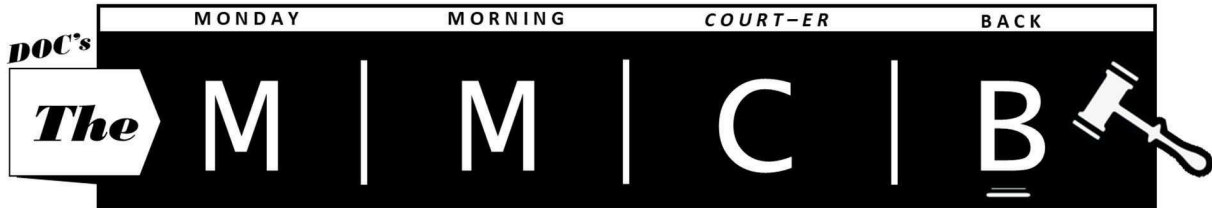


From: The LAB @ DOC
Subject: MMCB - Vol. 18 - Prior Experience (or lack thereof) & Past Performance, Oct. 2021



Welcome to MMCB Volume 18. Today's GAO decision covers Prior Experience and shows how to evaluate a vendor that, well, doesn't have any!

Matter of: AnderCorp, LLC
File: [B-419984](#)
Link: <https://www.gao.gov/products/b-419984>
Date: October 14, 2021



No matter your procurement strategy, Prior Experience can be a great evaluation factor to consider. In a phased approach, Prior Experience is a great Phase I factor to evaluate whether a vendor has performed work in the past similar to the work you are requiring in the requirements document. Now, let's take a look at how the Department of Labor evaluated prior experience and past performance as separate factors in their solicitation to build the Gulfport Jobs Corps Center, a construction services requirement under FAR Part 15, Contract by Negotiation.

Prior Experience is separate and distinct from Past Performance

The GAO states this concept plainly here:

Generally, an agency's evaluation under an experience factor is distinct from its evaluation of an offeror's past performance [5] Weston-ER Fed. Servs., LLC, B-418509, B-418509.2, June 1, 2020, 2020 CPD ¶ 311 at 14 (citing Commercial Window Shield, B-400154, July 2, 2008, 2008 CPD ¶ 134 at 3). Experience factors focus on the degree to which an offeror has actually performed similar work, whereas past performance factors focus on the quality of the work performed.

The Department of Labor took this into account as they were building their procurement strategy and had **separate** factors for prior experience and past performance:

The solicitation contemplated the award of a fixed-price contract to the offeror submitting the lowest-priced, technically acceptable proposal, considering the following non-price evaluation factors: (1) project experience; (2) past performance; (3) technical approach and risk; (4) management and organization; (5) safety program; and (6) quality control program.

For Factor 1, the Department asked vendors to “***submit three examples of relevant projects, either substantially complete or completed with the past five years, demonstrating [the] technical capabilities to perform the project.***” Whereas, for Factor 2, Labor asked vendors “***to submit information about projects they have previously performed so the agency could evaluate relevant past performance.***” The RFP included language under the past performance factor stating that **vendors without a record of relevant past performance would receive a neutral rating. There was no such language included for Factor 1, Prior Experience.**

How do you evaluate a vendor without any experience?

Having the Prior Experience and Past Performance evaluations as separate factors prepared the Department of Labor for the situation at hand when the protester, AnderCorp, submitted a proposal that did not contain any project experience. Their proposal stated only:

AnderCorp does not have any directly related experience in the last five (5) years. However, as noted in Factor 4, Subfactor 2,[6] our proposed project team has a wealth of individual relevant experience which will allow AnderCorp to successfully execute this project.

In evaluating this proposal, the Department of Labor found the protester as Unacceptable under the project experience factor because it did not include any examples of project experience. Under the past performance factor, the Department evaluated AnderCorp’s proposal as Acceptable/Neutral, noting that no past performance information on AnderCorp was available. Spoiler: this is the correct way to handle the situation.

