



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** The QED Group, LLC

**File:** B-403634

**Date:** November 23, 2010

---

Keith R. Malley, Esq., Keith R. Malley, PC; and Richard L. Moorhouse, Esq., and William M. Jack, Esq., Greenberg Traurig, LLP, for the protester.

R. Rene Dupuy, Esq., Agency for International Development, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Agency reasonably excluded protester's proposal from the competitive range, where the agency found that protester's proposal, which had significant weaknesses and a deficiency, was not among the most highly rated offers.

---

### DECISION

The QED Group, LLC, of Washington, D.C., protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. M-OAA-DCHA-DOFDA-09-567, issued by the U. S. Agency for International Development (USAID) for analytical services.

We deny the protest.

### BACKGROUND

The RFP, issued on May 22, 2009, provided for the award of approximately four indefinite-delivery/indefinite-quantity contracts for analytical services and support for the design and implementation of USAID-funded democracy and governance (DG) strategies and programs. Offerors were informed that two of these contracts were set aside for small businesses.<sup>1</sup> RFP § L.6(a).

---

<sup>1</sup> The agency reserved the right to award more or fewer than four contracts. RFP § L.6(a).

A detailed statement of work (SOW) was provided that described the services being procured here as ensuring “that DG strategies, programs and activities, and monitoring and evaluation plans are based on in-depth, well-informed analysis; cutting edge research; valid data; and best practices in the field of democracy and governance.” RFP § C.2. Contractors were required to provide general DG assessments (which focus on fundamental constraints and problems that limit transition to, and consolidation of, democracy and improved governance in a polity); sectoral assessments (which focus on specific democracy technical areas including rule of law, elections and political processes, civil society, and governance); DG strategy development; managing for DG results (setting benchmarks that provide a means for demonstrating achievements); DG program and activity design; DG evaluation; and research and special studies. RFP § C.3. Offerors were also informed that, if grant funds were available for institutional capacity-building, the contractor would be responsible for administration of the grants. RFP § C.4.

Offerors were informed that the awards would be made on a best-value basis, considering price and the following weighted technical evaluation factors: technical understanding (30 points); corporate capability (25 points); personnel (20 points); past performance (20 points); and small disadvantaged business participation program targets (5 points). RFP § M.3. The technical evaluation factors were stated to be significantly more important than cost. Although the solicitation identified a maximum possible technical score of 100 points, small business offerors were informed that the maximum possible raw technical score for small businesses was 90 points, because one of the past performance subfactors (past performance in using small businesses, which was worth 10 points) was not applicable to small business concerns.<sup>2</sup> RFP § M.3(e).

Subfactors were identified for each of the technical evaluation factors. For example, the technical understanding factor identified three subfactors, in descending order of importance: demonstrated understanding of the SOW; demonstrated understanding of the four DG subsectors (*i.e.*, rule of law, elections, civil society, and governance); and innovative approaches. RFP § M.3(a). The personnel evaluation factor identified three subfactors, in descending order of importance: demonstrated quality of the senior technical advisor and of the contract manager; demonstrated professional capability and appropriate academic credentials for technical experts; and evidence of availability of key personnel and proposed technical experts. RFP § M.3(c). The past performance factor included two subfactors (each weighted

---

<sup>2</sup> To allow for the comparison of large and small business proposals, the agency converted each small business’s raw score to a score on a 100-point scale. See Agency Report (AR), Tab 9, Technical Review Memorandum, at 4-5.

10 points): past performance references and past performance in using small business concerns. RFP § M.3(d).

Instructions were provided for the preparation of proposals under each of the evaluation factors and subfactors. Offerors were instructed to submit a technical proposal, limited to 25 pages, containing the protester's technical understanding, corporate capability, personnel, and past performance information. Offerors were informed that the 25-page limitation for technical proposals did not include, among other things, offerors' responses to the past performance in using small business concerns subfactor, appendix attachments for biographical information (*i.e.*, resumes and other documentation), a labor distribution chart, and small disadvantaged business participation program target information. RFP § L.9(b). Offerors were told, however, that all critical information from the appendices should be summarized in their technical proposals.

