
From: The LAB @ DOC
Subject: MMCB Vol. 16 - Prime + Sub (Team) Experience at DHS FPS, April 2021



Welcome to MMCB Volume 16! This Monday covers a decision that touches on the flexibility we have on **past performance/experience**.

Matter of: VxL Enterprises, LLC
File: [B-419467.2](#)
Link: <https://www.gao.gov/products/b-419467.2>
Date: March 8, 2021

Have you ever led or coached a team when during the experience or past performance evaluation, they gained more confidence with a total team-based approach? Specifically, that a prime and subcontractor indicated prior experience working together on similar projects? You most likely wanted to give them proper credit for it in the consensus evaluation report, but you didn't envision that in your solicitation as part of your evaluation criteria. Now, you are **not** empowered by your level above or procurement attorney to consider this important discriminator in the evaluation report, which could influence the final decision or even the Phase 1 down-select decision. I have seen this very thing many times throughout many DHS Components.

This decision offers some of that empowerment for **you** – read below!

Background

For background and context, this was a single-award IDIQ for armed guard services with two factors (past performance and management approach) plus price. There were 17 offerors. The past performance factor allowed for three references for the prime and up to three for a teaming partner or subcontractor. Here are three small things that stood out to me in the set up for the past performance evaluations, which are good things to consider in the future:

#1 Feels – I like this humanistic wording in the RFP!

*In determining the rating for the past performance evaluation factor, the agency would “give greater consideration to the contracts which the Government **feels** are most relevant to the RFP.”*

#2 Outside sources – not just Government past performance sources.

*The agency also reserved the right to obtain information for use in the evaluation of past performance from any and all sources, **including sources outside of the government.***

#3 Reserving the Right – more flexibility.

*To determine relevance, the agency **reserved the right** to evaluate submitted projects individually or in the aggregate, consistently across all proposals.*

Factor	VxL	Triple Canopy
Relevant Past Performance	Acceptable	Highly Acceptable
Management Approach	Highly Acceptable	Highly Acceptable
Price	\$64,097,620	\$64,315,185

Team Experience Focus

The awardee, Triple Canopy, submitted 3 references for itself and 3 for its proposed subcontractor as permitted by the RFP. Here is how this shook out in evaluation, the highlight for me is that showing they worked together lowered risk of unsuccessful performance. I often agree with this sentiment and coach teams to include something along those lines in the experience language in the RFP.

*Moreover, the agency noted that one past performance reference provided evidence that Triple Canopy and its proposed subcontractor had worked together in a manner similar to their proposed relationship for the performance of this requirement. **That experience in working together, the agency concluded, would reduce performance risk. The agency assigned Triple Canopy's proposal a rating of highly acceptable under the past performance factor.***

But wait, the protestor also included subcontractor references, but this evaluation played out differently.

The agency's evaluation noted that none of the past performance references demonstrated a past working relationship between VxL and its proposed subcontractor. The agency concluded that VxL had a history of very good performance on relevant contracts and rated VxL's proposal as acceptable under the past performance factor.

The SSA's tradeoff found Triple Canopy superior in both factors. The two paragraphs in this decision are good, but I will extract one quote below related to the protest grounds of the past performance evaluation:

The The source selection authority further noted that Triple Canopy had the "most directly relevant project[,]” and that Triple Canopy and its proposed subcontractor had worked together in the past. In the source selection authority's view, there was “very little performance risk to the Government in relation to Triple Canopy successfully performing the present requirement.”

Protest Grounds, Agency Response, GAO Discussion

Protestor's primary argument:

VxL argues that the agency's past performance evaluation improperly distinguished between the proposals of Triple Canopy and VxL. Comments on Supp. Protest at 3. The protester contends that the agency relied solely on the **prior working relationship of Triple Canopy and its proposed subcontractor--an unstated evaluation criterion**--to find Triple Canopy's past performance more relevant than VxL's.

Agency Response:

The agency asserts that it properly considered whether a prime contractor and a proposed subcontractor demonstrated an ability to successfully work together, because such a prior working relationship reduces the risk that the two contractors will have conflicts or issues in jointly performing the requirement.

GAO Discussion and Why We are Here

An agency's consideration of how a proposed team would function together is reasonable and logical, even where a solicitation does not expressly state a preference for contractor/subcontractor teams that have previously performed similar requirements. Systems Research & Applications Corp., B-257939.5, Feb. 28, 1995, 95-1 CPD ¶ 214 at 5. We thus see nothing unreasonable in the agency's finding that the prior working relationship of Triple Canopy and its proposed subcontractor would reduce performance risk in this procurement.

Final Thought



This is the empowerment discussed at the beginning; even when the solicitation doesn't expressly 'allow' for the team-based experience to be included in an evaluation, then it is still okay! This goes back to 1995 with some precedent on the decision so that is also helpful when trying to persuade a team to envision this prior working relationship into the evaluation for either experience or past performance. Please keep this in mind when running your next procurement, coaching a team, or even when reviewing as a level above, procurement attorney, or other review role.



Bonus footnotes with commentary, as there are often good nuggets at the end:

I like that they didn't get too detailed on their definition of scope!

[2] - "The agency defined "scope" simply as "guard services.""

I mean, this whole footnote is worthy of inclusion and understanding.

[6] "The protester argues that it has a mentor/protégé relationship with its proposed subcontractor, and that relationship would more effectively reduce performance risk than the "mere prior standard prime/sub relationship of no known specifics" that Triple Canopy has with its proposed subcontractor. As an initial matter, Triple Canopy's technical proposal indicates that it is also a

participant in the mentor/protégé program with its proposed subcontractor. Moreover, the performance of Triple Canopy and its proposed subcontractor is, in fact, documented in the record. The intervenor asserts that the record contains no such analogous record of VxL and its proposed subcontractor having “actually performed work together.” More important, VxL has not demonstrated why it was unreasonable for the agency to provide evaluation credit for a prior working relationship between the prime contractor and its proposed subcontractor. We agree. We also conclude that this assertion simply expresses the protester’s disagreement with the agency’s evaluation which is not sufficient, standing alone, to show that it was unreasonable.

This volume was originally authored in April 2021 and refreshed in March 2025.

*Disclaimer: The information contained in this MMCB is merely an opinion of the author and does not constitute formal legal or policy guidance of any kind.

