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Decision

Matter of: Trajen, Inc.; Maytag Aircraft Corporation

File: B-296334; B-296334.2; B-296334.3; B-296334.4

Date: July 29, 2005

Thomas O. Mason, Esq., Robert E. Korroch, Esq., Rachel L. Semanchik, Esq., and Francis E. Purcell, Jr., Esq., Williams Mullen PC, for Trajen, Inc.; and J. Randolph MacPherson, Esq., and Michael J. Noonan, Esq., Halloran & Sage LLP, for Maytag Aircraft Corporation, the protesters.

Benjamin N. Thompson, Esq., Jennifer M. Miller, Esq., and Christine F. Mayhew, Esq., Wyrick Robbins Yates & Ponton LLP, for LB&B Associates, Inc., an intervenor. Timothy A. Raezer, Esq., Defense Logistics Agency, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Discussions were meaningful where agency led protesters into areas of their proposals requiring additional information or improvement, including staffing levels and maintenance plans.
2. Agency's use of three adjectival ratings instead of five, as called for by solicitation, did not render evaluation unreasonable, since adjectival ratings are simply a guide for use by contracting officials, and numerical scores as well as supporting narratives provided means of differentiating among proposals that would have been provided by additional adjectival ratings.
3. Technical evaluations of protesters' proposals under staffing and other subfactors were reasonable where they are consistent with content of proposals; for example, protesters' proposals offered fewer personnel than agency's estimated targets and personnel who lacked required qualifications, and failed to reasonably assure the government of access to preventive maintenance software.
4. Technical evaluation of awardee's proposal was unobjectionable where agency reasonably found that proposed staffing levels were appropriate and that personnel were qualified for proposed positions.

DECISION

Trajen, Inc. and Maytag Aircraft Corporation protest the award of a contract to LB&B Associates, Inc. under request for proposals (RFP) No. SP0600-04-R-0032, for fuel receipt, storage, and issue services at the Government-Owned-Contractor Operated (GOCO) facilities at Defense Fuel Support Point (DFSP), Norfolk, Virginia, and aircraft refueling services for Naval Station (NS) Norfolk and Naval Amphibious Base (NAB), Little Creek, Virginia. Trajen and Maytag challenge the technical evaluations of their own and LB&B's proposals, the conduct of discussions, and the source selection.

We deny the protests.

The RFP contemplated the award of a fixed-price contract (with cost-reimbursable line items) for a period of 5 years, to provide necessary labor, management, and equipment to operate five fuel terminals. Three of the terminals--Craney Island, Yorktown, and Sewell's Point--comprised the DFSP, and two--NS Norfolk and NAB Little Creek--comprised the alongside aircraft refueling facilities. Craney Island, the largest single government fuel storage facility in the continental U.S., is located in Portsmouth, Virginia and is some 42 road-miles southeast of Yorktown and 20 road-miles southwest of Sewell's Point, which is located on NS Norfolk. The DFSP complex is responsible for the receipt, storage and handling, quality surveillance, shipment, and accountability of various government-owned petroleum products in support of designated Department of Defense activities. The NS Norfolk-NAB facilities are responsible for fuel storage and services for various aircraft and naval vessels. In addition to petroleum-related services, the contractor is responsible for equipment and grounds maintenance at the facilities. The RFP contained two detailed performance work statements (PWS) outlining the requirements of each performance area.

Proposals were to be evaluated on the basis of four factors, listed in descending order of importance--operational capability, past performance, price, and socio-economic/subcontracting. The operational capability factor was divided into nine subfactors, also listed in descending order of importance and with the following stated weights--operation and staffing plan (5), contract compliance plan (4), maintenance plan (3), product quality surveillance plan (3), product inventory control and accountability plan (3), security plan (2), training plan (2), safety plan (2), and equipment/vehicles (2). The RFP provided that, after proposals were evaluated under each factor, a rating of exceptional, very good, satisfactory, marginal, or unsatisfactory would be assigned. In evaluating the proposals, the technical evaluation team (TET) evaluated proposals under each factor and subfactor on the basis of three adjectival ratings (and corresponding points)--exceptional (3), average (2), and marginal (1). Technical factors were considered more important than price.

