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# Decision

**Matter of:** Favor TechConsulting, LLC

**File:** B-420279; B-420279.3; B-420279.6

**Date:** January 7, 2022

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## DIGEST

1. Protest that agency unreasonably evaluated protester's proposal is denied where the record shows that the evaluation was consistent with the terms of the solicitation.
2. Protest challenging agency's failure to disqualify awardee due to alleged organizational conflicts of interest is dismissed where the protester was found ineligible for award and therefore is not an interested party to raise this protest ground.

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## DECISION

Favor TechConsulting, LLC (FTC), located in Vienna, Virginia, protests the issuance of a task order to Liberty IT Solutions, located in Herndon, Virginia, under request for task execution plan (RTEP) No. T4NG-0613, issued by the Department of Veterans Affairs (VA) for health services development, security and operations (DevSecOps) support. The protester contends that the agency unreasonably and unequally evaluated its technical approach, calculated FTC's past performance score incorrectly, improperly failed to disqualify the awardee based on its organizational conflicts of interest, and conducted a flawed best-value tradeoff determination.

We deny the protest.

## BACKGROUND

On August 31, 2021, the agency issued the RTEP as a task order solicitation under the agency's Transformation Twenty-One Total Technology-Next Generation multiple-award indefinite-delivery, indefinite-quantity contract. The solicitation sought health services DevSecOps support for the VA's Office of Information and Technology, Development, Security and Operations, Enterprise Program Management Office, Health Services Portfolio Operations. The support to be provided includes shippable products, operations support, and security compliance for the Health Services Portfolio. Contracting Officer's Statement (COS) at 1. The solicitation contemplated a 12-month, fixed-price task order with a cost-reimbursable line item for travel and four 12-month option periods.

The RTEP provided for award on a best-value tradeoff basis considering the following three evaluation factors: technical, past performance, and price. Agency Report (AR), Tab 6, RTEP at 4.<sup>1</sup> The technical factor was significantly more important than the past performance factor, which was significantly more important than price. *Id.* To receive consideration for award, a rating of no less than acceptable was required for the technical factor. *Id.*

For the evaluation of the technical factor, the solicitation required offerors to propose a detailed technical approach that provides, among other elements: (1) an approach to a system-of-systems architecture and a roadmap that includes clearly defined initiate states, target states, and multiple transition states, including integrations or deprecation with the future state of electronic health record systems; and (2) an approach that addresses the criteria for current VistA and Non-VistA legacy products referenced in the base year potential product list.<sup>2</sup> *Id.* at 3.

The solicitation contemplated that the evaluation of the technical factor would consider two criteria: understanding of the problem and feasibility of approach. *Id.* at 5. For "understanding of the problem," the technical volume would be evaluated "to determine the extent to which it demonstrates a clear understanding of all features involved in solving the problems and meeting and/or exceeding the requirements presented in the task and the extent to which uncertainties are identified and resolutions proposed." *Id.* at 5. For "feasibility of approach," the technical volume would be evaluated "to determine the extent to which the proposed approach is workable and the end results achievable . . . to determine the level of confidence provided the [g]overnment with respect to the [o]fferor's methods and approach in successfully meeting and/or exceeding the requirements in a timely manner." *Id.*

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<sup>1</sup> The versions of the RTEP (Tab 6) and the evaluation report (Tab 8) provided in the agency report did not include page numbers. Citations to solicitation page numbers refer to the page number in the electronic Adobe pdf document.

<sup>2</sup> VistA is an acronym referring to the Veterans Health Information System Technology Architecture, one of the product lines within the Health Services Portfolio. RTEP at 172.

The agency received eight task execution plans (TEPs) in response to the solicitation. The VA evaluated the TEPs of FTC and Liberty as follows:

	<b>Technical</b>	<b>Past Performance</b>	<b>Price</b>
<b>FTC</b>	<b>Unacceptable</b>	<b>14.2</b>	<b>\$622,978,299</b>
<b>Liberty</b>	<b>Outstanding</b>	<b>17</b>	<b>\$734,949,800</b>

AR, Tab 10, Source Selection Decision Document at 2.

FTC was rated unacceptable under the technical factor as a result of two deficiencies.<sup>3</sup> The first deficiency was assessed for “providing an incomplete technical approach in its example [system-of-systems] architecture and roadmap.” *Id.* at 5. The second deficiency was assessed for “failing to describe a detailed plan to address Non-VistA legacy products for [d]efect [m]anagement, [r]emediation, and [t]imeliness.” *Id.* As a result of these deficiencies, FTC was found ineligible and removed from award consideration. *Id.* at 6.

