U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: VCH Partners, LLC

File: B-421230.5

Date: April 17, 2024

Jon D. Levin, Esq., Maynard Nexsen, P.C., for the protester.
Carmody G. Daman, Esq., and Barbara B. Ayala, Esq., General Services Administration, for the agency.
Kyle E. Gilbertson, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where record shows that agency's action in amending the solicitation to address errors found in a prior protest was reasonable.

DECISION

VCH Partners, LLC (VCH), a mentor-protégé joint venture[1] service-disabled veteran-owned small business (SDVOSB) of Denver, Colorado, protests the terms and conditions of General Services Administration (GSA) request for proposals (RFP) No. 47QTCB22R0007, for the SDVOSB pool of the governmentwide acquisition contract (GWAC) called Polaris, to provide customized information technology (IT) services and services-based solutions. The protester argues that a solicitation amendment, issued by GSA in response to a prior protest before the U.S. Court of Federal Claims (COFC), unreasonably limits proposal revisions.

[1] The Small Business Administration's (SBA) small business mentor-protégé program allows small or large business firms to serve as mentors to small business protégé firms to provide "business development assistance" to the protégé firms and to "improve the protégé firms' ability to successfully compete for federal contracts." 13 C.F.R. § 125.9(a), (b); *see* 15 U.S.C. § 644(q)(1)(C). One benefit of the mentor-protégé program is that a protégé and mentor may form a joint venture. 13 C.F.R. § 125.9(d). If SBA approves a mentor-protégé joint venture (MPJV), that MPJV is permitted to compete for any type of small business contract for which the protégé firm qualifies. 13 C.F.R. § 125.9(d)(1).

We deny the protest.

BACKGROUND

On September 15, 2022, GSA issued this RFP as a total set-aside for the Polaris SDVOSB pool[2] pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 19.14. Contracting Officer's Statement (COS) at 2. The Polaris GWAC seeks to provide participating government agencies with access to highly qualified IT contractors. MOL at 1.

The RFP contemplates the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts to provide customized IT services and services-based solutions. Agency Report (AR), Tab 6, RFP at 3.[3] Under individual task orders, contractors will be required to provide all management, supervision, labor, facilities, and materials necessary to furnish the requested IT services. *Id*. The RFP anticipates a 10-year IDIQ contract ordering period, consisting of a 5-year base period and a single 5-year option period. *Id.* at 19.

The solicitation advises that GSA intends to make award to the 70 offerors that are the highest technically rated with fair and reasonable pricing, with any offerors tied at the 70th position receiving an award. *Id.* at 98. The agency's source selection will be based on the offerors' self-scoring, using an agency-provided scoring table. *Id.* at 102-04. This scoring table allows offerors to claim points based on specified categories related to: (1) relevant experience; (2) past performance; (3) systems, certifications, and clearances; and (4) organizational risk. *Id.* The table provides for a maximum total of 95,000 possible points for all categories. *Id.* at 104.

The RFP explains that GSA will begin its evaluation by initially ranking the proposals by highest total claimed self-score. *Id.* at 99. Then, the agency will: screen proposals to confirm that the offeror has submitted supporting documentation for all applicable evaluation elements; validate the offeror's supporting documentation and claimed points under each evaluation element; and check for fair and reasonable pricing. *Id.* This process will continue until the agency identifies 70 awardees. *Id*.

As amended, the RFP established November 18, 2022, as the proposal due date. COS at 2. Approximately [DELETED] offerors submitted proposals in response to the solicitation. *Id.* at 3. On October 7, prior to the deadline for proposal submission, VCH

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[2] The Polaris GWAC is divided among the following four solicitation set-aside types (or "pools"): small businesses (SB); woman-owned small businesses (WOSB); SDVOSB; and historically underutilized business zone businesses. Memorandum of Law (MOL) at 1.

