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# Decision

**Matter of:** OSI Vision, LLC

**File:** B-420199

**Date:** January 3, 2022

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## DIGEST

Protest challenging the evaluation of quotations is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.

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## DECISION

OSI Vision, LLC (OSI), a small business located in San Antonio, Texas, protests the issuance of a task order to Agile-Bot II, LLC (Agile-Bot), also a small business located in Reston, Virginia, by the Department of the Army, Mission and Installation Contacting Command, under request for quotations (RFQ) No. W9124J-21-R-HELP to obtain various information technology support services.

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

On April 29, 2021, the Army issued the RFQ as a competitive set-aside under the Small Business Administration's (SBA) 8(a) program, using the ordering procedures of Federal Acquisition Regulation (FAR) 8.405-5. Agency Report (AR) exh. 3-1, RFQ at 1.<sup>1</sup> The RFQ was issued to vendors holding a contract under the General Services Administration's Multiple Award Schedule 541513, Information Technology Professional Services. *Id.* As amended, the RFQ sought quotations for help

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<sup>1</sup> The RFQ was amended five times.

desk/service desk support, daily operations management, technical management services, and cybersecurity services in support of the U.S. Army North Command in Fort Sam Houston, Texas.<sup>2</sup> AR exh. 3-15, RFQ amend. 2, Performance Work Statement (PWS) at 2.

The RFQ contemplated issuance of a fixed-price task order for a 14-day phase-in period, a base period of 10-months, two 1-year options, and a 6-month extension in accordance with FAR 52.217-8, Option to Extend Services. RFQ at 1; AR exh. 3-13, RFQ amend. 1, Provisions and Clauses at 17; AR exh. 3-15, RFQ amend. 2, PWS at 3. The RFQ provided that award would be made on a best-value tradeoff basis, considering the following evaluation factors: technical approach, past performance, and price. AR exh. 3-13, RFQ amend. 1, Provisions and Clauses at 16. The technical approach factor included three equally weighted subfactors: (1) understanding of requirement; (2) staffing plan/key personnel qualifications and experience; and (3) phase-in plan. The technical approach factor was approximately equal to the past performance factor and, when combined, they were significantly more important than price. *Id.*

The RFQ provided that a vendor's technical approach would be evaluated for technical merit under each of the three subfactors to determine the degree to which the proposed approach met or exceeded the RFQ's requirements. At issue in this protest is the agency's evaluation of quotations under the staffing plan/key personnel qualifications and experience subfactor. The RFQ stated that this subfactor would be evaluated qualitatively assessing how well the vendor's quotation addressed the following elements: (i) key personnel qualifications; (ii) staffing approach; (iii) staffing plan; and (iv) key personnel positions. See *id.* at 11-12.

With respect to past performance, vendors were required to provide up to three past performance references for work performed as the prime contractor. AR exh. 3-13, RFQ amend. 1, Provisions and Clauses at 12. The RFQ also provided that

If the offeror is proposing the use of a major subcontractor (defined as performing 30% or more of the total labor value of the contemplated effort), the offeror shall provide at least one past performance reference for all subcontractors, teaming partners, and/or joint venture partners proposed to perform a significant portion of the proposed effort based on the total proposed price.

*Id.*

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<sup>2</sup> This procurement is for recurring services and is a follow-on to a contract previously awarded as part of the SBA's 8(a) program. Contracting Officer's Statement at 1.

The contract references were to demonstrate experience performing work similar in size, scope, and complexity to the PWS, and were to be current or performed within 3 years from the date of issuance of the RFQ. *Id.* at 12-15.

The Army received timely quotations from multiple vendors, including OSI and Agile-Bot.<sup>3</sup> Contracting Officer's Statement at 2. As relevant here, OSI identified cFocus Software, Inc. (cFocus), the incumbent contractor, as its subcontractor. AR exh. 4, Vol. II, OSI's Technical Proposal at 1. Agile-Bot submitted its quotation as an 8(a) mentor-protégé joint venture with BuddoBot as the protégé and Agile Defense as the mentor.<sup>4</sup> Intervenor's Req. for Dismissal at 4.