Trajen, Maytag, LB&B, and another offeror submitted proposals. All were evaluated by the TET and included in the competitive range. The TET issued written discussion letters, conducted oral negotiations, and obtained final proposal revisions (FPR) from each of the offerors. The results of the final consensus evaluation were as follows:

	Maytag	Trajen	LB&B
Op. Capability (78 avail. points)¹	Average (44)	Average (42)	Exceptional (66)
Op & Staff Plan (15)	Marginal	Average	Exceptional
Compl. Plan (12)	Average	Marginal	Exceptional
Maint. Plan (9)	Marginal	Marginal	Exceptional
Prod. Qual. Surv. (9)	Average	Average	Average
Prod. Inv. Ctrl/Acct (9)	Average	Marginal	Average
Security (6)	Average	Average	Average
Training (6)	Average	Average	Average
Safety (6)	Average	Average	Average
Equip/Veh. (6)	Average	Average	Exceptional
Past Performance	Very Good	Very Good	Exceptional
Price	\$30,511,080	\$29,985,000	\$33,309,107
SocioEcon/Subcontracting	Exceptional	Exceptional	Exceptional

The contracting officer, as the source selection authority (SSA), reviewed the TET's consensus evaluations of each proposal and performed a price-technical tradeoff. The SSA concluded that LB&B's superior technical proposal, as evidenced by its higher proposed manning levels, better contract compliance and maintenance plans, and proposal of [deleted] equipment and vehicles, more than offset the other offerors' lower prices. After receiving debriefings, Trajen and Maytag filed these protests.²

MEANINGFUL DISCUSSIONS

Trajen and Maytag assert that the agency improperly downgraded their proposals in certain areas without bringing the evaluated weaknesses in those areas to the protesters' attention during discussions. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, they must lead the offeror into the areas of its proposal that require correction or amplification.

¹ The weight of each subfactor was multiplied by the value of the exceptional rating (3) to determine the available points for each subfactor and the factor overall.

² Both protesters have raised numerous issues concerning the conduct of this procurement. We have considered them all and find that they have no merit or did not prejudice the respective protester. This decision addresses the more significant of the protesters' issues.

Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. However, this does not mean that an agency must “spoon-feed” an offeror as to each and every item that must be revised or addressed to improve the submission. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 9.

Trajen Discussions

Trajen asserts that the agency improperly failed to provide it with meaningful discussions regarding weaknesses identified under the operations and staffing subfactor. While conceding that the agency raised questions about its staffing in discussions, Trajen maintains that the agency failed to make clear its actual concerns and that it failed to consider the protester’s responses in its FPR.³

The discussions with Trajen were meaningful. The agency was concerned with Trajen’s staffing levels and told the firm during discussions to take another look at its staffing considering the three diverse and separate areas of the DFSP, hot pit staffing, and the distance to the site at NS Norfolk. Trajen Agency Report (TAR) at 14; Tab I, at 11. The agency also identified the need to provide a chart or table showing typical hours/days/weeks worked to assist it in calculating the number of full time equivalents (FTE), and asked for a typical 7-day week, hourly breakdown by job classification, to include management and supervisory personnel. *Id.* In response, Trajen proposed [deleted], but did not provide breakdowns for all sites. TAR at 14. In its final consensus evaluation, the TET found that Trajen’s FPR responses were unacceptable and questioned the adequacy of the firm’s overall staffing levels given the projected workloads and Trajen’s current staffing at Craney Island. Among other concerns, the TET found Trajen’s personnel changes to be insufficient; it thus found no basis for changing Trajen’s original rating of average under this subfactor.

³ In its initial protest, Trajen also asserted that the agency failed to provide it with meaningful discussions with regard to its contract compliance, maintenance, and product inventory control/accountability plans. Trajen Protest at 7. The agency provided a detailed response to these assertions, including its identification of specific discussion questions relating to each of these plans, in its report. While Trajen continued to assert in its comments on the agency report that its proposal was misevaluated under these subfactors, it did not respond to the agency’s explanations. Where, as here, an agency submits a detailed response to protest arguments, and the protester makes no further mention of an issue, or merely references an issue but does not substantively reply to the agency’s detailed position, we deem the issues abandoned. Citrus Coll.; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8.

Trajen asserts that in oral discussions, the agency specifically advised the firm that it only needed to submit breakdown charts for the NS Norfolk and NAB Little Creek sites. Trajen Declaration (Decl.) at ¶ 13. However, the agency claims that Trajen is mistaken, and we find no evidence in the record supporting Trajen's claim. To the contrary, the written discussions clearly pointed to staffing issues at all DFSP sites, and there was nothing in the written discussions to suggest that the request for breakdown charts extended only to two sites. This being the case, and given that the RFP already required offerors to submit staffing matrices identifying how many and what types of employees would participate in each operation, RFP § L.201.100.B(1), there appears to have been no reason for the agency to restrict the scope of the requested charts. Further, based on past performance surveys criticizing Trajen's staffing levels at Craney Island, it appears that the protester was well aware of the agency's concerns in this area. Trajen Protest, exh. 1. While Trajen disagrees with the TET's evaluation, it is clear that the agency's discussions led the firm into the areas of the TET's concerns with staffing levels. (In any case, in the absence of complete charts, the agency evaluated Trajen's staffing at the remaining sites based on the firm's initial proposal, and Trajen has not established that the agency misinterpreted the firm's staffing levels at these sites.)⁴

Maytag Discussions

Maytag asserts that the agency failed to provide the firm with meaningful discussions by failing to apprise the firm of its actual concerns regarding staffing levels, personnel qualifications, and various aspects of its proposed maintenance plan.