[3] Citations are to the Adobe PDF page numbers. Unless otherwise noted, references to the solicitation are to the conformed copy (through amendment 5) of the RFP provided at tab 6 of the agency report.

and another plaintiff, SH Synergy, LLC, protested to the COFC, challenging the terms and conditions of the Polaris solicitation's SB, WOSB, and SDVOSB pools. COS at 2; *SH Synergy, LLC and VCH Partners, LLC v. United States*, 165 Fed. Cl. 745, 750 (Fed. Cl. 2023). The court granted the protests, in part, and enjoined GSA from evaluating proposals and awarding IDIQ contracts under the current versions of the relevant Polaris solicitations. *Id.* at 786. The COFC held that should GSA "wish to proceed with the procurement, GSA may do so provided it amends the SB, WOSB, and SDVOSB Pool Solicitations in compliance and consistent" with the court's decision. *Id.*

Relevant here, the agency issued amendment 4 to the RFP in response to the COFC decision.[4] AR, Tab 3e, RFP amend. 4 at 4. Prior to the January 12, 2024, deadline for submission of revised proposals, VCH filed this protest with our Office.

DISCUSSION

VCH challenges the terms and conditions of amendment 4 as unreasonably limiting proposal revisions.[5] In the protester's view, the agency should instead "allow offerors to revise all aspects of their proposals." Protest at 1. The agency defends amendment 4 as a reasonable and appropriate response to the COFC decision and injunction regarding this solicitation. COS at 10-12; MOL at 4-9. We have considered the arguments and issues raised by VCH, and while we do not address them all, we find no basis on which to sustain the protest.

Under the solicitation, offerors must submit a minimum of three, and a maximum of five, "Primary Relevant Experience Projects." RFP at 76. Each project is worth 4,000 points, and offerors can then claim additional points based on the characteristics of the projects. *Id.* at 102-03. Offerors are also permitted to submit a maximum of three "Emerging Technology Relevant Experience Projects." *Id.* at 82. Offerors can claim 1,000 points for each of these projects, and up to 1,000 additional points based on the breadth of experience demonstrated across those projects. *Id.* at 103.

In the version of the SDVOSB pool solicitation that VCH protested at the COFC, the RFP required of MPJVs, "a minimum of one Primary Relevant Experience Project or Emerging Technology Relevant Experience Project must be from the Protégé or the offering Mentor-Protégé Joint Venture." AR, Tab 3c, RFP amend. 2 at 70. For SDVOSB JVs (not MPJVs), the RFP similarly required that a minimum of one experience project "must be from an SDVOSB member of the joint venture or the offering SDVOSB Joint Venture." *Id.*

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[4] GSA subsequently issued amendment 5. AR, Tab 3f, RFP amend. 5 at 1. Amendment 5 does not change the RFP's terms and conditions relevant to this protest.

[5] VCH does not argue that the agency's amendment fails to adequately address the issues that were the subject of litigation at the COFC. As such, we offer no opinion as to whether the agency's actions in amending the solicitation properly address the concerns articulated by the court in its decision.

Before the court, the protesters argued, among other things, that the challenged Polaris solicitations violated an SBA regulation requiring agencies to consider the work and qualifications of the individual members of the MPJV as well as the MPJV itself, and "may not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally." *SH Synergy, LLC*, 165 Fed. Cl. at 769 (quoting 13 C.F.R. § 125.8(e).) In its decision, the court recognized that the solicitations, as drafted, required protégé firms to submit one project to comply with section 125.8(e)--the SBA regulation which "requires the agency to evaluate the individual performance of a mentor-protégé JV's protégé member." *Id.* at 768-69. The court held, however, "that the Polaris Solicitations violate Section 125.8(e) by applying the same evaluation criteria to all Relevant Experience Projects, regardless of whether the project is submitted by a protégé firm or by offerors generally." *Id.* at 770.