After receipt of quotations, the agency convened a source selection evaluation board (SSEB) to evaluate vendors' quotations. After concluding that none of the vendors met the experience requirements for various key personnel positions, the agency decided to revise the RFQ's key personnel requirements. Accordingly, on August 16, the agency amended the RFQ to reduce the minimum supervisory experience from 6 years to 4 years for each key personnel position.<sup>5</sup> AR exh. 3-24, RFQ amend. 5 at 7-10. Vendors were permitted to revise only this aspect of their quotations and to submit revised quotations, or an email indicating no revisions, by August 19. AR exh. 3-23, Agency Email to Vendors.

Following the requested submission, the SSEB assigned adjectival ratings under the non-price evaluation factors and drafted a technical consensus evaluation report. As relevant to the protest, a rating of outstanding indicated a quotation with an exceptional approach and understanding of the requirements that contained multiple strengths, and low risk of unsuccessful performance. AR exh. 3-13, RFQ amend. 1, Provisions and Clauses at 19. A rating of good indicated a quotation with a thorough approach and understanding of the requirements that contained at least one strength, and low to moderate risk of unsuccessful performance. *Id.* The RFQ defined a strength as an

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<sup>3</sup> Although the evaluation record and the agency's response to the protest often refer to the receipt of "proposals" from "offerors," the RFQ actually solicited "quotations" from "vendors."

<sup>4</sup> The SBA's 8(a) mentor-protégé program is designed to encourage approved mentors to provide various forms of business development assistance (*i.e.*, technical and management assistance, financial aid in the form of equity investments and/or loans, and subcontract support) to eligible protégé participants in order to enhance the capabilities of the protégés and improve their ability to successfully compete for federal contracts. 13 C.F.R. § 124.520(a).

<sup>5</sup> Later, in response to a debriefing question from OSI, the contracting officer explained that the agency issued amendment 5 after evaluating quotations because no vendor "presented a staffing plan that met the [solicitation] requirements." Agency's Resp. to Intervenor's Req. for Dismissal, exh. 3, Q&A No. 4. The agency further stated that vendors "were able to meet a 4 year experience requirement but not 6." *Id.*

aspect of a quotation that had merit, or exceeded specified performance or capability requirements in a way that would be advantageous to the government during contract performance. *Id.*

Past performance was assigned adjectival ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence or unknown confidence. *Id.* at 21. As relevant, a rating of substantial confidence was based on the vendor’s recent/relevant performance record, and a high expectation that the vendor will successfully perform the required effort. *Id.*

The evaluation of OSI’s and Agile-Bot’s quotations<sup>6</sup> resulted in the following ratings and evaluated prices:

	OSI	Agile-Bot
<b>Technical Approach</b>	<b>Outstanding</b>	<b>Outstanding</b>
Understanding of Requirement	Outstanding	Outstanding
Staffing Plan/Key Personnel Qualifications & Experience	Good	Good
Phase-in Plan	Outstanding	Outstanding
<b>Past Performance</b>	<b>Substantial Confidence</b>	<b>Substantial Confidence</b>
<b>Evaluated Total Price</b>	<b>\$13,996,766</b>	<b>\$12,938,159</b>

AR exh. 6, OSI Debrief at 2; AR exh. 5.1, Source Selection Evaluation Board (SSEB) Consensus Report at 3.

With respect to OSI’s quotation, the SSEB identified four strengths under subfactor 1, understanding of requirements. For subfactor 2, staffing plan/key personnel qualifications and experience, the evaluators identified one strength for OSI’s key personnel resumes, finding that the technical certifications, security clearances, and supervisory experience of its proposed key personnel exceeded the RFQ requirements for their positions. For the phase-in plan, subfactor 3, the SSEB identified one strength, finding that OSI’s transition plan contained almost no risk because the vendor was teaming with the incumbent contractor. AR exh. 6, OSI Debrief at 1-2; AR exh. 5.2, Task Order Decision Document at 17, 19. The record here did not disclose the evaluated strengths for the awardee’s quotation, only the adjectival ratings.