On September 29, the VA notified FTC of the award to Liberty. This protest followed.<sup>4</sup>

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<sup>3</sup> Under the agency’s evaluation plan, a rating of unacceptable was defined as:

TEP that contains a major error(s), omission(s) or deficiency(ies) that indicates a lack of understanding of the problems or an approach that cannot be expected to meet requirements or involves a very high risk; and none of these conditions can be corrected without a major rewrite or revision of the TEP. A TEP that fails to meet any of the Government’s requirements after the final evaluation shall be ineligible for award regardless of whether it can be corrected without a major rewrite or revision of the TEP.

AR, Tab 5, Task Order Evaluation Plan at 6.

<sup>4</sup> Because the value of the task order is in excess of \$10 million, this protest is within our jurisdiction to consider protests regarding task orders placed under civilian agency indefinite-delivery, indefinite-quantity contracts. See 41 U.S.C. § 4106(f)(1)(B); *Alliant Sols., LLC*, B-415994, B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 4 n.8.

## DISCUSSION

The protester challenges numerous aspects of the agency's evaluation of TEPs and argues that the awardee had disqualifying organizational conflicts of interest (OCIs). As an initial matter, the protester argues that the VA's assessment of two deficiencies in FTC's technical approach reflected clear error, as well as the imposition of unstated evaluation criteria and disparate treatment. The protester also challenges the agency's failure to credit certain strengths and discriminators in its TEP, and argues that the agency erred in its calculation of FTC's past performance score.<sup>5</sup> In addition, FTC argues that the awardee had disqualifying OCIs by virtue of the acquisition of Liberty by Booz Allen Hamilton, a contractor providing program management support for the VA's Electronic Health Record Modernization project. Last, the protester contends that the agency's best-value tradeoff was flawed as a result of these errors.

While we do not address every argument raised by the protester, we have reviewed each argument and find no basis to sustain the protest.

### Technical Evaluation

FTC challenges as unreasonable both deficiencies assessed by the VA under the technical factor.

#### Challenge to first deficiency

For the first deficiency, the agency found that FTC provided an incomplete technical approach in its example system-of-systems architecture and roadmap. AR, Tab 8, FTC Evaluation Report at 2. The agency further found that FTC failed to meet the RTEP requirement to include initial, target and multiple transition states pertaining to the Electronic Health Record systems, and that FTC did not address how its approach reflected any Health Services Portfolio application to be completed as required in the RTEP. *Id.* The agency noted that the approach described a framework FTC would follow across the portfolio, but did not provide a roadmap and any level of specificity for the government to use to "properly evaluate the feasibility of the [o]fferor's approach including its plan for integration with the future state of the Electronic Health Record systems." *Id.*<sup>6</sup>

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<sup>5</sup> The agency has conceded that it erred in the calculation of FTC's past performance score, and that FTC's past performance score should have been 15.2. COS at 13. The agency argues, however, that this error did not competitively prejudice FTC. The protester has acknowledged that this error, by itself, did not prejudice FTC. Comments & Supp. Protest at 38.

<sup>6</sup> In addition, another part of the deficiency faults FTC for including an approach to Vista transition activities that is outside the scope of the task order. We address below this portion of the deficiency and the protester's challenge to it.

The protester argues that this deficiency is impermissibly based on unstated evaluation criteria because the RTEP required offerors to provide an approach to a system-of-systems architecture, not the architecture itself. Citing excerpts from its TEP, the protester argues that it provided just such an approach. The protester asserts that rather than requiring that offerors propose an architecture, the RTEP made the architecture a contract deliverable (by requiring the completion of a “solution level roadmap” after the commencement of contract performance). Supp. Comments at 16 (*citing* RTEP at 193, 226). FTC contends that its interpretation of the solicitation “give[s] effect to all relevant [s]olicitation provisions,” whereas the agency’s interpretation of the requirement would render the contract deliverable requirement meaningless. *Id.*

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency’s discretion, since the agency is responsible for defining its needs and the best method of accommodating them. *Wyle Labs., Inc.*, B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6. In reviewing protests challenging an agency’s evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency’s judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5.