With respect to the personnel factor, offerors were required to provide information for a senior technical advisor and a contracts manager and for five technical experts in functional labor categories: two program development specialists, a social scientist, and two political scientist/political economists. For the senior technical advisor and contracts manager, the RFP required offerors to provide resumes and three references for each individual. RFP § L.9(c)(3)(i). Offerors were required to provide resumes and signed statements of availability for each of the technical experts in the identified labor categories demonstrating technical expertise to perform the contract requirements. RFP § L.9(c)(3)(ii).

With respect to the past performance references subfactor, offerors were instructed to provide references and identify up to five recent and relevant contracts for efforts similar to the requirements here. RFP § L.9(c)(4)(A). For the using small business concerns subfactor, large business offerors were required to provide a narrative summary of the offeror's use of small business concerns over the last 3 years, including a description of how the offeror actually used the small businesses, the nature of the work performed by the small businesses, and the extent of compliance with the firm's small business subcontracting plans.<sup>3</sup> To supplement this narrative, firms also had to provide a "Subcontracting Report for Individual Contracts" form for each contract, and provide three small business references, including a brief summary of the type of work each firm provided. RFP § L.9(c)(4)(B).

By the July 10 closing date, USAID received 11 proposals, which were evaluated by the agency's technical evaluation committee (TEC). Four of the offerors, including

---

<sup>3</sup> Small business offerors were not required to submit information describing their past performance in using small business subcontractors. See RFP § L.9(c)(4)(B).

QED, were large businesses. The proposals were evaluated as follows (the proposals of small businesses are indicated by “SB”):<sup>4</sup>

<b>Offeror</b>	<b>Final Evaluated Score</b>	<b>Total Evaluated Price</b>
A	87.3	\$5,325,915
B	82.7	\$6,165,611
C (SB)	77.1	\$5,219,763
D (SB)	75.2	\$5,991,748
E	72.2	\$5,105,226
F (SB)	61.9	\$5,865,528
G (SB)	61.8	\$6,372,080
<b>QED</b>	<b>58.2</b>	<b>\$5,419,116</b>
H (SB)	57.7	\$5,491,553
I (SB)	57.4	\$5,263,119
J (SB)	54.4	\$5,930,555

See AR, Tab 9, Technical Review Memorandum, at 5.

The TEC’s point scoring was supported by narrative explanations, which identified respective strengths, weaknesses, significant weaknesses, and deficiencies. With regard to QED’s proposal, the TEC noted several strengths, but also evaluated the protester’s proposal as including a number of weaknesses and significant weaknesses, and a deficiency. *Id.* at 66-73. For example, under the first technical evaluation subfactor (understanding of the SOW), the agency found that QED had demonstrated “a strong understanding” of the statement of work, an “excellent overview of general and sub-sectoral assessments,” and “a very good understanding of managing for results,” among other strengths. The TEC also noted, however, that QED’s proposal contained several weaknesses under this subfactor, including a vague “program design and activity design,” and a “significant weakness” for QED’s failure to identify the process or systems it would use for grants management. *Id.* at 66. QED’s proposal received 10.5 of 15 possible points under this subfactor.

Under the demonstrated professional capability/appropriate academic credentials for technical experts subfactor, the TEC noted some strengths in QED’s proposal but also noted a significant weakness because most of QED’s proposed technical experts lacked significant relevant experience. In this regard, the TEC found that the proposed technical experts did not “have deep experience in evaluation, which is a

---

<sup>4</sup> In addition to considering all 11 offerors for award under the unrestricted part of the RFP, the agency also evaluated the small business offerors for award of one of the set-aside contracts. See AR, Tab 9, Technical Review Memorandum, at 5.

priority for [the Bureau for Democracy, Conflict and Humanitarian Assistance Office of Democracy and Governance].” *Id.* at 71. QED’s proposal received 2.1 of 7 possible points under this subfactor.

With regard to past performance, QED’s proposal received 8.5 of 10 available points under the past performance references subfactor. *Id.* at 72. The TEC found, however, that QED completely failed to address the past performance using small businesses concerns subfactor. Although the proposal instructions identified specific information that offerors must provide to address this subfactor (for example, the RFQ required a narrative summary of the organization’s use of small businesses over the past 3 years), QED’s proposal did not address its use of small business subcontractors or provide any substantive response, other than to state that it was a recently-graduated small business.<sup>5</sup> See QED’s Technical Proposal at 25. The TEC assessed QED’s failure to address this subfactor to be a proposal deficiency and assigned the proposal none of the 10 possible points. AR, Tab 9, Technical Review Memorandum, at 73.

