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# Decision

**Matter of:** Excelsior Ambulance Service, Inc.

**File:** B-422177.4

**Date:** June 14, 2024

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## DIGEST

Protest that the agency unreasonably evaluated the awardee's quotation is denied where the record shows that the agency reasonably evaluated the awardee's quotation in accordance with the terms of the solicitation and procurement laws and regulations.

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## DECISION

Excelsior Ambulance Service, Inc., a service-disabled veteran-owned small business (SDVOSB), of Ludowici, Georgia, protests the award of a contract to GovTranz, LLC, also an SDVOSB, of Salt Lake City, Utah, under request for quotations (RFQ) No. 36C24924Q0020, issued by the Department of Veterans Affairs for non-emergency patient transportation services for the Tennessee Valley Healthcare System. Excelsior argues that the agency unreasonably evaluated GovTranz's past performance.

We deny the protest.

## BACKGROUND

The agency issued the RFQ on October 20, 2023, as a total SDVOSB set-aside pursuant to Federal Acquisition Regulation (FAR) part 13, simplified acquisition procedures. Agency Report (AR), Tab 3, RFQ at 1; Contracting Officer's Statement (COS) at 1. The solicitation required non-emergent patient transportation services for the Tennessee Valley Healthcare System's veterans and beneficiaries from their place of origin to their destination, including providing wheelchair van services and other

overland transportation. RFQ at 16. The solicitation contemplated the award of a 5-year requirements contract with five consecutive 1-year ordering periods. *Id.* at 1.

Award was to be made to the vendor with the lowest-priced, technically acceptable quotation considering technical capability,<sup>1</sup> past performance, and price factors. *Id.* at 82-85.

Under the technical capability factor, vendors were to provide a narrative description of their ability to perform the required services and demonstrate at least three years of experience providing non-emergent patient transportation services. *Id.* at 82-83. This factor was assigned a rating of either technically acceptable or unacceptable. *Id.*

Under the past performance factor, vendors were required to provide at least three past performance questionnaires discussing performance that was relevant and recent where the vendor received a rating of at least satisfactory. *Id.* at 84. Relevant was defined as at least three years of experience providing transportation services for medical facilities. *Id.* Recent was defined as work performed within the last three years. *Id.* In evaluating a vendor's past performance, the agency considered customer satisfaction, responsiveness to customer needs, and vendors' ability to meet delivery schedules. *Id.* The RFQ also stated that:

In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available or so sparse that no meaningful past performance rating can be reasonably assigned, the offeror may not be evaluated favorably or unfavorably on past performance (see FAR 15.305 (a)(2)(iv)). Therefore, the offeror shall be determined to have unknown past performance. In the context of acceptability/unacceptability, "unknown" shall be considered "acceptable."

*Id.* at 84-85.

This factor was also assigned a rating of either acceptable or unacceptable. *Id.* at 83-84. Price, which is not at issue here, was evaluated for reasonableness. *Id.* at 82.

Twelve vendors submitted quotations, including Excelsior and GovTranz. COS at 1-2. Of these, four quotations were found to be technically acceptable. AR, Tab 10, Source Selection Decision Document (SSDD) at 5. Two of the four were submitted by GovTranz.<sup>2</sup> *Id.*; COS at 1-2. GovTranz is a Small Business Administration (SBA) approved mentor-protégé joint venture firm formed between Evulum, LLC, (the protégé) and Navarre Corporation (the mentor) in January 2023. AR, Tab 6, SBA Mentor-

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<sup>1</sup> The technical capability factor had four specific subfactors that are not at issue here.

<sup>2</sup> GovTranz submitted a total of three quotations. Two of those quotations were acceptable and one was technically unacceptable. AR, Tab 10, SSDD at 4-5; COS at 1-2.

Protégé Program Application Approval; COS at 1-2; Protest, Exhibit C, SAM.gov Registration at 2.

