

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

VCH PARTNERS, LLC,

Plaintiff,

v.

UNITED STATES,

Defendant.

Case No. 23-891 C
Judge _____

COMPLAINT

For its bid protest complaint against the United States of America, Plaintiff VCH Partners, LLC (“VCH”) shows the Court as follows:

Nature of the Action

1. VCH protests Solicitation No. 36C10B23R0011 (“Solicitation” or “RFP”), issued by the United States Department of Veterans Affairs (“VA” or “Agency”).

The Parties

2. VCH is a limited liability company headquartered in Maryland.
3. The United States of America, for all purposes relevant hereto, acted by and through the Agency.

Jurisdiction and Standing

4. The Court has subject-matter jurisdiction over this bid protest under the Tucker Act, as amended by the Administrative Dispute Resolution Act of 1996. 28 U.S.C. § 1491(b)(1).

5. VCH is an “interested party” because it has the ability to submit a qualifying proposal and intends to do so by the due date set for receipt of proposals. It is therefore an “actual offeror” with a direct economic interest in the Solicitation.

6. Absent the errors alleged in this complaint, VCH suffers from a non-trivial competitive injury that can be redressed by judicial relief. It is therefore prejudiced.

Factual Background

The Solicitation

7. The Agency refers to the Solicitation as “T4NG2,” an initialism for “Transformation Twenty-One Total Technology Next Generation Two.

8. The Agency issued the Solicitation as a multiple award Indefinite Delivery/Indefinite Quantity (“IDIQ”).

9. The Solicitation has a 60-month base period and one 60-month option. The Agency anticipates issuing firm fixed price, time and materials / labor hour, and cost reimbursement task orders.

10. The maximum overall contract value is \$60,700,000,000.00. The minimum guaranteed value is \$1,000.

11. Under T4NG2, the Agency will procure various information technology services in several functional areas. These areas include:

- program management,
- strategy,

- enterprise architecture and planning;
- systems/software engineering;
- software technology demonstration and transition;
- test and evaluation;
- independent verification and validation;
- enterprise network;
- enterprise management framework;
- operations and maintenance;
- cybersecurity; training;
- IT facilities; and
- other solutions encompassing the entire range of IT and Health IT requirements

12. Specific work, locations of performance, and travel will be defined in individual task orders.

13. The Agency said it intended to award 30 contracts. In the event of a tie, all offerors tied for 30th will receive award unless more than six offerors are tied in that spot. In that event, the Agency will award only 29 contracts.

14. The Agency will make reserve awards of up to fifteen contracts to service disabled veteran-owned small businesses (“SDVOSBs”). Of those fifteen, the Agency is reserving up to one spot each for a woman-owned small business (“WOSB”) / SDVOSB and HubZone / SDVOSB.

15. Because these are reserve awards, the competition is “full and open.” 48 C.F.R. 19.501(a)(2). Therefore, all awardees will compete in a single pool as opposed to separate small business and “other than small business” pools.

16. The current due date set for receipt of proposals is June 14, 2023.

Instructions and Evaluation Criteria

17. The Agency intends to award a contract to the higher rated offerors with a fair and reasonable price.

18. The competition is based on points scored. Offerors will submit a self-scoring worksheet based on various factors.

19. The Agency will use self-scores from highest to lowest. It will establish a “preliminary top 30.”

20. Thereafter, the Agency will conduct an acceptability review in which it will verify the offerors’ claimed number of points. If the Agency cannot validate the number of points, it will deduct them from the offeror’s self-score and re-sort the list. Should the offeror fall out of the top 30 offerors, the Agency will add the next highest rated self-scored proposal. The Agency will continue this process until it validates the top 30 scores.

21. For the top 30 scored proposals, the Agency will verify that the offerors have proposed fair and reasonable pricing.

22. To ensure it meets its reserve, the Agency will then consider socioeconomic categories.

23. If the Agency satisfies its reserve goal within the top 30 offerors it will make award. If not, it will proceed to “Step Two.”

24. Under Step Two, once the 15th non-SDVOSB offeror is identified prior to reaching the Top 30 Offerors that represent the highest rated offers with a fair and reasonable price, all remaining non-SDVOSB Offerors will be removed from award consideration and the remaining SDVOSB list will be re-sorted. The evaluation will then continue utilizing that list of re-sorted SDVOSBs until the Top 30 are identified and all reserves are met.

25. The Agency intends to evaluate relevant experience, past performance, veteran employment, small business participation commitment, and SDVOSB/VOSB evaluation.