The contracting officer, as the task order decision authority, subsequently received and reviewed the evaluators’ findings. The contracting officer accepted the evaluation record and concluded that the OSI and Agile-Bot quotations, under both the technical approach and past performance factors, were essentially equal in merit. AR exh. 5.2, Task Order Decision Document at 1. The contracting officer concluded that Agile-Bot’s lower-priced quotation represented the overall best value to the government. *Id.*

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<sup>6</sup> The quotations submitted by the other vendors are not relevant to this protest and are not further discussed.

The agency provided OSI with notice of the selection decision and a written debriefing that listed each of its evaluated strengths. AR exh. 6, OSI Debrief at 1-3. The Army also provided OSI with Agile-Bot's adjectival ratings and price. *Id.* at 1. This protest followed.

## DISCUSSION

OSI challenges the evaluation of both its own and Agile-Bot's quotation under the non-price factors. With regard to its own evaluation, OSI alleges that the agency improperly evaluated its quotation under the staffing plan/key personnel qualifications and experience subfactor, arguing that its quotation deserved a rating of outstanding rather than good under this subfactor. Protest at 16. OSI also contends that the agency miscalculated Agile-Bot's quotation under the phase-in plan subfactor and the past performance factor. *Id.* We have considered all of the protest issues and arguments raised by OSI, and although we do not address them all, we find no basis on which to sustain the protest.

### Technical Evaluation

OSI contends the evaluation of its technical quotation was unreasonable. The protester argues that the agency failed to assess additional strengths under the staffing plan/key personnel qualifications and experience subfactor which, according to the protester, would have led to higher ratings and the award. Specifically, OSI asserts: (1) it deserved a strength for teaming with the incumbent, cFocus, whose performance under the incumbent contract received exceptional contractor performance assessment reporting system ratings; (2) it deserved a separate strength because the resumes for each key personnel position show that the proposed personnel exceeded the required qualifications and provided a significant benefit to the Army; (3) it should have received a strength for proposing one full-time equivalent (FTE) for each key personnel position; and (4) it should have received a strength because it has a high level of Army experience with the [DELETED].<sup>7</sup> See *generally* Protest at 8-11.

Where, as here, an agency issues an RFQ to vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. See *DataSavers of Jacksonville, Inc.*, B-415113.3, Aug. 24, 2018, 2018 CPD ¶ 290 at 4; *Harmonia Holdings Grp, LLC*, B-414691, B-414691.2, Aug. 17, 2017, 2017 CPD ¶ 272 at 4. When a protester argues that its quotation should have been assessed additional strengths, we generally will not disturb the agency's exercise of its discretion with respect to whether a feature of a vendor's quotation so exceeds the solicitation's requirements as to warrant the assignment of a strength, absent evidence that an agency's evaluation was unreasonable or disparate. *Mission1st Grp., Inc.*, B-419369.2, Jan. 25, 2021, 2021

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<sup>7</sup> [DELETED]

CPD ¶ 65 at 12; *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4. A protester's disagreement with the agency's judgment, without more, does not establish that the evaluation was unreasonable. *Converge Networks Corp.*, B-419643, June 14, 2021, 2021 CPD ¶ 266 at 4; *Open Tech. Grp., Inc.*, B-416313, B-416313.2, Aug. 2, 2018, 2018 CPD ¶ 273 at 7.

Here, in responding to each of the claims made by the protester, the Army states that its evaluation of OSI's quotation was reasonable and in accordance with the terms of the solicitation. Contracting Officer's Statement at 4; Memorandum of Law at 8. First, the agency states that OSI's quotation was, in fact, assessed a strength for its subcontractor's exceptional performance under the incumbent contract. The agency explains that this strength was properly assigned under the past performance factor. To the extent OSI complains that it also should have received credit under the staffing plan/key personnel qualifications and experience subfactor as well as the past performance factor, the agency further explains that such an evaluation approach was not required under the terms of the RFQ. *Id.* We agree with the agency. How well OSI's team member performed as the incumbent was reasonably viewed by the agency as a matter for consideration under the past performance factor.