Both GovTranz's and Excelsior's quotations were found acceptable under the technical capability and past performance factors. AR, Tab 10, SSDD at 5. GovTranz had the lowest-priced technically acceptable quotation with a total price of \$8,115,000, and Excelsior's quotation was the next lowest-priced technically acceptable quotation with a total price of \$9,775,270. *Id.* Both prices were found to be fair and reasonable. *Id.*

As relevant here, GovTranz's quotation included four past performance references for special mode transportation services for its mentor, Navarre that were performed within the last three years. The quotation also included, as attachments, past performance questionnaires from two contracts GovTranz had performed for patient and special mode transportation services completed within the last three years. AR, Tab 4, GovTranz Quotation at 43-46; Tab 4a, Past Performance Questionnaire; Tab 4b, Past Performance Questionnaire; Tab 8, Contractor Responsibility Assessment (CRA) at 8-9. The agency also generated its own report on GovTranz's performance history, which included that GovTranz had completed two contracts within the last three years. AR, Tab 8, CRA at 8-9. The agency ultimately determined that GovTranz's quotation demonstrated acceptable past performance based on the aggregate past performance of GovTranz--again, comprised of Navarre and Evulum--and Navarre. Memorandum of Law (MOL) at 5; COS at 2; Agency's Additional Briefing Resp. at 2; AR, Tab 10, SSDD at 5.

The agency made award to GovTranz for \$8,115,000, on February 29, 2024. COS at 2; AR, Tab 10, SSDD at 5. This protest followed.

## DISCUSSION

Excelsior asserts that the agency unreasonably evaluated GovTranz's past performance as acceptable because it does not have at least three years of its own experience and cannot provide the requisite references. We have considered the protester's argument and find that it does not provide us with a basis to sustain the protest. We note that, in reviewing protests challenging an agency's evaluation of quotations, our Office does not reevaluate quotations or substitute our judgment for that of the agency; rather, we review the record to determine whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *SKE Italy Srl*, B-414884.3, Jan. 24, 2018, 2018 CPD ¶ 37 at 4. A protester's disagreement with the agency's evaluation judgements concerning the merits of past performance does not establish that the evaluation was unreasonable. *Navarre Corp.*, B-419088.2, Mar. 4, 2021, 2021 CPD ¶ 113 at 3.

Excelsior asserts that the solicitation required past performance questionnaires from contracts the "vendor" itself had completed within the past three years, and therefore, regardless of GovTranz's status as a joint venture, it was required to meet this requirement based solely on its experience as a joint venture, exclusive of Navarre's

and Evulum's individual experience. Comments at 1; Protestor's Resp. to the Agency's Additional Briefing at 1-2. Excelsior argues that GovTranz cannot meet this requirement because it was created only a year and a half ago and the aggregate experience of Evulum and Navarre cannot be used to satisfy the terms of the solicitation. Protest at 2; Comments at 2.

The agency responds that the RFQ did not require GovTranz to meet the requirements based solely on its own experience, and that interpreting it with Excelsior's alleged meaning would directly contradict SBA regulations regarding how agencies are to evaluate the experience of mentor-protégé joint ventures. MOL at 5. The agency explains that as a mentor-protégé joint venture, GovTranz was not required to meet the past performance requirement based solely on the joint venture's experience, but rather demonstrate the requisite experience based on the aggregate experience of Navarre, Evulum and GovTranz. *Id.* at 3-4; Agency's Additional Briefing Response at 1-2. The agency explains that GovTranz's quotation included four relevant and recent contracts performed by Navarre and that GovTranz's own experience includes two relevant and recent contracts. Agency's Additional Briefing Response at 2 n.1; AR, Tab 8, CRA at 9. Therefore, the agency asserts that GovTranz meets the past performance requirements based on Navarre's individual experience and Evulum's experience acquired through its participation in GovTranz, considered in the aggregate. MOL at 3-5; Agency's Additional Briefing Resp. at 2.

The protester does not refute any of the agency's findings regarding Navarre and GovTranz's past performance references, but rather reiterates its argument that GovTranz was required to meet the past performance requirements based solely on its own experience because the solicitation required the vendor to have the requisite experience. Protestor's Response to the Agency's Additional Briefing at 1-2. We do not agree, and we find that the protester has not demonstrated that the agency failed to evaluate GovTranz's quotation in accordance with the terms of the solicitation or unreasonably evaluated its past performance references.

The SBA's mentor-protégé program allows small or large business firms to serve as mentors to small business protégé firms in order 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). Under the SBA's mentor-protégé program, an SBA-approved joint venture is permitted to compete as a small business for "any government prime contract, subcontract or sale, provided the protégé qualifies as small for the procurement." 13 C.F.R. § 125.9(d)(1); see *also* 13 C.F.R. §§ 121.103(b)(6), (h)(1)(ii).