In discussions, the agency informed Maytag that its [deleted] proposed full- and part-time employees equated to approximately [deleted] FTEs, with [deleted] at the DFSP and [deleted] at the NS Norfolk/NAB. Maytag AR (MAR), Tab X, at 7. Written discussions informed Maytag that the agency intended to discuss staffing based on the three diverse and separate areas of the DFSP, hot pit staffing, and the distance to the NS Norfolk site, along with the firm's reliance on part-time personnel. *Id.* Then, during oral discussions, the agency specifically referenced Craney Island and Yorktown and asked the firm to reassess its staffing based on the workload factors to be provided. Maytag Discussion Notes, Nov. 18, 2004. When Maytag explained

⁴ In its comments on the agency's report, Trajen also asserted that the agency improperly downgraded its proposal regarding its proposed deputy fuels director without providing discussions. Trajen's Initial Comments at 11. Protest grounds such as this must be raised within 10 days after the basis for protest is known or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2005). Here, the agency provided the evaluation documents on which this argument is based on May 20, 2005, but Trajen raised it for the first time in its comments filed on June 6, more than 10 days later. Accordingly, this protest ground is untimely and will not be considered.

that it had proposed at least [deleted] more FTEs than the agency had calculated, the agency advised it to look again, even with those additional persons counted. Id. Maytag asked for additional feedback on where it was light in staffing, and by e-mail of December 3, the agency advised that it was concerned that the level of manning was low given the multitude of tasks at Craney Island, with particular concern about the firm's ability to staff the simultaneous operations. MAR, Tab U. In its FPR, Maytag added some [deleted] FTEs to Craney Island. The agency's target staffing for Craney Island was [deleted] FTEs, however, and Maytag's revision raised its staffing only to [deleted] FTEs. MAR, Tab P. In its final consensus evaluation, the TET found that Maytag's increased staffing was inadequate. MAR, Tab K.

Maytag asserts that the agency should have provided it with more information, including an explanation of the multitude of tasks and simultaneous operations that the agency believed required greater staffing. However, we believe the discussions provided were sufficient to lead Maytag into the areas where its proposal was lacking. Maytag had the benefit of the agency's workload levels, the PWS for Craney Island, and the agency's view that an increase of only a few personnel was likely inadequate. The agency was not required to essentially "spoon-feed" the protester by providing additional information. Arctic Slope World Servs., Inc., supra.

With regard to personnel qualifications, the agency asked Maytag in written discussions to clarify its proposed terminal superintendent's deepwater terminal experience as an operator or supervisor, since his experience appeared to be "around" terminal functions, not within terminals or as an operator. MAR, Tab X, at 7. In oral discussions, the agency advised that it did not have a "good feeling" about the proposed employee; from his resume, it appeared to the agency that he was around the periphery of terminals and had most of his experience in the quality assurance area, while the agency needed deepwater experience. Maytag Discussion Notes, Nov. 18, 2004. In response, Maytag provided narrative information in its FPR highlighting the employee's supposed deepwater terminal experience. In reviewing the FPR, the TET found that Maytag had not changed the employee's resume to expressly indicate deepwater terminal experience, apart from quality surveillance specialist (QAS) experience. MAR, Tab K.

Maytag asserts that the agency should have stated that it considered the employee unqualified instead of simply seeking "clarification" of his experience. However, we believe the agency's discussions were more than adequate to lead Maytag into the area of this concern. The protester was aware that the agency had specific problems with the proposed employee and it was up to the firm to provide adequate support in establishing his qualifications. The agency reasonably downgraded the proposal based on Maytag's failure to do so.

ADJECTIVAL RATINGS

Trajen and Maytag assert that the evaluation was flawed because the agency did not follow the evaluation scheme outlined in the RFP. Specifically, they note that, while the RFP provided for an evaluation using five adjectives--exceptional, very good, satisfactory, marginal, and unsatisfactory--the TET applied only three--exceptional, average, and marginal.

In reviewing a protest of an agency's proposal evaluation, our review is confined to a determination of whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. When considering the ratings assigned by an agency to an offeror's proposal, we have consistently taken the position that evaluation ratings, be they adjectival, numerical or color, are merely guides for intelligent decision-making in the procurement process. KBM Group, Inc., B-281919, B-281919.2, May 3, 1999, 99-1 CPD ¶ 118 at 11.

