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**From:** The LAB @ DOC  
**Subject:** MMCB - Vol. 23 - Experience, Oral Presentations, Documentation, Incumbency status, and more!



Welcome to MMCB Volume 23! This edition focuses on the boundaries we are afforded in our evaluation of Prior Experience, including if assessing the level of complexity and results is considered unstated evaluation criteria. This also touches many other innovative procurement techniques like oral presentations, on-the-spot consensus evaluations, streamlined documentation, and confidence ratings.

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**Matter of:** Alethix LLC  
**File:** [B- 420920.3, B-420920.4](#)  
**Link:** <https://www.gao.gov/products/b-420920.3%2Cb-420920.4#mt=e-report>  
**Date:** December 15, 2022

On April 22, 2022 , the U.S. Department of Agriculture (USDA) issued a request for quotation (RFQ) using the federal supply schedule (FSS) procedures of FAR 8.405-3, limited to vendors holding farm production and conservation blanket purchase agreements (BPAs). The RFQ was for software development services for USDA’s Farm Production and Conservation Business Center and Natural Resources Conservation Service. The RFQ followed an efficient evaluation model incorporating many innovative procurement techniques: advisory down-selects, prior experience only, confidence ratings, oral presentations with interactive dialogue, on-the-spot consensus evaluations, streamlined documentation, and more. The best-value tradeoff included three factors: prior experience, technical solution, and price.

The Government evaluated the awardee and the protester as follows:

	Prior Experience	Technical Solution	Price
<b>Awardee – TSPI</b>	Some Confidence	Some Confidence	\$82.34 million
<b>Protestor – Alethix</b>	Some Confidence	Some Confidence	\$96.89 million

The protestor lobbies many arguments, but we will focus on the following: **1)** USDA unreasonably evaluated their prior experience factor and applied unstated evaluation criteria, **2)** documentation of oral presentations and technical solution factor, **3)** unequal treatment under the technical solution factor, and **4)** that USDA’s award decision was unreasonable because it was based on adjectival ratings instead of a meaningful best-value tradeoff as required by the RFQ.

## 1. Prior Experience

The protester really has one main argument that is multi-faceted, that the USDA applied unstated evaluation criteria that caused them to get a 'some confidence' rating rather than a 'high confidence.' Out of the seven BPA holders, six submitted Phase 1 quotations.

For the prior experience factor, vendors were directed to respond to questions and prompts from a worksheet provided with the RFQ. The worksheet advised that responses should focus on vendors' "*strongest experiences*" from the last three years. Even though Alethix was the incumbent, the USDA found that the submitted worksheet summarized the firm's experience broadly, "*without demonstrating degree of complexity and without demonstrating clear successful delivery and results.*" Basically, even though Alethix may have performed similar work under the incumbent contract, their worksheet did not communicate the degree of complexity of the specific work under the incumbent contract, and their other experience submissions were not similar in scope, scale, or level of complexity.

Alethix disagreed:

Alethix disagrees with the agency's assessment, arguing that the firm's submission (1) did demonstrate the degree of complexity of its work with the identified software related products; and (2) clearly showed "experience in successful delivery" and creating results. Protest at 9-12. The protester contends that the agency's conclusions are "especially baffling" given that Alethix's quotation relies on its work for the agency under the incumbent contract. According to Alethix, even if its quotation had not "plainly demonstrated" the complexity and successful delivery of work, the RFQ did not require such a discussion as part of the evaluation of prior experience. Alethix argues that, to the extent the agency applied such standards to the evaluation, the agency improperly applied unstated evaluation criteria. Id.

Alethix does not believe that agency was permitted to include the complexity and successful delivery of work as the RFQ did not require it as part of the prior experience evaluation. A prior MMCB, Vol. #22,, also focused on unstated evaluation criteria having to do with the evaluation of innovation under each technical factor. Please give that one a read if you haven't already. The agency disagreed, claiming it was proper to consider both elements as part of the evaluation. The GAO agreed with the USDA:

As an initial matter, we do not find--as Alethix argues--that USDA applied unstated evaluation criteria when the agency assessed Alethix's experience for level of complexity and results. The agency reasonably considered those elements as part of its confidence assessment for the prior experience evaluation factor. Although a solicitation must inform vendors of the basis for evaluation by identifying the evaluation factors and their relative importance, a solicitation need not specifically identify each and every element an agency considers during an evaluation where such elements are intrinsic to, or reasonably subsumed within, the stated evaluation factors. *Leader Commc'ns., Inc., B-412819, B-412819.2, June 13, 2016, 2016 CPD ¶197 at 5.* Here, assessing level of complexity, in our view, is intrinsic to an evaluation of prior experience for relevance. Therefore, the agency's consideration of such as part of its assessment of vendor's experience is neither inappropriate nor is it the application of an unstated evaluation criterion. See, e.g., *Straughan Env't, Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 7-8* (finding the agency's consideration of key personnel's relevant experience was logically encompassed within stated evaluation criteria).

Those highlights should be more than enough to convince a reader that assessing the level of complexity is intrinsic to prior experience, but this next paragraph goes above and beyond to explain to any reader how clear this topic is, especially when coupled with the standard definition for confidence ratings.

We also find that considering whether prior experience included successful delivery is **logically encompassed by the evaluation criteria**. For the prior experience factor, the RFQ advised that the agency would “**assess its level of confidence that the vendor understands the requirement and will be successful in performing the [order],” based on the vendor’s responses to the prior experience worksheet**. In other words, the agency would consider whether vendors had experience **directly related to the work under the solicitation for development and delivery of software solutions, rather than, for example, more theoretical work**. See *FujiFilm Med. Sys. USA, Inc.*, B-400733.9, B-400733.10, Dec. 1, 2009, 2009 CPD ¶ 244 at 5 (“[I]t is always reasonable for an agency to consider whether an offeror has **specific experience directly related to the work to be performed under the solicitation, even if such experience is not explicitly called for in the solicitation**.”).

We can be targeted and direct to the experience we want to see in our Prior Experience factors while keeping the evaluation criteria section of the solicitation to a high level, aligned to the commonly adopted definition of confidence ratings, found in the [Periodic Table of Acquisition Innovations](#) (PTAI). We don’t need to spell out every element of the possible evaluation – the government has broad discretion in evaluations: “*An agency has broad discretion when evaluating vendors’ experience to determine whether a particular contract is relevant to the work procured under a solicitation, and the determination of the relative relevance of a vendor’s performance history is primarily a matter within the agency’s discretion.*”

But what if the agency should have understood the information submitted by an incumbent as inferring the complexity or successful delivery required by the solicitation? Fortunately, we have another highlighted paragraph that answers that question for us. Spoiler alert: that responsibility is on the vendor and not the agency.

Here, Alethix’s quotation referred to its development and maintenance work under the incumbent contract and generally to “tools” and “applications” under two other efforts. AR, Tab 9, Alethix Prior Experience at 4-5. **The agency, in its evaluation, noted these descriptions, but observed that the descriptions were high level and did not specifically describe complexity or successful delivery. Although Alethix argues that the agency should have understood this information, because Alethix relied, in part, on referencing the incumbent effort, agencies, generally, are not required to consider extrinsic information in the evaluation of quotations**. *Mainstream IP Sols.*, B-418722, July 14, 2020, 2020 CPD ¶ 284 at 4. **Moreover, it is a vendor’s responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency**. *Axxeum, Inc.*, B-420013, B-420013.2, Oct. 29, 2021, 2021 CPD ¶ 354 at 5.

This finding has been well-documented in prior MMCBs: the vendor is responsible for submitting a well-written artifact that provides enough detail to allow the agency to properly evaluate it AND that an incumbent provider can’t rely generally on its incumbency for a future evaluation. Over the years, I have seen more vendor reliance on incumbency efforts in oral presentations vs. written prior experience submissions; nonetheless, the same principle applies.

Here is the final point the GAO provided on this multi-faceted protest grounds on prior experience.

Although Alethix's arguments attempt to paint its quotation as demonstrating the firm's experience, comprehensively, our review of the record supports the reasonableness of the agency's conclusions. A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. Procentrix, Inc., B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 5. To the extent Alethix's contentions now attempt to more clearly demonstrate its prior experience, our review is limited to the protester's quotation, as submitted. Creol Consulting, LLC, B-419460, B-419460.2, Mar. 4, 2021. Accordingly, we find the agency's conclusions to be reasonable, and find the protester's arguments to amount to no more than disagreement with the agency's evaluation findings.

## **2. Oral Presentation Documentation**

The technical solution factor was the only technical factor in Phase 2. The agency received six quotes in Phase 1 for the Prior Experience evaluation, but just four proceeded to Phase 2 for the oral presentation and price. Here is a recommendation for FAR Part 8 procurements, just call them Oral Briefings vs. Oral Presentations; this is another step in ensuring your vendors understand they are in Part 8 only and that FAR 15 terms do not apply to your procurement. The procedures for Oral Presentations are only found in Part 15 and they are wholly inapplicable to FAR Part 8. In other words, stay in your FAR lane. The initial argument here can be seen below:

Alethix first argues that the record of the agency's evaluation is insufficient, noting in particular that the agency did not record (or did not retain recordings of) oral presentations or individual evaluator notes on those presentations. Alethix also complains that although the evaluators purportedly found "many strengths" in Alethix's oral presentation, the record does not identify what those strengths were.

The GAO first re-stated the noted statutory differences between FAR 8.4 and 15 with respect to the documentation of oral presentations, then looks to the agency's documentation.

Generally, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. See, e.g., Analytica, LLC, B-418966, Nov. 9, 2020. At the same time, consistent with the objective of allowing for streamlined procurements under the FSS program, we have found that, unlike negotiated procurements under FAR part 15, FAR subpart 8.4 does not expressly require an agency to record or otherwise transcribe the content of the vendors' oral presentations.

Our review of the record here shows the documentation to be sufficient--albeit sparse--with respect to the agency's conclusions about the vendors' oral presentations.

There is no requirement to keep individual evaluator notes on oral presentations, not even in for Part 15 procurements. There is no requirement for FAR 8.4 procurements to video record, audio record, or transcribe an oral presentation. FAR 8.4 procurements do not follow the documentation rules in FAR 15 for negotiated procurements. This principle was covered deeply in the Court of Federal Claims (COFC) decision [No. 22-152C](#), give that a thorough read after this! In the end, even for FAR 15 requirements, the selection official has lots of flexibility on what constitutes the official record of the oral presentation. In many cases it is the on-the-spot consensus evaluation report, which was done here.

Alethix also contended that the agency did not document the nature of the strengths identified in Alethix's approach. The GAO shared this finding from the consensus evaluation report on the oral presentation,

therefore finding no basis to sustain Alethix's protest alleging that the agency's evaluation was inadequately documented.

Alethix's presentation and answers to scenarios were sound in concept, demonstrated many strengths/knowledge/understanding of how to deliver SAFe [Scaled Agile Framework] development support for the Conservation Programs, Contracts, and Agreements Value Stream. Their responses featured and involved the right people, and their delivery was well-versed and organized.

### **3. Unequal/disparate treatment**

This decision is unique in that the USDA leaned into the '*dependency of government intervention*' aspect of the confidence rating definition in order to determine its ratings for each vendor. Many teams choose to not include that last portion of the standard confidence rating definition, but this team did (see [footnote six](#) in the decision), and used it as a basis of the rating. Alethix took offense as they argued the SAFe method was too similar between their approach and the awardees, however the agency criticized only Alethix for a need of government intervention. This section will weave together some quotes from the decision in one place for convenience. Basically, the two approaches were not identical and the differences in the evaluation stemmed from differences in the two approaches (which is the most common outcome when this is a protest ground).

Alethix also contends that the agency improperly treated Alethix and TSPi differently by criticizing only Alethix for a need for government intervention when both vendors necessarily committed to relying on the RFQ's required SAFe methodology.

USDA defends its evaluation of Alethix under the technical solution factor as reasonable, referring to and quoting the evaluators' contemporaneously documented concerns about Alethix's approach that served as the basis for the agency's assessment of a rating of some confidence.

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Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings do not stem from differences between the vendors' quotation.

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We see nothing objectionable in the agency's evaluation here. The agency did not criticize Alethix for relying on SAFe specifically or agile development generally; instead, the evaluators noted a concern that Alethix's particular approach to the methodology was "very heavy in process and meetings" and required high-level "leadership engagement" and an "above average amount of involvement from the government." By contrast, the evaluators identified that TSPi's approach reflected "taking on responsibility." Although Alethix disagrees that its approach would require anything more than the usual amount of interaction between contractor and government, it has not established that the agency's concerns were unreasonable.