We find the assessment of the deficiency here to be consistent with the stated evaluation criteria. As previously noted, the solicitation called for a detailed approach and roadmap, requesting that offerors provide “an approach to a system-of-systems architecture and a roadmap that includes clearly defined initiate states, target states, and multiple transition states including integrations or deprecation with the future state of Electronic Health Record systems.” RTEP at 2. The approach was to “describe how it reflects most Health Portfolio applications to be addressed by this requirement.” *Id.* In addition, proposals were to “address all activities required to ensure that point to point interfaces are avoided and capabilities are implemented as a set of common services leveraged by an interoperability platform.” *Id.*

Following these stated criteria, the agency found that FTC did not satisfy the requirement for a detailed approach and framework. The agency noted that FTC “failed to include initial, target and multiple transition states pertaining to the Electronic Health Record systems and did not address how the [o]fferor’s approach reflects any Health Portfolio application to be completed as required in the RTEP.” AR, Tab 8, FTC Evaluation Report at 2. The VA further noted that FTC’s approach “described a framework it would follow across the portfolio for [system-for-systems], however [it] did not provide a roadmap and any level of specificity for the [g]overnment to properly evaluate the feasibility of the [o]fferor’s approach including its plan for integration with the future state of the Electronic Health Record systems.” *Id.*

While the protester cites portions of its TEP that it contends contain these missing details, we are not persuaded that the agency’s findings were unreasonable. In this

respect, FTC's approach mainly focused on its experience and expertise without providing a detailed technical approach. See, e.g., AR, Tab 7, FTC TEP at 6 (**“Approach to System-of-Systems Architecture and a Roadmap** To meet VA's extraordinary [System-of-Systems] challenge, we bring the team with the most experience, technical capability, and tools expertise to transition [Health Services Portfolio's System-of-Systems] to the next generation.”). While FTC's TEP contains general information about the protester's approach to addressing these requirements, it omits specific details required by the evaluation criteria, such as how the approach “reflects most Health Portfolio applications to be addressed by this requirement.” RTEP at 2. As noted by the agency, “[w]hile FTC's proposal did contain several mentions, by name, of applications and products, its proposal failed to provide sufficient information . . . as to *how* FTC would utilize these applications to meet RTEP requirements.” Memorandum of Law (MOL) at 7.

In sum, we agree with the agency that the deficiency is consistent with the content of FTC's TEP and the stated evaluation criteria, which required specific details and a roadmap to demonstrate the feasibility of an offeror's approach and the offeror's understanding of the problem.

The protester also challenges the evaluators' finding that its TEP approached VistA transition activities by proposing to “determine which versions of Health Portfolio products are being implemented at each VistA instance and . . . utilize this for activities that will result in identifying which VistA instances can be depreciated<sup>7</sup> following release of Cerner capability at each site impacted.” AR, Tab 8, FTC Evaluation Report at 3. The VA faulted this approach for being outside the scope of the task order, and stated that these “unnecessary activities” would materially impact the delivery of VistA functionality to the field, creating an unacceptable level of risk that FTC would not be able to provide a solution that meets the task order requirements. *Id.* The protester contends that its TEP “at no point states the foregoing, and it appears that the VA is describing an approach proposed by a different offeror.” Protest at 19.

In response to this protest ground, the agency noted that FTC's TEP supports the agency's interpretation of the TEP's approach to VistA transition activities. Specifically, FTC's TEP stated:

[DELETED]

AR, Tab 7, FTC TEP at 7. While the protester contends that it never proposed for FTC to identify which VistA instances could be depreciated, we find that the agency reasonably interpreted this TEP language as proposing to go beyond the requirements

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<sup>7</sup> The agency uses the word depreciated in its description of the deficiency, by which it presumably means deprecated. In this respect, the solicitation's description of the technical approach states that offerors shall provide “a roadmap that includes clearly defined initiate states, target states, and multiple transition states including integrations or deprecation with the future state of Electronic Health Record systems.” RTEP at 160.

of the performance work statement (PWS) by [DELETED]. See AR, Tab 8, FTC Evaluation Report at 3. To the extent FTC argues that the quoted language should be interpreted differently, we note that it is an offeror's responsibility to submit a well-written proposal that clearly demonstrates the merits of its proposal, and an offeror that fails in this responsibility runs the risk that the agency will unfavorably evaluate its proposal. See, e.g., *Enterprise Servs., LLC et al.*, B-415368.2 *et al.*, Jan. 4, 2018, 2018 CPD ¶ 44 at 7.

### Challenge to second deficiency

The protester further argues that the second deficiency assessed by the agency was unreasonable and reflected disparate treatment. In this respect, the VA found that FTC "failed to describe a detailed plan to address Non-VistA legacy products for Defect Management, Remediation, and Timeliness PWS Sections 5.3.4.8, 5.3.5.9 and 5.3.4.10, which were specifically requested in the RTEP." AR, Tab 8, FTC Evaluation Report at 3. The agency noted that FTC's approach "lacked acknowledgment and a documented understanding of the complexities of VistA and Non-VistA across the enterprise and how items would be managed related to those complexities ([e.g.], sites with local modifications), in order to ensure streamlined functioning for sites." *Id.* The agency further noted that the lack of an approach "lowers the [g]overnment's confidence that the [o]fferor has the ability to successfully complete the tasks set forth in the PWS, resulting in significant training of the [o]fferor to gain clarity of the complexities of the systems and ultimately delaying the delivery of functionality and the [o]fferor's ability to react to defects within the required response times for the critical clinical care products utilized in this task order." *Id.*