26. On April 30, 2023, VCH filed an agency-level protest in which VCH pointed out legal errors in the Agency’s evaluation scheme under the small business participation commitment factor and its decision to allow mentor companies to compete with their mentor-protégé joint ventures (“MPJVs”).

27. On May 11, 2023, the Agency issued an amendment, which altered language relating to contractor teaming arrangements (“CTAs”), which includes JVs. The VA included language about “collusion.”

28. On May 18, 2023, VCH filed a second agency-level protest regarding the “collusion” language.

29. On June 2, 2023, the Agency denied the protests.

30. This protest follows.

COUNT ONE
THE SOLICITATION VIOLATES REGULATIONS BY REQUIRING ALL OFFERORS TO SUBMIT SMALL BUSINESS PARTICIPATION INFORMATION, AND IS OTHERWISE ARBITRARY AND IRRATIONAL

31. VCH realleges and incorporates the allegations of the preceding paragraphs by reference as if fully set forth herein.

32. Solicitation Section L.13.3 requires all offerors to submit SBP Commitment information. It states:

All Offerors are required to submit Small Business Participation Commitment information. Please note the T4NG2 NAICS code is 541512.

Offerors must use the provided spreadsheet, Attachment 014 found in Section J of the Solicitation and submit under Volume 5. Please rename this file replacing Prime Offeror with your company name.

See sample spreadsheet below:

A	B	C
Business Type	Requirement	Proposed
Small Business	35%	
Business Type	Goals	Proposed
SDB (including Section 8(a))	5%	
WOSB	5%	
HUBZone	3%	
VOSB	17%	
SDVOSB	15%	

Please note that a Prime Offeror or Subcontractor who meets more than one small business type concern, should be included for each of the proposed goals for that business type (i.e. an Offeror who is a WOSB and also an SDVOSB, should have its percentage be included for the business types WOSB, VOSB, and SDVOSB).

Please note that the overall small business requirement of 35% includes all small businesses under the NAICS code.

For Mentor/Protege Joint Ventures, subcontracts to the Mentor only count if the Mentor qualifies for that socio-economic category.

Offerors shall input the proposed goals for SDB, WOSB, HUBZone, VOSB, and SDVOSB as reflected in Attachment 014 within Column C of the T4NG2 Self Scoring Worksheet (Attachment 15). The percentages proposed for the goals will be incorporated into any resulting contract in accordance with H-4 Small Business Requirements.

33. This violates 48 C.F.R. 52.219-9(a) “Small Business Subcontracting Plan,” which governs requirements for offerors to assert goals for percentages of subcontracting of work. The first sentence in the regulation explicitly says that the clause “does not apply to small business concerns.” There is no rational or reasonable justification for the VA to require SBP Commitments from small businesses (including MPJVs).

34. Additionally, the points scheme for SBP commitments is unduly vague. Whereas experience and past performance allot specific numbers of points for submitting contracts with a minimum dollar threshold, the SBP Commitment provides no clear guidance regarding points. As set forth above, it contains percentages but does not disclose what the points scheme will be. This is a particular hardship for small businesses because they have no prior experience with small business participation plans.

35. This is further exacerbated by the Agency’s response to Question 613. The Agency said:

Although VA does not intend to evaluate the realism of each proposed commitment, if, on its face, a proposed commitment does not appear possible then VA reserves the right to deduct the claimed points. For example, if a large business proposes to meet 100% of a given socioeconomic category, that would not be possible. Another example would be if a SDVOSB proposes to meet 100%

of a given socioeconomic category, yet its proposed subcontractors are all large businesses, that may also not be possible.

36. The phrase “may also not be possible” in connection with an undisclosed number of “points,” leaves offerors with little way to determine how they will receive SBP commitment credit.

37. Additionally, the Solicitation states in Section H-4: “For Mentor/Protege Joint Ventures, subcontracts to the Mentor only count if the Mentor qualifies for that socio-economic category.”

38. However, 13 CFR §125.8(f) states:

Contract execution. The procuring activity will execute a contract set aside or reserved for small business in the name of the joint venture entity or a small business partner to the joint venture, but in either case will identify the award as one to a small business joint venture or a small business mentor-protégé joint venture, as appropriate.

