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# Decision

**Matter of:** VetsTec, LLC

**File:** B-418164

**Date:** November 7, 2019

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Thomas K. David, Esq., Kenneth Brody, Esq., and Katherine A. David, Esq., David, Brody & Dondershine, LLP, for the protester.  
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Colin Nash, Esq., and John W. Tangalos, Esq., Department of Veterans Affairs, for the agency.  
Joshua R. Gillerman, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest is dismissed where the protester is not an interested party to challenge the procurement.

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## DECISION

VetsTec, LLC, of Franklin, Tennessee, protests the award of a contract to B3 Group, Inc., of Herndon, Virginia, under request for proposals (RFP) No. 36C10B19R0009, issued by the Department of Veterans Affairs (VA) for an enterprise telecommunications expense management solution. VetsTec argues that the agency unreasonably evaluated its proposal and made a flawed award decision.

We dismiss the protest because VetsTec is not an interested party to challenge the award.

The RFP, issued on May 13, 2019, contemplated the award of a contract for an enterprise Telecommunications Expense Management Solution to provide asset and service inventory for the VA. Request for Dismissal, exh. A, RFP, at 1, 67-68. Award was to be made on a best-value tradeoff basis, considering price and non-price factors. Id. at 186. The non-price factors were technical, past performance, and veteran's

involvement.<sup>1</sup> Id. Relevant here, under the technical factor, offerors were required to provide a draft Concept of Operations (CONOPS) that reflected how the offeror's proposed solution would function within the VA environment. Id. at 191.

The RFP stated that in order to receive consideration for award, proposals could not receive a rating of lower than "acceptable" for the technical factor.<sup>2</sup> RFP at 186-187. The solicitation also explained that if a proposal failed to meet the RFP's minimum requirements, it will be rated "unacceptable," making the proposal ineligible for award. Id. at 187.

On June 9, the protester submitted its proposal in response to the RFP. Subsequently, on June 19, the agency issued amendment 0004 to the RFP to clarify aspects of the RFP, including the technical volume page limitations. Request for Dismissal, exh. C, amend. 0004, at 1. The amendment stated, in relevant part:

The page limit for Volume I is 40 pages. Volume I shall be submitted in PDF format as indicated in the solicitation. All pages submitted within Volume I including but not limited to cover page / title page, cover letter, table of contents, annexes, documentation, attachments or the like, etc., not specifically required by this solicitation will be counted toward the 40 page limit. The page count will be determined by counting the pages in the order they come up in the print layout view. All Offerors are reminded that in accordance with the terms of the solicitation, pages which exceed the total page limit for a particular volume will not be evaluated.

Id. (emphasis added).

The amendment expressly provided offerors the opportunity to submit a revised proposal, in light of the amendment's clarification, and indicated that the due date for the submission of revised proposals was June 24. Id. On that date, VetsTec acknowledged the amendment but declined to submit a revised proposal, requesting that its originally submitted proposal be evaluated. Request for Dismissal, exh. E, Email from VetsTec, June 24, 2019, at 1 ("VetsTec requests that our original proposal submitted June 9, 2019 be evaluated. We are not submitting a revised proposal.").

The agency evaluated proposals submitted in response to the RFP and assigned VetsTec's proposal two deficiencies. Request for Dismissal, exh. F, VetsTec Technical

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<sup>1</sup> According to the RFP, the technical factor is significantly more important than past performance, which is significantly more important than price, which in turn, is slightly more important than the veterans involvement factor. RFP at 186.

<sup>2</sup> Although not described in the RFP, it appears from the evaluation documentation that the possible adjectival ratings included: outstanding, good, acceptable, and unacceptable. See exh. G, Source Selection Authority, Initial Evaluation Brief, at 129.

Evaluation Report. The agency found that VetsTec's proposal failed to provide an "E-Bonding" integration framework capability and failed to include the draft CONOPS. Request for Dismissal, exh. F, at 2. The agency explains that VetsTec's draft CONOPS was not evaluated because it began after page 40 in the technical volume of VetsTec's proposal. Request for Dismissal at 3. Consequently, VetsTec's proposal was found to be technically unacceptable and thus ineligible for award. Id. The agency made award to B3, as the offeror that submitted the best-value proposal. Request for Dismissal, exh. H, Unsuccessful Offeror Letter, at 1. After providing the protester with a debriefing, VetsTec filed this protest. Request for Dismissal at 3.