The agency's use of three adjectives instead of the five stated in the RFP had no prejudicial impact on the evaluation. In this regard, all proposals were evaluated under the same scheme and the evaluation was not based solely on the adjectives; each of the nine subfactors had an individual weight that was multiplied by the numerical score assigned by the individual and consensus evaluations as well as supporting narratives. The maximum possible score for the operational capability factor was 78 points and the three adjectives represented various point ranges--exceptional (78-57), average (56-29), and marginal (less than 29). TAR, Tab H; MAR, Tab K. To the extent that a greater number of adjectives would operate to provide more precise differentiation among proposals, the numerical scoring of the proposals provided that differentiation. With a score of 66 points, LB&B's proposal was considered to be mid-exceptional, and the protesters' scores placed them in the mid-average range. TAR at 11; MAR at 9. Regardless of the adjectives applied, the relative standing of the offerors' proposals would remain the same, with LB&B's proposal rated significantly higher than either of the protester's. We note, moreover, that the source selection was not merely based on the adjectival or numerical ratings; the SSA specifically considered the narrative comments in the consensus evaluations and weighed the advantages of various aspects of LB&B's proposal over the others. We conclude that the agency's failure to use all five of the adjectives identified in the RFP was unobjectionable.

TRAJEN'S TECHNICAL EVALUATION

Trajen asserts that the agency improperly downgraded its proposal for failing to offer adequate staffing, based on an undisclosed, mechanically applied staffing level.

To ensure that its need for adequate staffing will be met, it is proper for an agency to evaluate technical or price proposals against an undisclosed, reasonable estimate of

the appropriate staffing needed to perform the solicitation requirements where, as here, the RFP notifies offerors that staffing is an area of evaluation. Gemini Indus., Inc., B-281323, Jan. 25, 1999, 99-1 CPD ¶ 22 at 3. However, it is inappropriate to determine the acceptability of proposals simply by the mechanical application of an undisclosed estimate. KCA Corp., B-255115, Feb. 9, 1994, 94-1 CPD ¶ 94 at 6-7.

There is no evidence of a mechanical application of the agency's estimates. As explained by the agency, its primary concern with this performance-based procurement was to ensure that the offerors could meet the performance requirements. TAR, Tab S, Decl., at ¶ 9. To this end, one of the TET members prepared a staffing estimate based on the workload and current staffing levels, and had it verified for accuracy by the DFSP Norfolk, Deputy Director. Id. In the evaluation, the staffing estimate was not used as a minimum level for acceptability, but was used as a common tool to help analyze all offerors' proposed staffing plans; each offeror's proposed staffing for each site was compared to the agency's estimate for that site. TAR, Tab J. In addition to this comparison, the TET considered the positions, skill levels, experience, approaches, and any efficiency to proposed staffing that would ensure performance. TAR, Tab S, Decl. at ¶ 9.

Trajen notes that it proposed to use innovative approaches, including [deleted]. Trajen Decl. at ¶¶ 7-9. Trajen maintains that its staffing should have been evaluated more favorably in light of these considerations.

This argument is without merit. The agency observes that Trajen's FPR did not refer to a [deleted], and explains that the TET considered the other efficiencies proposed, but concluded that the protester's overall staffing--specifically, at Craney Island and Yorktown, where Trajen was the incumbent contractor--was suboptimal and might not support the operations and maintenance requirements. Agency Response to Trajen's Supplemental Comments at 6; TAR, Tab H. A comparison of Trajen's staffing levels with the agency's estimate shows that the protester consistently proposed fewer personnel at all but one of the sites. In addition, Trajen's performance under its incumbent contract included criticism for inadequate manning, insufficient staff to meet daily operational requirements, and long delays in making many repairs due to insufficient manpower. Trajen Protest, exh. 1. Offerors are responsible for submitting an adequately written proposal, and run the risk that their proposal will be evaluated unfavorably where they fail to do so. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3. Here, Trajen has failed to establish that its proposed staffing level, in light of its innovative performance techniques, warranted more than an average rating; there thus is no basis to find the agency's evaluation unreasonable.

Trajen asserts that the agency improperly rated its proposal as only marginal for its contract compliance, maintenance, and product inventory control and accountability plans. Noting that its proposal was rated average in each of these areas in the initial evaluation, Trajen maintains that the agency had no basis to reduce these ratings.