39. MPJVs are considered small businesses. The Solicitation runs contrary to that by allocating credit for only the small business percentage of the work. For example, if an MPJV receives a contract for \$100, where the protégé does \$40 and a large mentor \$60 (the required workshare between the companies, as set forth in 13 C.F.R. 125.9(d)(1)(iii)(b)), the Solicitation only allows the MPJV to receive credit for the protégé’s work rather than for the entire effort. This impacts percentages under the SBP Commitment for MPJVs with a large mentor. It is contrary to MPJV regulation.

40. VCH is prejudiced. As a small business (MPJV), it must produce a small business participation plan that is not required by law, with which it has no experience creating or performing, and is handicapped by a points scheme that decrements its credit as the MPJV.

Under the current points scheme, VCH stands to lose points that will be credited to other offerors.

COUNT TWO
THE AGENCY ALLOWS MENTORS TO COMPETE AGAINST MPJVS, WHICH IS
ARBITRARY, IRRATIONAL, AND CONTRARY TO LAW

41. VCH realleges and incorporates the allegations of the preceding paragraphs by reference as if fully set forth herein.

42. As a small business reserve contract, T4NG2 will place all businesses—large and small—into a single competitive pool.

43. As a result, mentor companies are allowed to compete against their MPJVs. The purpose of MPJVs is to “enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve the protégé firms’ ability to successfully compete for federal contracts.” 13 CFR 125.9(a).

44. As part of that commitment, mentors and protégés must “[s]pecifically identify the business development assistance to be provided and address how the assistance will help the protégé enhance its growth and/or foster or acquire needed capabilities.” 13 C.F.R.

125.9(e)(1)(i). The failure to provide that assistance is grounds for terminating the MPJV relationship, may bar the mentor from the MPJV program for two years, and direct agencies to cancel contracts and award them directly to protégés. 13 C.F.R.(h)(1)-(2).

45. Should mentors receive awards on their own and as part of the MPJV, they will have the ability to compete directly with their protégés, which runs contrary to law.

46. In addition, the Agency amended the Solicitation to address “collusion.” In Solicitation Section L.10.6, the Agency writes:

The Government recognizes that CTAs (which include Joint Ventures) are permissible and that there may be scenarios where a company is party to CTAs for multiple proposals; however, caution shall be taken to ensure that those CTAs do not currently establish an arrangement that may lead to collusion in proposals submitted in response to this solicitation or may lead to the establishment of collusive arrangement at the task order level. Collusion occurs when: (1) an offeror has, for the purpose of restricting competition, consulted, communicated, or agreed with any other offeror or competitor relating to (i) prices in its proposal, (ii) intention to submit a proposal, or (iii) methods or factors used to calculate the prices in the proposal; (2) the prices in the proposal have been or will be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before the proposal due date or contract award; or (3) an attempt has been or will be made by the offeror to induce any other concern to submit or not to submit a proposal for the purpose of restricting competition. Proposals deemed to consist of a collusive arrangement, either for this Solicitation or for future task order competitions under the resulting contracts will be removed from award consideration. Additionally, collusive arrangements may result in criminal, civil or administrative action in accordance with FAR Subpart 3.3 for violation of applicable antitrust laws, to include the Sherman Antitrust Act, the Clayton Act and the Federal Trade Commission Act.

47. This is a permanent problem for mentors proposing separately from their MPJVs. The mentor will by definition assist with pricing and technical information relating to the MPJV proposal and have access to that information when submitting its own proposal. This necessarily results in the elimination from competition of both MPJVs and mentors in competitions for IDIQ award in the single award pool and subsequent task order awards. Yet, there is no prohibition against mentors submitting competing offers with their MPJVs. That is arbitrary and irrational.

48. VCH is prejudiced because it must compete with mentors separately and as members of MPJVs, and it must compete against them where there is a *per se* collusion.

PRAYER FOR RELIEF

WHEREFORE, VCH requests that this Court:

- A. Declare that the Solicitation is contrary to law, arbitrary and irrational;
- B. Permanently enjoin award of the contract under the Solicitation;¹
- C. Require the Agency to amend the Solicitation and resolicit proposals; and
- D. Award VCH such other and further relief as the Court may deem just and proper,

including, without limitation, bid and proposal costs.

Dated: June 13, 2023

Respectfully submitted,

s/ Jon D. Levin

Jon D. Levin
W. Brad English
Emily J. Chancey
Joshua B. Duvall
Nicholas P. Greer

Attorneys for VCH Partners LLC

OF COUNSEL:

MAYNARD NEXSEN PC
655 Gallatin Street SW
Huntsville, Alabama 35801
Telephone: (256) 512-5747
Cell: (703) 231-3247
Email: jlevin@maynardnexsen.com

¹ Counsel for VCH has spoken with DOJ counsel. The Agency has agreed to voluntarily stay award through early September but will continue to evaluate proposals during that time.