Evaluation Factor	AnderCorp	Roy Anderson Corp.
Project Experience	Unacceptable	Acceptable
Past Performance	Acceptable/Neutral	Acceptable
Technical Approach and Risk	Acceptable	Acceptable
Management and Organization	Acceptable	Acceptable
Safety Program	Acceptable	Acceptable
Quality Control	Acceptable	Acceptable
Price	\$41,559,000	\$42,989,00

What did the GAO have to say?

AnderCorp protested the evaluation decision and specifically targeted the evaluation findings for Factor 1 and Factor 2.

The protester asserts that when an offeror does not have a record of relevant past experience or performance, agencies may not evaluate that offeror favorably or unfavorably based on the lack of performance history. Id. Further, AnderCorp suggests that since its proposal received a neutral rating under the past performance factor, it should have received a similar rating under the prior experience factor since it submitted the same information in response to both factors. Comments at 2. The protester thus alleges that DOL violated procurement law by evaluating its proposal negatively, rather than neutrally, under the project experience factor, based on AnderCorp’s lack of prior experience

Needless to say, the GAO didn’t agree.

As relevant here, the FAR provides that “[i]n the case of an offeror without a record of relevant past performance . . . the offeror may not be evaluated favorably or unfavorably on past performance.”

FAR 15.305(a)(2)(iv); see also 41 U.S.C. § 1126 (where there is no past performance information, or that information is unavailable, “the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.”). There is no such provision in the FAR regarding the evaluation of an experience factor where the offeror has no record of prior experience.

In fact, the GAO finds that the FAR actually recognizes the distinction between experience and past performance:

*The FAR also recognizes this difference and identifies past performance and prior experience as two distinct evaluation factors: “The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as **past performance**, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, **and prior experience**” FAR 15.304(c)(2) (emphasis added).*

Conclusion

The GAO confirms that corporate experience and past performance are separate and distinct; there is NO requirement to evaluate a vendor without experience as neutral.

*The protester correctly explains the law as it pertains to the evaluation of past performance, however it attempts to apply that rule to the evaluation of prior experience. As noted above, the FAR (and applicable statute) state that an offeror with no past performance “may not be evaluated favorably or unfavorably on past performance” but there is no such provision addressing the evaluation of prior experience. FAR 15.305(a)(2)(iv). Accordingly, there is no requirement for the agency to evaluate AnderCorp as neutral under the project experience factor, as there is for the evaluation under the **past performance factor**. We therefore find that the agency’s evaluation of AnderCorp’s proposal was reasonable, in accord with applicable procurement law and regulation, and appropriately followed the solicitation’s terms. Thus, there is no basis to sustain AnderCorp’s challenge.*

The protest is denied.

Best Practices

So what are the best practices if you’re thinking of including Prior Experience as an evaluation factor in your next solicitation?

- 1) Remember that Prior Experience and Past Performance are distinct. Just because you use Prior Experience as an evaluation factor doesn’t mean you have to also use Past Performance. Past Performance is only required in evaluations of non-commercial procurements that fall under FAR Part 15 and is over the Simplified Acquisition Threshold (SAT).

Here are some instances where you don’t have to include Past Performance as part of your evaluation:

- FAR Part 12: If your procurement is for a commercial item, Past Performance is **discretionary** even when using it with subpart 15.3 procedures together.
- FAR Part 13, including subpart 13.5.
- FAR 8.405.
- FAR 16.505(b).
- FAR 36.303-1.
- If the contracting officer documents that it is not an appropriate evaluation factor, see [FAR 15.304\(c\)\(3\)\(iii\)](#), so anything that points back to using FAR 15.3 procedures.

- 2) Second, if you do use both Prior Experience and Past Performance, consider breaking them up into two evaluation factors. This way, if a vendor without experience submits a response they can be evaluated accordingly under both factors. Another best practice is to have the vendor provide past performance for the projects it referenced earlier under Prior Experience, that way you can evaluate the whole picture.
- 3) Third and finally, consider requiring vendors to provide short, focused Prior Experience responses. Don't just require vendors to *"describe your corporate experience as it pertains to the Statement of Work, section 2.1 through 2.8.3."* Instead, require vendors to *"describe your corporate experience in providing the most complicated part of the requirement or hardest area to procure."* This makes the response much easier to evaluate and much more meaningful.



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.