The evaluation of these aspects of Trajen's proposal was unobjectionable. Although each of these plans was initially evaluated as average, the agency explains that the TET had concerns about each, and it notes that those concerns were raised in discussions. Trajen's FPR was found not to have adequately addressed those concerns and was downgraded. For example, the RFP required that maintenance plans address the requirements of PWS § CG-2.4, which called for inclusion of an automated electronic preventive maintenance (PM) program, Maximo or equivalent. RFP § L.201.100.B.3. In discussions, the agency noted that the firm had proposed to use a proprietary PM program, and asked it to explain how the program compared to Maximo--whether it was web-based and would provide the government with access to information relevant to PM and, if not, whether Trajen would make a workstation available for government use. TAR, Tab I, at 12. According to the agency, access to PM information is important given the government's need to monitor some \$500 million in government-furnished equipment. TAR at 9. In reviewing Trajen's response, the TET found that the firm did not provide any comparative information relating its proposed proprietary PM program to Maximo but, rather, simply indicated that it was a capable program. In addition, Trajen failed to indicate that the government would be provided access to the program; the agency found Trajen's FPR statement that it "could" provide access to be unacceptable, noting that, under Trajen's incumbent contract, the firm had denied the agency access when the agency had sought to verify maintenance data. TAR, Tab S, at ¶ 10. We conclude that the agency reasonably downgraded Trajen's proposal for failing to adequately address these concerns.

With regard to the compliance plan subfactor, offerors' plans were to include a description of how contract compliance would be ensured, including internal inspection/control systems and reporting procedures, as well as identification of personnel responsible for monitoring/updating the plan. RFP § L.201.100.B.2. In discussions, the agency pointed out that Trajen's plan was general and confusing as to what personnel would monitor compliance and what reports would be provided to the contracting officer's representative, and lacked a chain of command regarding submission of findings and resolutions. TAR, Tab I, at 11. In reviewing Trajen's response, the TET found the initial and follow-on plans to be general and confusing, and found that the firm had failed to clarify the inclusion of [deleted] in the proposal. Trajen provides nothing to support its position that the TET's findings were unreasonable. Instead, it asserts that the evaluation report failed to explain the downgrade of its proposal in these areas. An agency may reasonably downgrade a proposal after discussions where, as here, there is an absence of documented advantages to support the higher initial score. See Dragon Servs. Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 11. In our view, the agency reasonably determined that the protester failed to adequately respond to or resolve the agency's concerns; the TET thus reasonably evaluated Trajen's proposal as marginal under these subfactors.

MAYTAG'S TECHNICAL EVALUATION

Maytag asserts that the agency improperly evaluated its proposal as marginal under the maintenance and operations and staffing subfactors. Specifically, it maintains that the TET misevaluated its maintenance plan, its staffing levels, and its proposed terminal superintendent. In the protester's view, a proper evaluation would have resulted in its proposal being rated at least average under both subfactors, which would have affected the source selection. Maytag's Initial Comments at 16-18. While we find that the evaluation was flawed in some respects, we also find that those flaws did not competitively prejudice Maytag.

Maintenance Subfactor

The TET found in its evaluation that Maytag's proposal failed to indicate that Maytag would provide web access to its PM software; relied on a [deleted] approach for all sites, which was inadequate; and failed either to provide for the use of Maximo PM software or to establish the equivalence of its proposed PM software at all sites. MAR, Tab K. The TET downgraded the proposal to a marginal level.

Maytag asserts that it was improper to penalize it for lack of web access to its PM program, since it proposed to provide the access called for by PWS CG-2.4.2.4, which requires contractors to make PM records available to the government upon request. In written discussions, the TET requested Maytag to "clarify if [its PM software] will be web based and that they will provide the Government access to information relevant to [PM]. If not, then they will need to provide access to a workstation for use by the Government." MAR, Tab X, at 8. In response, Maytag's FPR simply promised to provide the government with [deleted] "whenever requested." The TET found this to be an unacceptable response. We think this determination was reasonable. The context of this discussion question called for the firm to make clear that its PM software would be web-accessible to the government or, alternatively, available to it on a dedicated workstation. Maytag's failure to propose such access provided support for the TET's negative evaluation comment.

However, we agree with Maytag that the evaluation of its proposal under the maintenance plan subfactor was otherwise flawed. With regard to PM software, the TET erred in downgrading Maytag's plan for failing to establish the equivalence of its proposed software to Maximo. Contrary to the TET's position that Maximo was required at all sites, the RFP only required its use at the three DFSP sites. PWS, CG-2.4.3.1.1, CR-2.12.1. Since, as acknowledged by the TET, Maytag's FPR proposed to use Maximo at the three DFSP sites (MAR, Tab K), as required, and proposed to use Maytag's PM program at the sites where Maximo was not called for, there was

nothing in the RFP that reasonably supported downgrading the firm's proposal for failing to establish how its PM program was equivalent to Maximo.⁵

Likewise, we find that the TET erred in finding that Maytag had proposed “[deleted] to maintain all five widely dispersed areas,” which, the TET concluded, “is not adequate to maintain the five terminals.” MAR, Tab K. Contrary to the TET's understanding, Maytag's proposal did not call for maintenance at all sites to be handled by [deleted]. In this regard, the initial proposal and FPR identified maintenance tasks to be performed by personnel at each of the five sites, and for the three DFSP sites, it added a notation that the [deleted]. FPR, Appendix CG-O&SP-1. In context, we think the reference to “all sites” plainly was intended to apply only to all DFSP sites. The TET's evaluation on this point therefore was unreasonable.