Although the protesters had focused their challenges primarily on the SBA regulation governing MPJVs, the court's decision addressed also the allegation that the agency had similarly violated the SBA requirements related to SDVOSB JV offerors. *Id.* at 765 n.19 (citing 13 C.F.R. § 125.18(b)(5), now codified at 13 C.F.R. § 128.402(f).) The court's decision stated that "to the extent there is overlap between the regulations governing mentor-protégé JVs and the regulations governing [] SDVOSB JVs, the court's holdings on the former apply with equal force to the latter." *Id.*

As a result, the court enjoined the agency from proceeding with the Polaris procurement under the issued solicitations, including the SDVOSB pool, without first revising those solicitations consistent with its decision. *Id.* at 786. The court noted, "[f]or the Polaris procurement to proceed, the agency must adjust the evaluation criteria it applies to assess a protégé firm's Relevant Experience Project." *Id.* at 774. While the court found that it "need not prescribe the precise changes GSA must adopt going forward," the court did offer "suggestions for alternative evaluation methods that would address the defects identified." *Id.*

Regarding MPJVs, the decision explained that one option would be to "allow the protégé firm's project to be submitted *in addition to* the three to five Primary Relevant Experience Projects and the potentially three Emerging Technology Relevant Experience Projects already contemplated under the Solicitations." *Id.* at 774-75. This additional project "could then be evaluated on a pass/fail basis based on whether the project complies with the Solicitations' evaluation criteria and demonstrates the necessary experience to fulfill the protégé firm's 40 [percent] performance requirement contained in 13 C.F.R. § 125.8(c)."[6] *Id.* at 775.

The agency issued amendment 4 "as a result of the COFC protest decision." AR, Tab 3e, RFP amend. 4 at 4. Amendment 4 included changes to the "requirements for

[6] This section of the SBA's regulation requires that the joint venture's small business partner "must perform at least 40 [percent] of the work performed by the joint venture." 13 C.F.R. § 125.8(c)(1).

protégé relevant experience within SBA Mentor-Protégé Joint Venture offers." *Id.* at 1. For MPJVs, the RFP still requires that a minimum of one relevant experience project "must be from the Protégé or the offering Mentor-Protégé Joint Venture." *Id.* at 8; RFP at 69. However, the amended RFP now provides that this requirement can be met by submitting "a Primary Relevant Experience Project"; "an Emerging Technology Relevant Experience Project"; or--new to this amendment--a "Capabilities Relevant Experience Project." AR, Tab 3e, RFP amend. 4 at 8; RFP at 69. The agency will evaluate this new "Capabilities Relevant Experience Project" on a pass/fail basis, but GSA will not assess the project a point score under the RFP's scoring table. AR, Tab 3e, RFP amend. 4 at 8; RFP at 70. Through amendment 4, the agency sought to revise the RFP to be consistent with one of the court's suggested options. Specifically, protégé firms are no longer required to submit a scored project to be evaluated against the same criteria as other offerors generally, and instead may submit an additional capabilities relevant experience project that is evaluated on a pass/fail basis. AR, Tab 4, Contracting Officer (CO) Memorandum for Record (MFR) at 2.

Amendment 4 also changed the requirements for "relevant experience within Joint Venture offers for SDVOSB members." AR, Tab 3e, RFP amend. 4 at 1. Although the court's decision had primarily focused on MPJVs, the agency determined that "regulatory overlap" required the agency to also make changes for SDVOSB JVs because "regulations similar to Mentor-Protégé Joint Ventures exist for SDVOSB Joint Ventures as well." COS at 4, 12; AR, Tab 4, CO MFR at 2. That is, similar to section 125.8(e) of the regulation--which the court concluded the agency had violated for MPJVs--section 128.402(f) mandates that, for SDVOSB JVs, a procuring activity may not require the SDVOSB to "individually meet the same evaluation or responsibility criteria as that required of other offerors generally." 13 C.F.R. § 128.402(f).

