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**Comptroller General  
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**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** JSF Systems, LLC

**File:** B-410217

**Date:** October 30, 2014

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Thomas O. Mason, Esq., Francis E. Purcell, Jr., Esq., Christopher Kimball, Esq., and David E. Fletcher, Esq., Cooley LLP, for the protester.

Douglas C. Proxmire, Esq., and Christina K. Scopin, Esq., Venable LLP, for Hesco Bastion, Inc., an intervenor.

Robert Sundberg, Esq., Department of the Army, Corps of Engineers, for the agency.

Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging agency's evaluation of protester's technical proposal is denied where the evaluation was consistent with the solicitation's evaluation criteria.

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### DECISION

JSF Systems, LLC, of Washington, D.C., protests the award of a contract to Hesco Bastion, Inc., of North Charleston, South Carolina, under request for proposals (RFP) No. W912EK-14-R-0006, issued by the Department of the Army, Corps of Engineers, for gabion baskets and related services for the agency's National Flood Fight Center. JSF challenges the agency's evaluation of the offerors' technical and price proposals, and the ensuing award decision.

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

### BACKGROUND

The RFP, issued as a small business set-aside, sought proposals for gabion baskets for use as a temporary barrier to flooding; technical advisory services related to floods; and refurbishment of used gabion baskets.<sup>1</sup> RFP at 1, 5-15. The

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<sup>1</sup> The gabion baskets are essentially containers or baskets made of steel mesh, partially lined with textile material, and filled with sand, gravel, or other fill material,

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solicitation anticipated the award of one or more indefinite-delivery/indefinite-quantity contracts for a base period of approximately 1 year, with 2 option years, under which delivery orders would be issued. Id. at 3. The estimated total value of the contract, including base and option years, is \$33,930,000. Contracting Officer's Statement (COS) at 1. Award was to be made to the lowest-priced, technically-acceptable (LPTA) offeror. RFP at 108-109.

The RFP required offerors to submit separate technical and price proposals. Technical proposals were to be evaluated as acceptable or unacceptable, considering the following three evaluation factors: technical performance, personnel, and refurbishment capability. Id. at 109, 112. For an offer to be considered technically acceptable, it was required to meet every technical acceptability standard in the RFP for non-cost factors. Id. at 109.

As relevant here, with respect to the refurbishment capability factor, the RFP instructed offerors to provide a technical report describing the process and facilities the offeror would use to refurbish the product, and to provide at least two examples from previous contracts or experience that would confirm the offeror's capability to refurbish the product to original specifications. Id. at 114.

The Corps received proposals only from JSF and Hesco. COS at 2. Hesco's proposal offered its proprietary product, the "Hesco Flood Barrier," and JSF offered its own product, called the "DefenCell MAC." As relevant here, with respect to the refurbishment capability factor, JSF submitted a proposal that described its capacity and proposed methodology for refurbishment, but did not provide any examples of prior contracts or actual refurbishment experience. Agency Report (AR), Tab 6, JSF Technical Proposal, at 13-14. To the contrary, JSF stated in its proposal "No previous refurbishment contracts have been undertaken." Id. at 13.

Hesco's proposal was found to be acceptable under every technical factor, and acceptable overall. JSF's technical proposal was evaluated as acceptable under every technical factor except refurbishment capability. The agency's technical evaluation team (TET) members acknowledged that although JSF "clearly identified a facility capable of refurbishment," it did not identify any previous refurbishment contracts. AR, Tab 7, TET Evaluations, at 6, 11. The TET rated JSF's proposal as unacceptable under this factor, and found it therefore unacceptable overall. AR, Tab 10, Source Selection Decision Document (SSDD), at 2. Award was made to Hesco as the LPTA offeror. This protest followed a debriefing. Id. at 3.

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that can be joined together as a modular structure to act as a levee or barrier to floodwater.

