
From: The LAB @ DOC
Subject: MMCB - Vol. 22 - How do I evaluate innovation, if it wasn't included in the solicitation?
And More!



Welcome to MMCB Volume 22! This edition covers the question, “How do I evaluate innovation, if it wasn’t called out in the solicitation?!”

Matter of: TekSynap Corporation; Candor Solutions, LLC
File: B- 420856; B-420856.2; B-420856.4; B-420856.5
Link: <https://www.gao.gov/products/b-420856%2Cb-420856.2%2Cb-420856.4%2Cb-420856.5>
Date: October 6, 2022

On April 6, 2022, the Department of Justice issued a solicitation under NITAAC CIO-SP3 for IT support services, using the procedures of FAR 16.505. The solicitation provided that the contract would be awarded on the basis of a best-value tradeoff considering price and the following three non-price factors listed in descending order of importance: technical approach; key personnel resume; and past performance. Price was considered less important than the non-price factors, separately or combined.

The Government evaluated the awardee, and the protester as follows:

	Technical Approach	Key Personnel	Past Performance	Price
Awardee – Inerso	Outstanding	Outstanding	Substantial Confidence	\$72.79 million
Protestor – TekSynap	Outstanding	Good	Substantial Confidence	\$71.86 million

The protestor challenges two decisions made by the Source Selection Official (SSO): 1) that Inerso’s proposed program manager was determined to be acceptable because he held a Bachelor of Arts (BA) in economics, which is a common major within the framework of a university’s business program, and 2) that since Inerso demonstrated an outstanding technical approach with many *innovations*, combined with a much more experienced program manager, and very relevant past performance that surpassed customer expectations 100 percent of the time, Inerso’s non-price proposal was better overall. This protest followed.

1. Key Personnel was NOT Qualified

The protester first argues that *“because a degree in economics is not one of the acceptable degrees listed in the solicitation, Insero should have been evaluated as unacceptable under the Key Personnel factor.”*

Under the key personnel factor, offerors were required to submit a resume for a proposed program manager. As relevant to this protest, the program manager was required to have a Bachelor of Science (BS) or Bachelor of Arts (BA) in computer science, information systems, engineering, business, physical science, or another technology related discipline.

The agency reports that when the proposals were being evaluated the TET asked the contracting officer if a degree in economics was within the domain of a business degree and she responded that it was. In the contracting officer’s view *“any related degree reasonably encompassed within the broader category should receive evaluation credit.”*

And the GAO agreed:

On this record, we find that the contracting officer could reasonably determine that a degree in economics met the requirement for a business degree, and thus, reasonably conclude that Insero’s proposed program manager met the solicitation’s education requirement. In any case, even if we conclude that the agency waived the education requirement for Insero, this waiver does not provide a basis to sustain the protest. An agency may waive compliance with a material solicitation requirement in awarding a contract if the award will meet the agency’s actual needs without prejudice to other offerors. TekSynap does not explain how it was prejudiced by the waiver of this requirement, that is, what it would have done differently had it been given an opportunity to propose a different program manager with a degree in economics as the agency accepted for Insero.

When written broadly, the Government has some discretion to determine if proposed personnel meet the solicitation requirements. Manage risk by using flexible words in your solicitation like, “highly desired” to describe key personnel education and experience requirements.

2. Government used “Innovation” as an Unstated Evaluation Criteria

Next, the protester argues that:

[T]he agency used unstated evaluation criteria in evaluating Insero’s proposal under the technical approach factor. TekSynap specifically argues that in conducting the best-value tradeoff the agency credited Insero with proposed innovations, yet the solicitation did not identify innovations as a matter for consideration in the solicitation.

The GAO first re-states its well-established rule for reviewing the adequacy of tradeoff decisions:

An agency has **broad discretion** in making a tradeoff between price and non-price factors, and the extent to which one may be sacrificed for the other is governed only by the test of **rationality and consistency with the solicitation’s stated evaluation criteria**. There is no need for extensive documentation of every consideration factored into a tradeoff decision.

Rather, the documentation need only be sufficient to establish that the agency was **aware of the relative merits and costs of the competing proposals** and that the source selection was reasonably based

Overall, the CO concluded that TekSynap demonstrated a “slightly better” technical approach, but Inersso proposed a better program manager under the key personnel factor and had better past performance. She concluded that since **Inersso demonstrated an outstanding technical approach with many innovations**, combined with a much more experienced program manager, and very relevant past performance, Inersso’s non-price proposal was better overall. She then determined that since the non-price factors were more important than price individually and when combined, it was in the Government’s interest to pay the \$929,268.62 (1.29%) premium to obtain the additional benefits offered by Inersso.

We find nothing improper with the SSO’s consideration of the extent to which an offeror proposed innovative technical approaches and reject TekSynap’s contention that this amounts to the consideration of unstated evaluation criteria.

In this regard, where a solicitation, as here, indicates the relative weights of evaluation factors, the agency is not limited to determining whether a proposal or quotation is merely technically acceptable; rather, **proposals may be evaluated to distinguish their relative quality by considering the degree to which they exceed the minimum requirements or will better satisfy the agency’s needs.** With specific regard to the consideration of **innovations and/or creative approaches** to distinguish the relative quality of proposals or quotations, **an agency can properly consider both the extent to which the proposal or quotation exceeds the solicitation requirements and the extent to which offerors propose innovative measures to respond to those requirements.**

Do not be afraid to recognize innovations and other creative approaches and document them as something that exceeds the solicitation requirements. These may end up as distinguishing qualities that help make the best value tradeoff decision!

3. Factor 1 was the Most Important Factor

Finally, TekSynap asserts that the Contracting Officer failed to properly weigh the evaluation factors. According to TekSynap, there is no evidence in the record that the SSO gave the technical approach factor, for which TekSynap’s proposal was considered superior to Inersso’s, consideration as the most heavily weighted technical factor.

In the tradeoff decision, **the SSO explicitly recognized that technical approach was the most important of the three non-price factors.** Further, in conducting the tradeoff the SSO specifically considered the proposals of Inersso and TekSynap under the technical approach factor and **recognized that the protester demonstrated a slightly better technical approach.**

The SSO, however, was not required to find that TekSynap’s proposal was overall superior to Inersso’s under the non-price factors simply because the proposal was considered superior under the most heavily weighted technical approach factor.

Indeed, the record reflects that the SSO’s award decision reasonably was based on the fact that Inersso’s technical approach proposal was also rated outstanding, and demonstrated benefits for the government, and that Inersso’s proposal was considered superior to TekSynap’s proposal under the key personnel and past performance factors.

We therefore deny this protest ground.

Remember, the evaluation's order of importance does not dictate who the winner will be. That's what a best value tradeoff is all about. The Government should take into account the most important factor, as well as all of the other factors along with price, to make its tradeoff decision. The GAO has repeatedly stated that "*there is no requirement that the key award discriminator also be the most heavily weighted evaluation consideration,*" [Amyx, Inc. B-410623, B-410623.2](#), and [VariQ-CV JV, LLC B-418551, B-418551.3](#). Based on all of the arguments, GAO found that the protestor provided no basis to challenge the best value tradeoff decision.



This volume was originally authored in June 2022 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.