The agency decided that, like protégés in a MPJV, its evaluation could not treat SDVOSBs in a JV the same as "other offerors generally." AR, Tab 4, CO MFR at 2. For SDVOSB JVs, the amended RFP still requires that a minimum of one relevant experience project "must be from a SDVOSB member of the Joint Venture or the offering SDVOSB Joint Venture." AR, Tab 3e, RFP amend. 4 at 7; RFP at 69. However, like the amendment's changes for MPJVs, this requirement can now be met by submitting either a scored project, or the new pass/fail capabilities relevant experience project. AR, Tab 3e, RFP amend. 4 at 7-8; RFP at 69.

The agency implemented these changes through its issuance of amendment 4, permitting MPJVs to "remove and/or replace any Primary Relevant Experience Projects and/or Emerging Technology Relevant Experience Projects that were from the SDVOSB members of the Mentor-Protégé Joint Venture or offering Mentor-Protégé Joint Venture." AR, Tab 3e, RFP amend. 4 at 2. The amendment similarly permits SDVOSB JVs to remove and/or replace relevant experience projects "from a SDVOSB member of the Joint Venture or the offering SDVOSB Joint Venture." *Id*. The

amendment did not allow offerors to replace any other previously submitted experience projects that do not satisfy these conditions.[7] *Id.*

VCH contends that, considering the "interwoven nature" of the solicitation's evaluation scheme, it "makes much more sense" for the agency to allow offerors to "revise proposals in their entirety." Protest at 3-4. Our Office has explained that contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. *SMS Data Prods. Grp., Inc.*, B-280970.4, Jan. 29, 199, 99-1 CPD ¶ 26 at 2. As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency. *Leidos, Inc.*, B-409214.4, Jan. 6, 2015, 2015 CPD ¶ 63 at 17. In this regard, an agency's discretion when taking corrective action extends to a decision on the scope of proposal revisions, and there are circumstances where an agency may reasonably decide to limit the revisions offerors may make to their proposals. *See, e.g., Honeywell Tech. Sols., Inc.*, B-400771.6, Nov. 23, 2009, 2009 CPD ¶ 240 at 4.

Our Office generally will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *Networks Elec. Corp.*, B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. However, even where an agency is justified in restricting revisions in corrective action, the agency may not prohibit offerors from revising related areas of their proposals which are materially impacted. *Akima Data Mgmt., LLC; Absolute Strategic Techs., LLC*, B-420644.7, B-420644.8, Feb. 5, 2024, 2024 CPD ¶ 48 at 5. When assessing the reasonableness of an agency's restrictions on proposal revisions, we consider the extent to which the amendment, and the permitted changes in response to that amendment, materially impact or are inextricably linked with other aspects of an offeror's proposal. *Id.* at 5-6; *ManTech Advanced Sys. Int'l, Inc.*, B-421560.4, Aug. 14, 2023, 2023 CPD ¶ 210 at 11.

Here, we find that the agency has articulated a reasonable basis for restricting offerors from revising all portions of their proposals. While the protester argues that the COFC decision is "irrelevant to the issue before the GAO and should be ignored," the record reflects that the agency properly considered the court's decision when it issued amendment 4 and limited the scope of allowable proposal revisions. Comments at 3; *see* AR, Tab 4, CO MFR at 4. In this regard, the agency asserts that it was balancing the need to "bring Polaris to market as quickly as possible while minimizing the burden to stakeholders," when it concluded that the "best path forward was to issue a limited corrective action to correct the violation in the applicable regulations" by revising the

[7] If, as a result, a proposal does not include a scored primary relevant experience project or emerging technology relevant experience project from the protégé or offering MPJV (in the case of MPJVs), or the SDVOSB JV member or the offering SDVOSB JV (in the case of SDVOSB JVs), the offeror must submit an unscored capabilities relevant experience project. AR, Tab 3e, RFP amend. 4 at 2, 8.

relevant experience project requirements for protégé entities of MPJV offerors, as well as SDVOSB entities of SDVOSB JV offerors.[8] AR, Tab 4, CO MFR at 2; *see* COS at 3.