The agency asserts that it discussed this matter with Maytag, but this is not supported by the record. In this regard, the agency's only contemporaneous record is a handwritten notation on a copy of its written discussion questions--“[deleted] Miles of travel versus [deleted] people doing PM.” MAR, Tab X at 7. This notation does not indicate that the agency raised the matter with Maytag. We find more persuasive Maytag's own detailed memorandum, entitled “Norfolk Talks.” Maytag Discussion Notes, Nov. 18, 2004. This memo, in near transcript form, includes every other aspect of the agency's negotiations, with no mention of any question about [deleted]. According to the protester's detailed memo, in the context of the distances between sites, the parties only discussed Maytag's proposed use of [deleted]. Id.

While the evaluation in these two areas was flawed, as discussed below, even if Maytag's score under this subfactor were raised to average, the magnitude of the error simply was not great enough to affect the award decision.⁶

⁵ As discussed above, Trajen's proposal likewise was rated marginal under the maintenance plan subfactor, in part, for its failure to explain how its proposed software was equivalent to Maximo. Unlike Maytag, however, Trajen did not propose to use Maximo at the required DFSP sites; thus, the agency's evaluation of this aspect of Trajen's proposal was unobjectionable. In any case, even if Trajen's evaluation under this subfactor were raised to average, it would increase the firm's overall proposal score by only 3 points, which would not be sufficient to affect the award decision.

⁶ Given the other weaknesses in Maytag's proposal, it would not have received an exceptional rating for this subfactor in any case.

Operations and Staffing Subfactor

Maytag challenges the evaluation of its proposal as marginal under the operations and staffing subfactor. For example, while the TET concluded that the firm had proposed suboptimal staffing overall and, specifically, at Craney Island, Maytag asserts that the TET failed to consider its actual staffing level and the fact that its [deleted] staffing plan included [deleted].

The evaluation of Maytag's staffing level was reasonable. The RFP required the contractor to provide sufficient staffing to accomplish various simultaneous tasks identified in the RFP. PWSs, CG-1.8 and CR-1.8.1. In evaluating Maytag's proposal, the TET noted that the proposed staffing at Craney Island and Yorktown combined, was actually below the suboptimal staffing under the current contract. MAR, Tab K. While the agency had a target of some [deleted] FTEs ([deleted] for Craney and [deleted] for Yorktown), Maytag proposed [deleted] FTEs for Craney and [deleted] FTEs for Yorktown, for a total staffing of [deleted] FTEs at those sites. MAR, Tab P. The agency also determined that Maytag's slight staffing increase in its FPR, along with the [deleted] grounds maintenance personnel it proposed, did not bring its staffing up to the necessary level. MAR, Tab K. In this regard, the TET noted that, while Maytag consistently expressed its staffing in terms of [deleted] personnel, this was equivalent to fewer than [deleted] FTEs when part-time personnel were accounted for.⁷ *Id.* In contrast, the agency estimated a total strength of [deleted] FTEs for all sites. MAR, Tab P.

With regard to Maytag's [deleted] staffing, the agency observes that this is not a unique or innovative plan that would affect the necessary staffing level. In the agency's view, any prudent manager would employ [deleted] to cover for personnel absences, and would [deleted]. We have no reason to question this conclusion. The TET considered all proposed staffing by a breakdown of identified positions, shifts, and hours. Since the agency was seeking performance results and not manning levels, it focused on ensuring that appropriate positions were included and that sufficient labor of various categories and skills were available to perform. Supplemental AR, June 22, 2005, at 6. Maytag's [deleted] staffing approach, including [deleted], did not answer the agency's ultimate concern that sufficient FTEs were not

⁷ Maytag asserts that the agency made various mistakes in these calculations which, if corrected, would result in its manning strength being between [deleted] FTEs. Maytag Response to Agency Comments, June 20, 2005, at 18. The agency acknowledges some calculation errors, but asserts that they did not affect the relative standing of the offerors. Supplemental AR, June 22, 2005, at 5. In any case, since the SSA evaluated Maytag's overall staffing as [deleted] FTEs in her source selection decision, we conclude that Maytag was not prejudiced by any staffing calculation errors.

proposed to ensure successful performance, especially in light of the agency's issues with the current contractor's provision of suboptimal manning at Craney Island.