In addition, when evaluating a small business joint venture, the Small Business Act requires agencies to consider the capabilities of the individual members of the joint venture "if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity." 15 U.S.C. § 644(q)(1)(C). The SBA regulations implementing this statutory provision require agencies to consider the capabilities of small business vendors as follows:

When evaluating the capabilities, past performance, experience, business systems and certifications of an entity submitting an offer for a contract set aside or reserved for small business as a joint venture established pursuant to this section, a procuring activity *must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously*. A procuring activity may not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems and certifications necessary to perform the contract.

13 C.F.R. § 125.8(e) (emphasis added).

In promulgating these regulations, SBA explained that these “rules require a small business protégé to have *some* experience in the type of work to be performed under the contract,” but it would be “unreasonable to require the protégé concern itself to have the *same level* of past performance and experience . . . as its large business mentor.” Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments, 85 Fed. Reg. 66,146, 66,167 (Oct. 16, 2020) (emphasis added).

Our decisions have recognized this regulatory requirement and explained that SBA rules require agencies consider the experience of each joint venture partner in the aggregate and prohibit agencies from holding the protégé to the same standard as required for the joint venture itself. *MiamiTSPi, LLC--Recon.*, B-421216.3, May 11, 2023, 2023 CPD ¶ 117 at 7; *Veterans Care Med. Equip., LLC*, B-420726, B-420726.2, July 29, 2022, 2022 CPD ¶ 206 at 6. A protégé member of a joint venture is only required to have some experience and cannot be required to meet the experience requirement based solely on its own experience because joint ventures are created to help a protégé meet performance requirements it would not otherwise be able to on its own. *MiamiTSPi, supra* at 4, 7; *Veterans Care Med. Equip., supra* at 7; *Innovate Now, LLC*, B-419546, Apr. 26, 2021, 2021 CPD ¶ 178 at 4. Similarly, requiring a joint venture to meet the past performance requirements based solely on its own experience would in effect require the protégé member to have that experience as well. This would result in a protégé not being able to rely on the mentor’s experience to qualify for contracts, contrary to the purpose of the SBA mentor-protégé program. Consolidation of Mentor-Protégé Programs, 85 Fed. Reg. at 66,167-68.

Therefore, as the agency argues, if Excelsior’s assertion that the solicitation required SBA mentor-protégé joint ventures to meet the past performance requirements based solely on their own experience were correct, the solicitation would directly contradict 13 C.F.R. § 125.8(e). When a dispute exists as to a solicitation’s actual requirements, we begin by examining the plain language of the solicitation. *Navarre, supra*. If the solicitation language is unambiguous, our inquiry ceases. *Id.* We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that

gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Id.*

We see nothing in the solicitation to indicate that it intended to require SBA mentor-protégé joint ventures to meet the past performance requirements based solely on the experience of the joint venture, and the protester has not presented us with any evidence to support this claim other than citing to the past performance requirement that states that “offerors” must provide relevant and recent past performance examples. Therefore, we conclude that the agency evaluated GovTranz quotation in accordance with the terms of the solicitation and properly considered the aggregate experience of Evulum and Navarre because the agency was permitted and required to consider their joint experience.

We also note that although the protester did not dispute the relevancy and recency of Navarre’s or GovTranz’s past performance references, the record shows that the agency reasonably determined that Navarre’s and GovTranz’s references were relevant and recent. We also find that the agency reasonably determined that Evulum, based on its experience acquired through its participation in GovTranz, has some experience. As stated above, GovTranz’s quotation included four past performance references for Navarre and two past performance questionnaires for GovTranz. AR, Tab 4, GovTranz Quotation at 43-46; Tab 8, CRA at 8-9; Tab 4a, Past Performance Questionnaire; Tab 4b, Past Performance Questionnaire. Because the agency considered the joint venture’s own experience and permissibly attributed Navarre’s experience to the joint venture, the agency’s evaluation was consistent with the requirements of 13 C.F.R. § 125.8(e). *Veterans Care Med. Equip.*, *supra* at 7.

Finally, even if we were to agree with the protester’s assertion--which we do not--that the record does not support the agency’s conclusion that GovTranz had sufficient experience, this still would not provide a basis for the agency to eliminate GovTranz’s quotation from consideration for award. The RFQ instructed that if a vendor did not have a record of relevant past performance or if it is so sparse such that the agency cannot rate the past performance, the vendor is determined to have unknown past performance, which is considered acceptable. RFQ at 84-85. Therefore, even if GovTranz had no past performance, that would not require the agency to eliminate GovTranz from consideration. *Navarre*, *supra* at 5.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel