
From: The LAB @ DOC
Subject: MMCB Volume 24 - How Brief is too Brief for Evaluation Reports?



Welcome to MMCB Volume 24! In this issue we look at how brief is too brief? Can evaluators document their confidence rating evaluations using a checklist with yes/no questions? Find out!

Matter of: RemedyBiz, Inc.
File: [B-421196](#)
Link: <https://www.gao.gov/products/b-421196>
Date: January 17, 2023

Overview and Thorough Background: [Streamlined evaluation](#) documentation is the innovative procurement technique that focuses on documenting the discriminators between offerors. It suggests using bullet-point statements and avoiding long, complex narratives. You can find more about it [here](#). Over the years, many procurement teams have documented their consensus evaluation findings using brief, bulleted statements rather than long narrative essay style paragraphs. Many of these teams faced protests at the GAO and COFC. Both the GAO and COFC often state that it is not the quantity of documentation that is important but the quality. One of the first teams that implemented this style and faced a challenge was an IT procurement back in 2016 at USCIS ([B-412163, Sapient, Jan. 4, 2016](#)). Their streamlined bullets were challenged as “so vague and subjective” that they were “*per se inadequate to permit the SSA to make an intelligent and independent best value determination.*” Some reports only had a handful of bullets such as “*This contractor won’t lead us, push forward*”. The key is to ensure that the comment is tied to an evaluation factor and that it is meaningful. What you often don’t see in this bulleted style of documentation is an explanation of why each bullet is beneficial or risky to the government – that is often not necessary if the comment itself is meaningful and tied to the evaluation criteria. Another team at CBP in 2020 faced a challenge at the COFC ([No. 19-1329C, G4S, Dec 17, 2019](#)). This team had a comment that said “*sound staffing understanding*” under Factor 2 – Technical/Management Approach which was an oral presentation. This comment was directly related to a question that was asked as part of the factor.

Now that we have established the importance of meaningful, quality comments in our evaluation findings and less critical the length, quantity, and explanation of our evaluation findings; let's explore a team that took it to the extremes.

In RemedyBiz, the Department of Education relied on just a checklist. Was this too brief? Let's find out what the GAO had to say while also sharing other meaningful takeaways from the decision: 1) Unequal

Evaluation/Unstated Evaluation Criteria, 2) Contingent Hire as Key Personnel, and 3) Prior Experience as a Checklist.

Solicitation: The Department of Education issued a solicitation on July 18, 2022, that was set aside for small-businesses using the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 utilizing the General Services Administration’s Federal Supply Schedule (FSS). The RFQ sought quotations to implement a BPA for modern Acquisition Management System (AMS) that *“creates a secure business environment and facilitates and supports cost-effective acquisition of goods and services”* in support of the agency’s mission.

The solicitation set forth a three-phase, best value tradeoff process using an **advisory down-select** process where the non-price factors were significantly more important than price: Phase 1) Demonstrated Prior Experience, Phase 2) Oral Presentation and Slide Deck, Capability of Proposed Key Personnel, and Phase 3) Technical Submission, Price.

The RFQ advised that each non-price factor would be evaluated holistically using **confidence ratings** of high, some, and low confidence.

Phase 1 received 12 quotations. The table below summarizes the agency’s evaluation of the protestor (RemedyBiz) and the awardee (Centennial Technologies) for all three phases:

	RemedyBiz	Centennial Technologies
PRIOR EXPERIENCE	Some Confidence	High Confidence
ORAL PRESENTATION	Some Confidence	High Confidence
KEY PERSONNEL	Some Confidence	High Confidence
TECHNICAL	High Confidence	High Confidence
PRICE	\$19,761,453	\$18,631,479

The agency found the awardee to have the highest technical rating and the lowest price, therefore, they established the BPA with Centennial Technologies and issued the first call order on September 30. This protest followed.

1. Unequal Evaluation/Unstated Evaluation Criteria

RemedyBiz first challenges the evaluation of its quotation and Centennial Technologies’s quotation.

... the evaluators noted one of the aspects that “lowers expectation of success” for [the protestor] was that the firm’s program manager was the only individual who presented [at oral presentations], with no other key personnel speaking.

For the awardee, by contrast, the agency had higher expectations of success because, among other things, Centennial Technologies’s key personnel participated in the presentation and “appeared knowledgeable and confident.”

According to the protestor, these evaluation findings represent the application of unstated evaluation criteria for “which or how many Key Personnel spoke during the oral presentation.” The GAO did not agree.

With respect to the oral presentations, however, the RFQ explicitly notified vendors that the purpose of the oral presentations was for the agency to “understand” vendors’ technical and management approaches for implementing the AMS “directly from the” vendor and explicitly required that the vendor bring three key personnel to the presentation. In this context, we find that the RFQ adequately informed vendors that the agency would evaluate whether and how well the key personnel delivered the oral presentation.

2. Contingent Hire as Key Personnel

The protester next challenged the agency’s assessment of a “lowers expectation of success” finding because one of their proposed key personnel--the development lead--was listed as “contingent.” But again, the GAO did not agree.

It is not apparent from our review of the solicitation why the risk of the availability of key personnel cannot reasonably be considered as part of the evaluation of the key personnel factor. Indeed, as the protester itself acknowledges, the RFQ contained many requirements regarding the employment status of key personnel. These requirements only underscore the agency’s concern about the risk posed by a contingent hire. See McKean Def. Grp., LLC, B-415254.2. Dec. 19, 2017, 2017 CPD ¶ 389 at 8-9 (denying protest challenging weakness assigned for proposing contingent hires for key personnel positions). We therefore find no basis to sustain the protester’s complaint that the agency identified a risk associated with proposing a contingent hire in the development lead key personnel role.

If you require key personnel, you should feel empowered to consider any contingent hires as a decrease in confidence. However, please reconsider who is truly required as key personnel and remember you are making an award to a company, based on their ability and experience, and not to a person. There is simply no guarantee you will get that person who knocked it out of the park during orals or in a resume, however we can tie this concept together in the demonstrated prior experience factor.

3. Prior Experience Checklist

Finally, RemedyBiz protests the evaluation of quotations under Factor 1, Demonstrated Prior Experience evaluation factor. The agency had the following documentation and assigned the following ratings, where the awardee receiving a HIGH CONFIDENCE and the protestor received a SOME CONFIDENCE.

	RemedyBiz	Centennial Technologies
CMMI development level 3 certified?	Yes	Yes
Submitted 3 recent examples?	Yes	Yes
Project 1 - total contract value greater than \$5 million?	Yes	Yes
Project 2 - total contract value greater than \$5 million?	Yes	Yes
Project 3 - total contract value greater than \$5 million?	Yes	Yes
Identified a project for end-to-end federal Acquisition Management System implementation?	Project 1	Project 1
“Submitted info” on implementation methodology and hybrid implementation?	Yes	Yes

If only having a checklist doesn't make sense to you, then that makes two of us. Why did the protestor receive a lower rating? The two checklists are identical. The protestor had the same argument!

The protester argues that the agency has not justified its evaluation findings in the contemporaneous record or in its response to the protest, and that “[b]ased upon RemedyBiz’s significantly more substantial experience and the complexity of that experience, it was entitled to a higher rating than [Centennial Technologies].”

The agency asserts that it reasonably distinguished between the vendors based on “the descriptions of direct experience provided by the offerors.”

In response to their argument, the agency basically says in that last line, “*We read your proposal and relied on that.*” In all fairness, this was a good team, with a good process, and one hiccup. Let’s see what the GAO says.

The checklist had a column for notes to be included by the evaluation team. The awardees column had zero notes. The protesters column had one note: “*For the NIH [National Institutes of Health] contract referenced, as per the “Contract Effort Description,” the project is for the O&M [operations and maintenance] of various systems that includes ITSM [Information Technology Service Management], etc. In CY [calendar year] 21 and CY22, RemedyBiz did PRISM upgrade, but no new implementation mentioned.*”

There is seemingly no contemporaneous documentation of the differences between the quoters. Here's what the GAO had to say about this:

Here, the agency’s one identified basis for the distinction between the evaluation of RemedyBiz and Centennial Technologies—that the awardee had more experience with “end-to-end federal AMS implementation”—is not found in the contemporaneous evaluation record, but rather, only in the post-protest arguments advanced by counsel for the agency. Counsel’s post hoc justification, however, does not “simply fill in previously unrecorded details” but instead, inserts conclusions that are not manifested anywhere in the evaluation record or the source selection decision. ... As such, we find this argument—proffered in response to the protest, with no support in the contemporaneous record, to be a post-hoc rationalization deserving of little weight. See Microsoft Corp., B-420004, B-420004.2, Oct. 29, 2021, 2022 CPD ¶ 155 at 15; Boeing Sikorsky, supra at 15.

The GAO notes that the agency did not document its source selection decision, i.e., create any form of an award decision.

Instead, based on the evaluations of the non-price factors and price, the contracting officer asserts that because “Centennial Technologies received the highest confidence rating over all three phases and [it] had the lowest quoted price for BPA Call Order [No.] 01, a best value tradeoff analysis was not required to be performed.”



Here, the team confused a best value tradeoff analysis with an overall award decision. They documented neither. That is a recipe for disaster. You always need an award decision document, but when you have a higher-technically rated vendor with a lower price than the remaining eligible vendors then you don't need to document a tradeoff decision as there is nothing to tradeoff (see ICON Government and Public Health Solutions, Inc., [B-419751, June 2, 2021](#).) In this case, the GAO is simply noting that had the Government went ahead and written

a tradeoff document, even though it was not required, it might have included additional contemporaneous information that supported its Factor 1 rating for both vendors.

We conclude that the record of the agency's evaluation of quotations under the prior experience factor does not provide our Office with information sufficient to review the reasonableness of the agency's findings and the resulting award decision, and we sustain the protest on that basis.

Protest sustained, and for good reason. Again, this was a good acquisition team overall.

Corrective Action

After the protest decision, the procurement team took corrective action to address only Factor 1, Demonstrated Prior Experience. They added some documentation explaining their confidence rating from the checklist and re-awarded to the awardee. No new protest ensued. Case closed.

Final Thoughts

Is a checklist too brief? Well, not necessarily. Perhaps it was a good start if they just added a finding or two in that additional note's column. We don't know what the outcome would be, but I think it would have been find.

This volume was originally authored in February 2023 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.