Given Maytag's proposal of a significantly lower staffing level than the agency's target, the agency reasonably concluded that the firm's staffing level warranted a marginal rating under this subfactor. In this regard, we note that, as discussed above, the agency specifically advised Maytag to reconsider its Craney Island staffing in discussions.

Our conclusion is not changed by Maytag's assertion that the TET did not evaluate LB&B's proposed staffing using the same standards. In this regard, Maytag notes that LB&B proposed fewer personnel ([deleted] FTEs) than the agency's target of [deleted] FTEs at Craney Island and significantly more personnel ([deleted] FTEs) than the [deleted] FTEs target for Yorktown, and yet the agency failed to specifically address this in its evaluation. The agency explains that it recognized that LB&B, like Maytag, had proposed fewer personnel than the target for Craney Island, but concluded that, since LB&B had proposed a larger staffing level at Yorktown, it, unlike Maytag, would be in a position to permanently shift personnel to Craney Island to compensate for any understaffing there. Supplemental AR, June 22, 2005, at 6. We find nothing unreasonable in the agency's conclusion that it ran a greater risk of nonperformance from Maytag's overall understaffing than from LB&B's partially overstaffed proposal. Id. at 7.

Terminal Superintendent

Maytag challenges the TET's conclusion that the firm's proposed terminal superintendent was not qualified. The RFP required that this employee have a minimum of 6 years specialized experience in bulk fuel terminal operations, to include the receipt, storage and internal handling, and shipment of petroleum products via various modes of transport. PWS, CG-1.12.2.1. The RFP defined this specialized experience as the knowledge, skills, and abilities obtained as a result of direct participation in the aforementioned bulk fuel terminal operations. Id. Of the 6 years, 3 years were to be upper-level management experience at a deepwater bulk fuel terminal, with direct oversight and management responsibilities for the entire terminal. Id.

Maytag relied on its proposed employee's 3 years of experience as the deputy commander and quality manager at the Defense Energy Support Center (DESC), Mediterranean Region. His resume stated that he provided [deleted]. Maytag's FPR added that at the DESC Mediterranean, the individual was responsible for the [deleted]. Maytag FPR at 1.

In finding this employee's experience to be unacceptable, the TET relied on its own familiarity with the deputy commander/quality manager position at DESC Mediterranean. In this regard, the agency states that the employee's position did not

involve the necessary hands-on management responsibilities required by the RFP; it involved quality assurance monitoring and supervision of only four or five other QA specialists. The position also did not involve direct participation in day-to-day operations of the Mediterranean terminals, because all but one were run by host nation contractors or the U.S. Navy. The agency found nothing in the resume to indicate that the employee had any direct operational or management responsibilities at these facilities apart from product quality assurance. MAR, Tabs V ¶ 6, AA ¶ 11; Agency Response to Maytag's Supplemental AR Comments at 6-7. In support of its proposed employee, Maytag points only to the resume and FPR narrative, which we find the agency has effectively rebutted through its personal knowledge. An agency is not bound by the "four corners" of an offeror's proposal in the evaluation of proposals and may use other information of which it is aware. Park Tower Mgmt. Ltd., B-295589, B-295589.2, Mar. 22, 2005, 2005 CPD ¶ 77 at 6. We conclude that the agency reasonably concluded that Maytag's proposed terminal superintendent lacked the required experience to qualify for the position.⁸

In a related argument, Maytag asserts that the agency misevaluated LB&B's proposed terminal superintendent because he was less qualified than Maytag's proposed employee. Specifically, Maytag maintains that LB&B's proposed employee lacked the requisite 3 years of deepwater terminal experience and qualifications as an FSC/OSC. While the TET initially questioned the proposed employee's qualifications, after reviewing LB&B's FPR, the TET concluded that he was properly qualified. In this regard, the employee's revised resume added that his [deleted]. The agency equated this position with that of a site manager/fuel superintendent. MAR, Tab AA ¶ 10. The TET also considered the individual to be qualified as an FSC/OSC based on his long-time site manager experience at Diego Garcia, references to his competence in a specific [deleted] system, and his responsibility for [deleted] in his 12 years of experience as an Air Force superintendent of liquid fuels distribution. Id., ¶ 11. We find that the agency reasonably determined that the proposed individual possessed the required experience based on the information presented. Maytag's mere disagreement with the agency's judgment does not render the agency's evaluation unreasonable. See Command Mgmt. Servs., Inc., B-292893.2, June 30, 2004, 2004 CPD ¶ 168 at 3.