Certificate of Service

I hereby certify that on June 13, 2023, I caused copies of the foregoing to be served by electronic mail upon the following:

U.S. Department of Justice
Commercial Litigation Branch
National Courts Section
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044

/s/ Jon D. Levin

Jon D. Levin

In The United States Court of Federal Claims
Form 2
Cover Sheet

Plaintiff(s) or Petitioner(s)

23-891 C

Names: _____

Location of Plaintiff(s)/Petitioner(s) (city/state): _____

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): _____

Firm Name: _____

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box: _____

Street Address: _____

City-State-ZIP: _____

Telephone Number: _____

E-mail Address: _____

Is the attorney of record admitted to the Court of Federal Claims Bar? Yes No

Nature of Suit Code: _____

Select only one (three digit) nature-of-suit code from the attached sheet.

Agency Identification Code: _____

Number of Claims Involved: _____

Amount Claimed: \$ _____
Use estimate if specific amount is not pleaded.

Bid Protest Case (required for NOS 138 and 140):

Indicate approximate dollar amount of procurement at issue: \$ _____

Is plaintiff a small business? Yes No
Was this action proceeded by the filing of a protest before the GAO? Yes No Solicitation No. _____
If yes, was a decision on the merits rendered? Yes No

Income Tax (Partnership) Case:

Identify partnership or partnership group: _____

Takings Case:

Specify Location of Property (city/state): _____

Vaccine Case:

Date of Vaccination: _____

Related case:

Is this case directly related to any pending or previously filed case(s) in the United States Court of Federal Claims? If yes, you are required to file a separate notice of directly related case(s). See RCRC 40.2. Yes No

Nature-of-Suit Codes for General Jurisdiction Cases

100	Contract – Construction – (CDA)	210	Tax – Income, Corporate	354	Military Pay – SBP
102	Contract – Fail to Award – (CDA)	212	Tax – Income, Individual	356	Military Pay – Other
104	Contract – Lease – (CDA)	213	Tax – Income, Individual (Partnership)	500	Carrier – transportation
106	Contract – Maintenance – (CDA)	214	Tax – Informer’s Fees	502	Copyright
108	Contract – Renovation – (CDA)	216	Tax – Preparer’s Penalty	504	Native American
110	Contract – Repair – (CDA)	218	Tax – Railroad Retirement/Unemployment Tax Act	506	Oil Spill Clean Up
112	Contract – Sale – (CDA)	220	Tax – TEFRA Partnership – 28:1508	507	Taking – Town Bluff Dam
114	Contract – Service – (CDA)	222	Tax – Windfall Profit Overpayment – Interest	508	Patent
116	Contract – Supply – (CDA)	224	Tax – 100% Penalty – 26:6672 – Withholding	509	Taking – Addicks & Barker Reservoirs
118	Contract – Other – (CDA)	226	Tax – Other	510	Taking – Personality
120	Contract – Bailment	300	Civilian Pay – Back Pay	512	Taking – Realty
122	Contract – Bid Preparation Costs	302	Civilian Pay – COLA	513	Taking – Rails to Trails
124	Contract – Medicare Act	303	Civilian Pay – Disability Annuity	514	Taking – Other
126	Contract – Realty Sale	304	Civilian Pay – FLSA	515	Unjust Conviction and Imprisonment
128	Contract – Subsidy	306	Civilian Pay – Overtime Compensation	516	Miscellaneous – Damages
130	Contract – Surety	308	Civilian pay – Relocation Expenses	517	Miscellaneous – Affordable Care Act
132	Contract – Timber Sale	310	Civilian Pay – Suggestion Award	518	Miscellaneous – Lease
134	Contract – Other	312	Civilian Pay – Other	520	Miscellaneous – Mineral Leasing Act
136	Contract – Other – Wunderlich	340	Military Pay – Back Pay	522	Miscellaneous – Oyster Growers Damages
138	Contract – Protest (Pre Award)	342	Military Pay – CHAMPUS	524	Miscellaneous – Safety Off. Ben. Act
140	Contract – Protest (Post Award)	344	Military Pay – Correct records	526	Miscellaneous – Royalty/Penalty Gas Production
200	Tax – Allowance of Interest	346	Military Pay – Correct/Reinstate	528	Miscellaneous – Other
202	Tax – Declaratory Judgment – 28:1507	348	Military Pay – Reinstatement	535	Informer’s Reward
204	Tax – Estate	350	Military Pay – Relocation Expenses	536	Spent Nuclear Fuel
206	Tax – Excise	352	Military Pay – Retirement		
208	Tax – Gift				

Nature-of-Suit Codes for Vaccine Cases

449	Injury – Hepatitis A	485	Injury – Hemophilus Influenzae	477	Death – Pertussis
453	Injury – Pneumococcal Conjugate	486	Injury – Varicella	478	Death – Polio – inactive
456	Injury – DPT& Polio	490	Injury – Rotavirus	479	Death – Polio – other
457	Injury – D/T	492	Injury – Thimerosal	480	Death – Rubella
458	Injury – DTP/DPT	494	Injury – Influenza (Flu)	481	Death – Tetanus & Diphtheria
459	Injury - Measles	496	Injury – Meningococcal	482	Death – Tetanus & Tox.
460	Injury – M/M/R	498	Injury – Human Papillomavirus	483	Death – Other
461	Injury – Measles/Rubella	452	Death – Hepatitis A	487	Death – Hepatitis B
462	Injury – Mumps	454	Death – Pneumococcal Conjugate	488	Death – Hemophilus Influenzae
463	Injury – Pertussis	470	Death – DPT & Polio	489	Death – Varicella
464	Injury – Polio – inactive	471	Death – D/T	491	Death – Rotavirus
465	Injury – Polio – other	472	Death – DTP/DPT	493	Death – Thimerosal
466	Injury – Rubella	473	Death – Measles	495	Death – Influenza (Flu)
467	Injury – Tetanus & Diphtheria	474	Death – M/M/R	497	Death – Meningococcal
468	Injury – Tetanus & Tox.	475	Death – Measles/Rubella	499	Death – Human Papillomavirus
469	Injury – Other	476	Death – Mumps		
484	Injury – Hepatitis B				

AGENCY CODES

AGR	Agriculture	SBA	Small Business Administration
AF	Air Force	TRN	Department of Transportation
ARM	Army	TRE	Department of Treasury
AEC	Atomic Energy Commission	VA	Department of Veterans Affairs
COM	Department of Commerce	VAR	Various Agencies
DOD	Department of Defense	O	Other
DOE	Department of Energy		
ED	Department of Education		
EPA	Environmental Protection Agency		
GPO	Government Printing Office		
GSA	General Services Administration		
HHS	Health and Human Services		
HLS	Homeland Security		
HUD	Housing and Urban Development		
DOI	Department of the Interior		
ICC	Interstate Commerce Commission		
DOJ	Department of Justice		
LAB	Department of Labor		
MC	Marine Corps		
NAS	National Aeronautical Space Agency		
NAV	Navy		
NRC	Nuclear Regulatory Commission		
PS	Postal Service		
STA	State Department		

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

VCH PARTNERS, LLC,

Plaintiff,

v.

UNITED STATES,

Defendant.

Case No. 23-891 C
(Judge _____)

CERTIFICATE OF COMPLIANCE WITH PRE-FILING REQUIREMENTS

Counsel for Plaintiff VCH Partners, LLC, hereby states that it sent the required Pre-Filing Notice of Bid Protest Case pursuant to 28 U.S.C. § 1491(b) to the United States Department of Justice, the Clerk of the United States Court of Federal Claims and the contracting officer by email, at approximately 11:38 A.M. Central time on June 2, 2023.

Respectfully submitted,

/s/ Jon D. Levin

Jon D. Levin
W. Brad English
Emily J. Chancey
Joshua B. Duvall
Nicholas P. Greer

Attorneys for VCH Partners, LLC

OF COUNSEL:

MAYNARD NEXSEN PC
655 Gallatin Street SW
Huntsville, Alabama 35801
Telephone: 256.551.0171
Email: jlevin@maynardnexsen.com
 benglish@maynardnexsen.com
 echancey@maynardnexsen.com
 jduvall@maynardnexsen.com
 ngreer@maynardnexsen.com

Certificate of Service

I certify that on June 13, 2023, I caused copies of the foregoing to be served by electronic mail upon the following:

United States Department of Justice
Commercial Litigation Branch
National Courts Section
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044

/s/ Jon D. Levin
Jon D. Levin