In its protest, VetsTec contends that the agency unreasonably assigned its proposal a deficiency for its alleged failure to address the E-Bonding requirement. Protest at 11-12. VetsTec also asserts that its technical volume, inclusive of its CONOPS, was only 39 pages and that, "[c]onsistent with government procurement norms, the original RFP did not affirmatively state that an offeror's TOC [table of contents] or acronyms would be counted towards the 40 page limit."<sup>3</sup> Protest at 7 (emphasis added). VetsTec concludes that these alleged errors led to a flawed selection decision.<sup>4</sup> Id. at 13.

We find that VetsTec is not an interested party to challenge the procurement. Our Bid Protest Regulations define an interested party as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or 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, 20002 CPD ¶ 204 at 4.

As stated in the solicitation, if a proposal was found technically unacceptable, it would not be eligible for award. RFP at 187. The RFP also required the draft CONOPS to be included in the technical volume of an offeror's proposal. RFP at 191. VetsTec's technical proposal volume consisted of 45 pages, inclusive of the cover page, table of contents, and list of acronyms. Request for Dismissal, exh. D, VetsTec's Proposal. As

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<sup>3</sup> VetsTec also alleged that its CONOPS process was "indirectly evidenced throughout numerous sections of its proposal." Protest at 11. The protester has failed to furnish any factual support for this assertion--such as through citations to its proposal where it may have "evidenced" its CONOPS process. Thus, to the extent this assertion represented a distinct protest allegation; we dismiss it as legally and factually insufficient. 4 C.F.R. § 21.1(c)(4).

<sup>4</sup> The protester also argued that if the agency believed that if an aspect of VetsTec's proposal was not in compliance with the page limitations, the agency was obligated to advise VetsTec of this mistake. Protest at 9. To support this assertion, VetsTec cites to Federal Acquisition Regulation (FAR) § 14.407, Mistake in Bids, which provides a framework governing instances where an agency identifies an apparent mistake in a bid in the context of a sealed-bidding procurement. As this requirement was solicited as an RFP under FAR part 15, this provision is inapplicable here.

explained in amendment 0004, all pages submitted in the technical volume would be counted towards the 40 page limit, to include but not limited to the cover page and table of contents. Amend. 0004, at 1. The draft CONOPS portion of VetsTec's proposal did not appear until page 42 of its technical proposal. Id. at 42. According to the terms of the RFP, the agency could not consider any aspect of VetsTec's technical submission included after page 40. Amend. 0004, at 1 (“[P]ages which exceed the total page limit for a particular volume will not be evaluated.”). Therefore, the agency reasonably found that VetsTec's proposal had failed to provide the required draft CONOPS.<sup>5</sup> Request for Dismissal, exh. F, VetsTec's Evaluation Report, at 2; Request for Dismissal at 3.

By the terms of the solicitation, a proposal found to be technically unacceptable would not be eligible for award. RFP at 187. Because VetsTec's technically unacceptable proposal rendered it ineligible for award, VetsTec is, therefore, not an interested party to pursue this protest. 4 C.F.R. § 21.0(a)(1); RELM Wireless Corporation, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 4 (finding that a protester is not an interested party where, even if the protest is sustained, the protester will be ineligible for award under the remaining terms of the solicitation).

The protest is dismissed.

Thomas H. Armstrong  
General Counsel

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<sup>5</sup> We agree with the agency that, to the extent VetsTec is challenging the RFP's page limitations, or the agency's adherence to them during its evaluation of VetsTec's proposal, such an allegation is untimely. A protest challenging alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into it, must be filed not later than the next closing time for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1). While VetsTec appears to imply that the solicitation's page limitation was ambiguous, we disagree. The RFP, as amended, was clear that all pages within the technical volume, including the cover page and table of contents, would be counted toward the 40-page limit. Amend. 0004, at 1. The amendment was also clear that any pages which exceed this 40-page limit would not be evaluated. Id. Thus, to be timely, VetsTec was required to challenge the page limitation requirement prior to the due date for submission of proposals following the issuance of amendment 0004, i.e., on or before June 24. As VetsTec filed its protest after this date, this allegation is untimely and is dismissed. 4 C.F.R. § 21.2(a)(1); see AmaTerra Envtl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3 (protest challenging solicitation's methodology for evaluating price proposals is untimely when filed after the closing time for receipt of proposals).