The protester asserts that the assessment of this deficiency was improper because its TEP addressed both VistA and Non-VistA legacy products and because the "critique suggests, erroneously, that there should be two separate approaches for VistA and Non-VistA legacy products." Supp. Comments at 18. The protester argues that this was unreasonable because the VA historically has used a single process and approach to address all such products. FTC contends that, consistent with the VA's historical approach, it proposed a single, proven approach to manage and remediate defects across both VistA and Non-VistA applications. The protester argues that this approach reduces the costs of managing software defects, allowing FTC to focus on software complexity, and, [DELETED]. Last, the protester asserts that the assessment reflected disparate treatment because the awardee also proposed a single process for VistA and Non-VistA legacy products, but did not receive a similar deficiency. The protester notes that the agency instead assigned Liberty a significant strength for performing sustainment support for both VistA and Non-VistA legacy products.

We find the assignment of the above deficiency to be reasonable based on FTC's failure to provide a detailed approach to Non-VistA legacy products. In this respect, the RTEP required offerors to provide an approach that addresses the following criteria for both VistA and Non-VistA legacy products: (1) meeting certain timeliness requirements outlined in the PWS for ticket processing and defect remediation, (2) providing defect

remediation processing, (3) providing defect management planning, and (4) providing an Agile approach and best practices for testing and validation. RTEP at 3. The solicitation stated that the approach was to “demonstrate an understanding of the complexity of the legacy products involving MUMPS code and standards, Fileman data and storage, interface relationship between applications within and outside of VistA, Graph User Interface and web code, standards and databases.” *Id.*

According to the agency, to demonstrate this understanding, an offeror would need to demonstrate its understanding that the tool sets and key components for the management of VistA-based products differ from Non-VistA products. MOL at 10. The agency explains in this respect that VistA legacy management is a burdensome and time-consuming process, requiring site-to-site management, while Non-VistA products are more modern. *Id.* at 10-11. As a result, Non-VistA products are managed in a different manner than VistA products. *Id.* at 11.

As the agency notes, however, FTC’s approach did not demonstrate an understanding of these differences. Instead, its TEP discussed its experience and expertise with VistA and Non-VistA products without providing a meaningful level of detail regarding how it would approach the differing products, and without noting meaningful distinctions between the products. See AR, Tab 7, FTC TEP at 19. For example, while the RTEP required an approach that demonstrated an understanding of the Non-VistA products with respect to “[p]roviding defect remediation processing in PWS Section 5.3.4.9, Product Defect Remediation,” RTEP at 3, FTC’s TEP did not provide relevant details with respect to its defect remediation processing approach for Non-VistA products. Due to this lack of detail, we find that the agency reasonably found that FTC’s TEP failed to satisfy the evaluation criteria, which called for offerors to demonstrate the feasibility of their approach and an understanding of the problem. See RTEP at 5. While the protester contends that by assessing this deficiency, the agency unreasonably required two separate approaches for VistA and Non-VistA products, we find that the deficiency accords with the requirements in the solicitation for offerors to demonstrate an understanding of the two differing product types.

Turning to the protester’s allegation of disparate treatment, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10. Here, the record shows that the differing evaluation treatment of the two TEPs is reasonably explained by differences in the TEPs. In this regard, in contrast to FTC’s approach, Liberty included extensive details of the process it would use and, in doing so, demonstrated its understanding of the technical differences between VistA and Non-VistA legacy products. For example, Liberty’s response to section B.1.4 of the solicitation included a paragraph describing the requirements of maintaining VistA products and noting that [DELETED. AR, Tab 15, Liberty TEP at 23. In sum, we find the protester’s allegation of disparate treatment to be unsupported.



## Remaining Protest Grounds

Due to the above deficiencies, the agency reasonably found FTC's TEP technically unacceptable, and therefore ineligible for award. See RTEP at 4 ("To receive consideration for award, a rating of no less than 'Acceptable' must be achieved for the Technical Factor"). Because FTC is ineligible for award, FTC is not an interested party to pursue its remaining protest allegations. See *American Native Veterans of Louisiana*, B-414555.2, July 11, 2017, 2017 CPD ¶ 219 at 6. As a result, we dismiss the remainder of FTC's arguments, including its challenges to the evaluation of FTC's TEP and the agency's best-value tradeoff, and its allegations pertaining to OCIs on the part of Liberty.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel