials in negotiated best-value procurements have broad discretion in making cost/technical tradeoff decisions. PricewaterhouseCoopers LLP; IBM U.S. Fed., B-409885 et al., Sept. 5, 2014, 2014 CPD ¶ 289 at 20; American Material Handling, Inc., B-297536, Jan. 30, 2006, 2006 CPD ¶ 28 at 4. The propriety of a cost/technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's stated evaluation scheme. DGC Int'l, B-410364.3, Apr. 22, 2015, 2015 CPD ¶ 136 at 6; Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

The RFP included a detailed series of CLINs for the various SETA support services (e.g., labor, material/travel/ODCs, surge option labor), RFP at 3-80, and offerors were required to submit proposed costs for all CLINs. Id. at 143-147. As set forth above, cost was one of the evaluation criterion upon which contract award was to be based, and the RFP required the contracting agency to perform a cost realism analysis of each offeror's proposed cost to determine its evaluated cost (also referred to as "probable cost"). RFP at 21, 23. The Army thereafter performed the required cost realism evaluation, and offerors' total evaluated costs were based on all CLINs for all performance periods. AR, Tab 13, SSDD, at 2, 13.

SVS states that it "does not challenge the [agency's] probable cost evaluation (which was done in accordance with the RFP)." Protest at 10. Rather, SVS argues that the SSA's cost/technical tradeoff decision "should have[,] but failed to consider" that the surge CLINs had a very low probability of occurring, and that SVS was actually lower cost than NavQSys for the "real" labor CLINs. Id. at 11; see Comments at 6 ("Regardless of the cost evaluation scheme, the Agency failed to consider how much it would probably spend under the [NavQSys] and SVS proposals.").

The Army argues that its best-value determination was proper, because it was based on an evaluation of cost proposals done exactly as stated in the RFP, i.e., offerors' total evaluated costs for all CLINs. COS/MOL at 14-15. The Army also contends that if SVS believed the RFP's cost evaluation scheme should have treated base labor and surge labor differently, it was required to raise this apparent solicitation defect before the receipt of proposals. Id. at 15.

We find SVS's assertions to be wholly without merit. Here, the RFP plainly stated how the agency would evaluate offerors' cost proposals, as well as that the subsequent best-value tradeoff decision would be based on the technical, past performance, and cost evaluation results. Stated otherwise, the RFP clearly established that it was offerors' total evaluated costs that were to be used in the resulting cost/technical tradeoff, rather

---

(...continued)

have been abandoned and will not consider it further. See Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4.

than some alternate, unannounced methodology which SVS now suggests. Further, nothing in the RFP required the agency to perform the type of cost assessment now advanced by SVS, and thus, the protester has failed to establish what the agency violated by not performing such an analysis. See 4 C.F.R. § 21.1(c)(4) and (f); Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

SVS essentially argues offerors' costs should have been assessed one way under the cost evaluation factor, which it does not dispute, but should have then been considered in a different--and unannounced--manner as part of the best-value tradeoff decision. However, if SVS was of the belief that offerors' evaluated costs should not likewise be the basis of the subsequent best-value tradeoff determination, SVS was required to challenge this apparent solicitation defect before closing. 4 C.F.R. § 21.2(a)(1); see URS Fed. Servs., Inc., B-412580, B-412580.2, Mar. 31, 2016, 2016 CPD ¶ 1116 at 5. An offeror simply cannot wait until after contract award to challenge the ground rules by which it elects to compete. See Veterans2Work, Inc., B-416935, Jan. 9, 2019, 2019 CPD ¶ 54 at 5; DynCorp Int'l LLC, B-415349, Jan. 3, 2018, 2018 CPD ¶ 12 at 9.

The protest is denied.

Thomas H. Armstrong  
General Counsel