The protester's argument that it deserved a separate strength under the staffing plan/key personnel and experience subfactor for each one of its key personnel positions that exceeded the required qualifications is also without merit. As noted above, the record reflects that the agency did in fact assign the protester's quotation with a strength based on the qualifications of its key personnel. Specifically, the evaluators assigned OSI with a strength because the technical certifications, security clearances, and supervisory experience of OSI's proposed key personnel exceeded the RFQ requirements for their positions. While the protester believes that this strength should have been separately counted for each key position, the solicitation did not require any such separate counting of strengths.

Next, there is no basis for OSI's claim that it should have received a strength for proposing one FTE for each key personnel position. The agency correctly points to specific language in the RFQ indicating that the Army expected each key position would be filled by one FTE. *Id.*; Memorandum of Law at 9 (*citing*, AR exh. 3-13, RFQ amend. 1, Provisions and Clauses at 11). As stated previously, a strength would be assessed where an aspect of a quotation had merit, or exceeded specified performance or capability requirements in a way that would be advantageous to the government during contract performance. See AR exh. 3-13, RFQ amend. 1, Provisions and Clauses at 19. Given that OSI was proposing to meet the government's expectations, but not exceed them, we fail to see how the agency acted unreasonably by not assigning OSI's quotation a strength in this regard. Moreover, the agency acknowledged the solicitation stated that if each key position was filled by one FTE, the approach "may be determined as a strength and/or benefit to the Government." *Id.*; Memorandum of Law at 9 (*citing*, AR exh. 3-13, RFQ amend. 1, Provisions and Clauses at 12). Thus, the assessment of a strength was optional, but no such strength was

required, as argued by OSI. Hence, we see no basis to conclude the agency violated the terms of the solicitation by not assessing a strength in this area.

As to the protester's assertion that it deserved a strength for its [DELETED] experience, the agency contends that the protester fails to explain why such experience was advantageous to the Army or how that experience would require the agency to assign it a strength. *Id.* at 5; Memorandum of Law at 9. While OSI disagrees with the number of strengths and the adjectival rating assessed by the agency, on this record, we have no basis to conclude that the agency's evaluation of quotations was unreasonable. See *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 7.

Finally, prior to filing the agency report, the Army and the intervenor requested that our Office dismiss as untimely and legally insufficient various arguments raised by OSI in its protest. We agreed and did not require development of the record on these issues. We address these issues below.

#### Untimely Allegation

OSI objects to the Army's decision to revise the RFQ's key personnel experience requirement from 6 years to 4 years of mandatory supervisory experience for each key position. Protest at 5-8; see *generally*, Protester's Comments at 2-3. The protester asserts that it submitted resumes for its subcontractor's current incumbent staff for the key personnel positions. Each of these individuals, the protester alleges, met the initial 6 year supervisory experience requirement, and therefore the agency did not have a valid reason to reduce the experience requirement. Protest at 6. Had the agency informed OSI that its quotation failed "to meet the 6 year requirement, [OSI] would have challenged this finding as well as the [a]gency's issuance of [a]mendment 5." *Id.* at 7.

OSI's objection constitutes a post-award challenge to the terms of the RFQ. Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on alleged improprieties in a solicitation, which are apparent prior to the time set for receipt of quotations, must be filed prior to the time set for receipt of quotations. 4 C.F.R. § 21.2(a)(1); see *American Sys. Grp.*, B-418535, June 9, 2020, 2020 CPD ¶ 190 at 3; *Bluehorse*, B-412494, B-412494.2, Feb. 26, 2016, 2016 CPD ¶ 64 at 2-3 n.3. This rule includes challenges to alleged improprieties that do not exist in the initial solicitation but which are subsequently incorporated into it; in such cases, the solicitation must be protested not later than the next closing time for receipt of quotations following the incorporation. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4.