The consensus evaluation also criticized Maytag's [deleted] approach to maintenance which, as discussed above, represented a misinterpretation, and misevaluation, of

⁸ The TET also found that the proposed terminal superintendent lacked the requisite qualification as a facility spill coordinator (FSC) and on scene coordinator (OSC). Maytag points out that this qualification could be obtained on or before the contract start date (PWS, as amended, CG-1.12.2.3) and, in any event, its employee's resume indicated he had [deleted]. Since the TET reasonably concluded that the proposed employee was not otherwise qualified for this position, whether he possessed or could obtain the requisite FSC/OSC qualifications is immaterial to the evaluation.

Maytag's proposal. In view of the other weaknesses addressed by the TET under this subfactor, it is not clear how much this misinterpretation contributed to Maytag's marginal rating. However, even if Maytag's score were raised to average for this subfactor, it would only increase its score by 5 points which, as we discuss below, would not have changed the outcome of the source selection.

Prejudice

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Maytag was not prejudiced by the evaluation errors identified above. The RFP made technical factors more important than price and potential changes to Maytag's technical score are insufficient to affect the source selection. In this regard, even if, as suggested by Maytag, its ratings for the maintenance plan and operation and staffing plan subfactors were raised to average, its overall capability score would only increase by 8 points (3 points for maintenance and 5 points for staffing). These adjustments would only raise Maytag's overall capability score to 52 points. Given LB&B's much higher capability score, coupled with its higher past performance rating--exceptional compared to Maytag's very good--LB&B's technical superiority remains significant.⁹ In this regard, in finding LB&B's proposal to be the best value, the SSA stated that the tangible and intangible differences between LB&B's and Maytag's technical proposals and past performance more than offset the differences in price. Price Negotiation Memorandum at 15. Under these circumstances, there is no basis to conclude that the evaluation errors would have affected the source selection.

⁹ Maytag asserts that the agency improperly evaluated LB&B's proposal as exceptional under the equipment and vehicles subfactor, even though the firm provided no equipment availability date. While the RFP did not require the proposal of a specific availability date, the TET noted the absence of one. The agency states that LB&B's score was based on the proposal of [deleted] equipment and vehicles and that a proposal could be less than perfect and still be rated exceptional. However, even if LB&B's proposal had been downgraded to average for this subfactor, its overall score for the capability factor would drop only by 2 points, to 64 points, which would not materially diminish the technical superiority of LB&B's proposal as compared to Maytag's.

LB&B'S TECHNICAL EVALUATION

Maytag asserts that LB&B's proposed corporate executive officer (CEO) was not qualified for the position and that LB&B's proposal should have been downgraded accordingly. In this regard, one of the CEO's qualifications was to possess "working experience in the operation and maintenance of bulk fuel storage facilities equivalent to that managed under this contract." PWS, CG-1.12.1. Maytag asserts that LB&B's CEO lacked the required actual work experience operating a terminal comparable to the facilities under this procurement. Maytag Supplemental Comments at 6.

The PWS defines this position as one to "assure continuity between the Terminal Superintendent and the Contractor's home office," and called for the CEO to have the authority to make decisions concerning the contract, have a complete understanding of the contract, and to have relevant working experience. PWS, CG-1.12.1. As observed by the agency, unlike the requirement that the terminal superintendent have direct experience, the PWS did not require the CEO's experience to be obtained on-site or directly. Compare PWS, CG-1.12.1 with PWS, CG-1.12.2; Agency Response to Maytag Supplemental Comments at 3. In finding LB&B's CEO qualified, the agency relied in part on his experience as [deleted]. LB&B proposal at 1-26. The TET was aware that one of the Defense contracts for which the CEO was responsible was the DESC contract to operate and maintain the deepwater bulk fuel terminal at [deleted], and that the proposed CEO held the same position there. MAR, Tab AA, ¶ 9; Maytag Supplemental at 5. In the TET's view, since [deleted] was a deepwater bulk fuel terminal comparable to the DFSP in this procurement, the proposed CEO clearly met the "working experience" qualification. We find that this determination was reasonable.

Maytag finally asserts that the proposed CEO misrepresented his experience during a 3-year period when he worked for Maytag, and has submitted declarations from Maytag personnel in support of this claim. Maytag Supplemental Comments, exhs. 1-2. However, LB&B's CEO submitted a detailed declaration in rebuttal, outlining his actual responsibilities at Maytag, which were consistent with his resume. LB&B Response to Maytag Supplemental Comments, exh. 1. Further, the agency notes that the TET also considered the proposed CEO's significant Air Force experience from before his Maytag employment, and states that the most relevant experience it considered was the proposed CEO's most recent work at [deleted]. Agency Response to Maytag Supplemental Comments at 4-5. Under these circumstances, and since there is nothing on the face of the resume that brings into question its accuracy, we find no basis for questioning the evaluation in this regard.

The protest is denied.

Anthony H. Gamboa
General Counsel