Recognizing that the court's decision only affected the protégé entities of MPJVs, and the SDVOSB entities of SDVOSB JVs, we find unobjectionable, the agency's decision to limit proposal revisions to the relevant experience projects for MPJVs and SDVOSB JVs. *See* COS at 5; AR, Tab 4, CO MFR at 3; AR, Tab 3e, RFP amend. 4 at 2-3. Further, as the agency explains, the amendment also permits these business configurations to make "corresponding updates to identify newly proposed subcontractor(s), update teaming documentation, and update claimed scoring and verification for the organizational risk assessment." AR, Tab 4, CO MFR at 3; AR, Tab 3e, RFP amend. 4 at 2-3. Here, VCH has failed to demonstrate what other areas of offerors' proposals will be materially impacted by the revisions of amendment 4.[9] *Akima Data Mgmt., LLC*, *supra* at 5-6.

Since the agency's amendment responded to the areas of concern identified by the court's decision, and nothing in VCH's protest demonstrates that the agency's approach to proposal revisions was an abuse of discretion, we have no basis on which to sustain the protest. *Intermarkets Global*, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 3 (rejecting argument offerors "should be given the opportunity to generally

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[8] Further, the contracting officer explains that restricting the scope of revisions also minimizes the burden on SDVOSBs and their "limited resources to devote to bid and proposal activities," with those SDVOSBs having already invested "significant time and resources" into preparing and submitting proposals. COS at 3. Thus, according to GSA, the agency's corrective action consequently "valued alternatives that caused the least impact on these offerors," and the agency did not permit wider revisions because the requirements for other business configurations had not changed, and since "[s]eeking new proposals from all offerors would have been unreasonably burdensome" considering the COFC decision only impacted [DELETED] MPJVs and [DELETED] SDVOSB JVs, out of [DELETED] total submitted proposals. *Id.* at 3, 7-8; AR, Tab 4, CO MFR at 3.

[9] VCH argues that the agency, rather than use the "materially impacted" standard when limiting proposal revisions, should have instead provided evidence that amendment 4 could not reasonably have any effect on other proposal aspects, or that allowing wider revisions would have a detrimental effect on the competitive process. Protest at 2-3 (citing *Lockheed Martin Sys. Integration-Owego; Sikorsky Aircraft Co.*, B-299145.5, B-299145.6, Aug. 30, 2007, 2007 CPD ¶ 155). Unlike *Lockheed Martin*, the amendment here does not "materially change[] the solicitation's evaluation scheme," such that the agency was required to show that the amendment "could not reasonably have any effect on other aspects of proposals." *Lockheed Martin Sys.*, *supra* at 5-6. In any event, we find that, in addition to properly identifying the proposal areas materially impacted by the amendment's changes, the agency's analysis also provided ample evidence that amendment 4 "could not reasonably have any effect on other aspects of proposals." *Id.* at 5; *Akima Data Mgmt., LLC*, *supra* at 5; AR, Tab 4, CO MFR at 3-4.

revise their proposal" where corrective action was appropriate to remedy concerns identified by GAO). Through amendment 4, GSA modified the requirements for relevant experience projects for MPJVs and SDVOSB JVs and is allowing those offerors to address this change in their proposals. The amendment, therefore, expressly permits MPJVs such as VCH to revise their proposals in a manner intended to comport with the court's decision. Although VCH suggest that offerors should be allowed to "revise all aspects of their proposals," the protester's general desire for a second chance to re-craft its entire proposal does not render the agency's revision restrictions in amendment 4 unreasonable under the circumstances.[10] *See Akima Data Mgmt., LLC*, *supra* at 6.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

[10] The protester also argues, for example, that because this procurement has been pending for over a year, it "may necessitate changes to the offeror's originally submitted representations and certifications." Protest at 3. While GSA could have chosen to permit offerors to revise any aspect of their proposals, the contracting agency's decision not to undertake such action here represents a reasonable exercise of its discretion. *Honeywell Tech. Sols., Inc.*, *supra* at 5-6 (rejecting challenge to corrective action based mainly on allegation that proposals were "outdated").