Here, OSI's protest, properly construed, is challenging the agency's decision to revise the RFQ's key personnel experience requirements after the agency had received OSI's quotation that allegedly met the initial 6-year supervisory experience requirements. If OSI believed that these revisions violated procurement law or regulation, it was required to raise these protest grounds prior to the closing date for receipt of quotations following

incorporation of the amendment, *i.e.*, prior to August 19. 4 C.F.R. § 21.2(a)(1). Since it failed to do so, this protest ground is untimely and will not be considered.

While OSI insists that its protest should be considered timely because it did not learn until its debriefing why the agency reduced the supervisory experience requirement from 6 years to 4 years, the protester is mistaken. During the debriefing, the agency explained that its evaluation concluded that none of the firms met the more stringent 6-year requirement. Although the protester contends the agency's reasoning was flawed (OSI argues that it did in fact meet the requirement for 6 years of experience) the evaluation conclusions that led to the change are not relevant to the question of the government's minimum needs. That is, the government concluded that 4 years of experience was sufficient to meet its needs, and if the protester thought 4 years of experience was not sufficient--or was otherwise contrary to law or procurement regulation--it was required to raise the matter before the closing date set by amendment 5, not after award.<sup>8</sup>

### Legally Insufficient Allegations

OSI also raises several protest grounds that do not state a valid legal basis for our consideration. Our Regulations require that a protest include a detailed statement of the legal and factual grounds for protest, and that the grounds stated be legally sufficient. *Id.*; 4 C.F.R. §§ 21.1(c)(4) and (f), 21.5(f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

For example, OSI asserts that the agency should not have assigned Agile-Bot a past performance rating of substantial confidence because Agile-Bot could not have submitted a required past performance reference for BuddoBot, its joint venture partner. According to OSI, BuddoBot as "a joint venture partner, was required to submit a past performance reference, and its past performance reference should have been more important than the past performance references of its joint venture partner." Protest at 16. In this regard, OSI asserts that the solicitation established that "[a]ll joint venture partners [were] required to submit a past performance reference," yet Agile-Bot could not have submitted any relevant past performance references for its joint venture

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<sup>8</sup> We also note that the agency's decision to issue amendment 5 serves to enhance competition among 8(a) vendors. To the extent OSI alleges that the agency impermissibly revised its key personnel experience requirements after OSI had submitted a quotation that allegedly met the initial experience requirements, the protester is essentially arguing that the RFQ should be more restrictive of competition, which is inconsistent with our Office's role in reviewing bid protests. See *Areka Trading & Logistics Co.*, B-413363, Oct. 13, 2016, 2016 CPD ¶ 290 at 2-3 (we do not generally permit a protester to use the protest process to advocate for more restrictive government requirements).



partner because BuddoBot “has no \$10 million contracts.” *Id.* Accordingly, OSI argues, Agile-Bot should have received a lower past performance rating. *Id.*; Protester’s Resp. to Intervenor’s Req. for Dismissal at 3.

In our view, the protester’s arguments are based on an erroneous understanding of the terms of the solicitation and unsupported speculation. Contrary to OSI’s assertions, the solicitation did not require all joint venture partners to submit a past performance reference; rather, the solicitation only contemplated the submission of a past performance reference for a joint venture partner “[i]f the offeror is proposing the use of a major subcontractor.” See AR exh. 3-13, RFQ amend. 1, Provisions and Clauses at 12. The protester failed to provide any basis to reasonably support an allegation that Agile-Bot proposed to use a major subcontractor.

Similarly, we dismiss as legally insufficient the protester’s argument that it should have received a higher rating than Agile-Bot under the phase-in plan subfactor. The crux of OSI’s argument is that it must have had a superior plan since it teamed with incumbent contractor. We have consistently stated that unsupported allegations based on speculation on the part of the protester do not provide an adequate basis for protest. See, e.g., *Raytheon Blackbird Tech., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3; *Castro & Co., LLC*, B-415508.10, June 11, 2019, 2019 CPD ¶ 215 at 5-6. Moreover, there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that an agency assign or reserve the highest rating to the incumbent offeror. *Integral Consulting\_Servs., Inc.*, B-415292.2, B-415292.3, May 7, 2018, 2018 CPD ¶ 170 at 7-8.

The protest is denied in part and dismissed in part.

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