## DISCUSSION

The protester argues that the agency improperly evaluated both JSF's and Hesco's proposals. Protest at 8-9. With respect to its own technical proposal, JSF contends that the agency improperly evaluated its refurbishment capability as unacceptable, based on its apparent lack of refurbishment experience. Id. at 8. Although JSF concedes that it does not have any prior experience in refurbishing gabion baskets, JSF believes that its proposed methodology for refurbishment was sufficient to evidence its "requisite experience and capability to perform refurbishment . . . ." Id. JSF also argues that the Corps erred in finding Hesco's technical proposal acceptable, because Hesco did not provide test results showing that its product meets certain minimum standards, as required by the RFP.

An agency's evaluation of experience is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Herve Cody Contractor, Inc., B-404336, Jan. 26, 2011, 2011 CPD ¶ 27 at 3. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Id. Furthermore, a proposal that fails to conform to a material term of the solicitation is unacceptable and may not form the basis for award. Trace Systems, Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5.

Here, the RFP required offerors to separately describe the process and facilities they would use to refurbish the product and provide at least two examples from previous contracts/experience confirming their capability to refurbish the product to original specifications. See RFP at 114. The agency's TET and the CO recognized that JSF had met the first refurbishment requirement by describing a facility capable of refurbishment, but had failed to meet the second requirement by demonstrating prior experience. AR, Tab 10, SSDD, at 2. JSF does not dispute its lack of refurbishment experience. In short, JSF's proposal failed to conform to a material term of the RFP, and was found ineligible for award on this basis. We find the agency's conclusion in this regard reasonable and consistent with the RFP's requirement.

Further with respect to the refurbishment factor, JSF contends that the agency evaluated proposals unequally. Comments at 10-13. In this regard, the protester argues that although Hesco's proposal also failed to provide specific contract numbers, dates of performance, or other critical information to show refurbishment experience, it was found acceptable. Id. at 11.

We find no merit to this argument. In contrast to JSF's proposal, Hesco's proposal refers to refurbishment work it performed for the Corps in 2009 and 2013-2014, albeit without the details JSF believes should be required. AR, Tab 5, Hesco's Technical Proposal, at 24. In contrast, JSF does not have any refurbishment

experience. We thus do not find the treatment of the two offerors unequal, and deny this basis for protest.

With respect to JSF's remaining challenges to the evaluation of Hesco's proposal, we find the protester is not an interested party. Under our Bid Protest Regulations, only interested parties may protest procurement actions by Federal agencies such as the ones undertaken here by the Corps. 4 C.F.R. § 21.1(a) (2014). That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it could not be considered for an award if its protest were sustained. Yoosung T&S, Ltd., B-291407, Nov. 15, 2002, 2002 CPD ¶ 204 at 3.

Given our conclusion, above, that JSF's proposal was reasonably found technically unacceptable, it follows that the protester is ineligible for award and therefore lacks the requisite legal interest to challenge the evaluation of Hesco's proposal.<sup>2</sup> Accordingly, this basis of JSF's protest is dismissed.

The protest is denied in part and dismissed in part.

Susan A. Poling  
General Counsel

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<sup>2</sup> We recognize that where, as here, the agency has received only two proposals, we have found the protester to be an interested party to challenge the awardee's proposal. This is based on the theory that, if we were to sustain the protest, the agency would be faced with resoliciting the requirement. In that circumstance, even if the protester's proposal was found unacceptable under the protested procurement, the protester could be a "prospective bidder or offeror" under the resolicitation, and therefore, an interested party. See Greystones Consulting Group, Inc., B-402835, June 28, 2010, 2010 CPD ¶ 159 at 2 n.2. Here, in contrast, the protester expressly states that it does not have the experience required under the refurbishment factor (a material requirement); did not timely challenge that requirement in the RFP; and does not show that it could possibly meet the requirement if the procurement was recompeted. Given JSF's ineligibility to compete, we conclude JSF is not an interested party to challenge Hesco's evaluation.