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Nor do we find compelling Alethix's argument that any quotation relying on the mandated SAFe methodology would necessarily be identical in approach. Based on our review of the record, we find that the agency has documented reasonable explanations demonstrating that differences in the evaluators' findings were based on meaningful differences between the quotations. Accordingly, we conclude that

the differences in the agency's assessment of quotations here reasonably stem from differences in the quotations themselves and are not the product of disparate treatment

#### 4. Best-Value Tradeoff

Unsurprisingly, the protestor threw in the kitchen sink too, claiming that the tradeoff was devoid of any comparative analysis and that the selection official failed to look beyond the ratings and simply made award to the lower-priced quotation. The agency countered with the following:

According to USDA, the agency “carefully considered the aspects of each technical quotation that increased or decreased confidence, made a qualitative assessment of the written technical submissions, as well as oral responses to challenge scenarios, and documented the rationale for its confidence ratings in detail.”

Here is the GAO's finding:

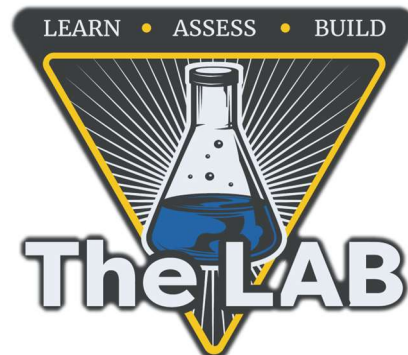
Here, although Alethix complains that the SSA did not meaningfully consider the underlying merits of the quotations, the agency's source selection decision demonstrates otherwise. The tradeoff decision shows that the SSA started by summarizing (in bullet form) the evaluators' consensus findings for each vendor under the prior experience and technical solution evaluation factors. AR, Tab 30, Award Decision at 4-8. The decision also noted that the SSA had independently reviewed the evaluation panel's consensus findings and confidence assessments, and concurred with those findings and recommendations. Id. at 3 (stating the SSA “independently reviewed the assignment of the confidence ratings as well as supporting bullets”).

The record also reflects that the SSA's comparative tradeoff analysis was unobjectionable.

There you have it. The decision also includes some example explanation made by the selection official, but this volume has gone on long enough. Feel free to read all 12 pages to fill in any gaps. If you are the selection official for a procurement, then I recommend including statements akin to “*I independently reviewed the evaluation panel's consensus findings and confidence assessments and concurred with those findings and recommendations*”. That is of course if you actually agree with them 😊.

**This volume was originally authored in December 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.





## BONUS FINDINGS BELOW



**Prior Experience is Not Past Performance:** Alethix claims that the awardee has “*very poor performance with respect to limited and marginally relevant experience that it does have*”. The GAO did not agree, and you can see that below. Experience is not Past Performance. The USDA intentionally did not evaluate Past Performance either as a separate factor or combined with Prior Experience. FAR 8.4 leaves the inclusion of Past Performance as *discretionary* to the contracting officer.

An agency’s evaluation of prior (or relevant) experience is distinct from an evaluation of past performance, because the former focuses on the degree to which a vendor performed similar work, while the later focuses on the quality of that performance. See Ausley Assocs., Inc., B-417509 et al., July 24, 2019, 2019 CPD ¶ 279 at 3. As such, we find no merit to Alethix’s use of TSPI’s alleged “poor performance” as a basis to question the agency’s assessment of that firm’s experience. See Amyx, Inc., B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 14-15 (finding that the agency reasonably evaluated relevant experience as distinct from past performance)



**Again with the Incumbency:** Alethix argues their experience is superior because they were incumbents. This is nonsense, but the GAO expounds more:

...we have repeatedly explained that “a protester’s apparent belief that its incumbency status entitled it to higher ratings or dispositive consideration provides no basis for finding an evaluation unreasonable.” Raytheon Co., B-417935 et al., Dec. 13, 2019, 2020 CPD ¶ 6 at 6. There is no requirement that an offeror be given additional credit for its status as an incumbent, or that the agency assign or reserve the highest rating for the incumbent offeror. Id. In short, Alethix’s arguments here provide no basis on which to sustain the protest.



**Fusion Procurement?** There is always goodness in the footnotes of a GAO decision. Footnote three can be seen below. This was one solicitation that sought three separate call orders rather than a solicitation for each call order which fits the PTAI definition for a [Fusion Procurement](#).

The RFQ sought quotations for three call orders (referred to as “Metis,” “Money,” and “Olympia”); only the Money order is at issue in this protest. RFQ at 16; Protest at 1