The TEC’s evaluation report was provided to the contracting officer, who determined that the agency would conduct discussions with the most highly rated offerors. AR, Tab 10, Competitive Range Determination, at 6. The contracting officer reviewed the offerors’ technical ratings and evaluated prices to determine, which offerors would be included in the competitive range. On the basis of this review, the contracting officer ranked the offerors in the following order:

<b>Offeror</b>	<b>Final Evaluated Score</b>	<b>Total Evaluated Price</b>
A	87.3	\$5,325,915
C (SB)	77.1	\$5,219,763
E	72.2	\$5,105,226
B	82.7	\$6,165,611
D (SB)	75.2	\$5,991,748
F (SB)	61.9	\$5,865,528
<b>QED</b>	<b>58.2</b>	<b>\$5,419,116</b>
I (SB)	57.4	\$5,263,119
H (SB)	57.7	\$5,491,553
G (SB)	61.8	\$6,372,080
J (SB)	54.4	\$5,930,555

---

<sup>5</sup> QED graduated from the section 8(a) program in August of 2008. Protest at 3.

Id. at 3. The contracting officer determined that he would include the proposals of offerors A, C, E, B, and D in the competitive range, as among the most highly rated offerors. Id. at 5.

With regard to the remaining proposals, including QED's, the contracting officer found that these proposals, which were substantially lower rated than the proposals included in the competitive range, were technically unacceptable. Id. at 5. In this regard, the contracting officer determined that the proposals of QED and these other offerors did not demonstrate an in-depth understanding of the SOW or the capacity to implement all components of the RFP.

QED's proposal was excluded from the competitive range. Following a debriefing, QED protested to our Office.

## DISCUSSION

QED complains that the agency unreasonably excluded the firm's proposal from the competitive range. QED argues that, given the strengths the agency identified under QED's technical proposal as well as the number of points the agency assigned to its proposal for technical understanding, the agency's conclusion that the proposal was technically unacceptable was unreasonable.<sup>6</sup> See Comments at 3. Specifically, QED notes that the TEC's evaluation found, among other things, that its proposal demonstrated "a strong understanding" of the SOW, an "excellent overview of general and sub-sectoral assessments," and "a very good understanding of managing for results." Id. As a result, QED argues that it was inconsistent for the contracting officer to find its proposal technically unacceptable. QED also challenges the agency's evaluation of the firm's proposal under the personnel, and past performance evaluation factors.<sup>7</sup>

We will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Novavax, Inc., B-286167, B-286167.2, Dec. 4, 2000, 2000 CPD ¶ 202 at 13. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1); D & J Enter., Inc., B-310442, Dec. 13, 2007, 2008 CPD ¶ 8 at 2.

---

<sup>6</sup> QED notes that its proposal received the same point score under the understanding of the SOW subfactor as two competitive-range offerors.

<sup>7</sup> QED does not protest the agency's evaluation of the competitive-range offerors' technical proposals, nor does QED challenge all of the agency's evaluated weaknesses in its technical proposal.

Here, we find no basis to object to the agency's evaluation of QED's proposal or the competitive range determination. Although QED's proposal had certain evaluated strengths, the proposal nevertheless was found to have a number of significant weaknesses and a deficiency. More specifically, even under the understanding of the SOW subfactor, for which the TEC assessed a number of strengths in QED's proposal, the TEC and contracting officer also found that QED's proposal had a number of weaknesses and a significant weakness in the protester's understanding of the SOW. See AR, Tab 9, Technical Review Memorandum, at 66. Given QED's evaluated weaknesses, significant weaknesses and deficiency, we find that the agency could reasonably conclude that QED's proposal was not among the most highly rated proposals such that it should not be included in the competitive range.

With respect to the evaluation of QED's proposal under the demonstrated professional capability/appropriate academic credentials for technical experts subfactor, QED complains that the agency only awarded the firm 2.1 of 7 possible points. In this regard, QED disagrees with the agency that its technical experts lack relevant DG experience, arguing that its senior technical advisor has significant DG experience and that the agency failed to evaluate the [DELETED] experts "with significant DG capability and credentials," which QED identified in an appendix to its proposal. See Comments at 3; QED's Technical Proposal, app. 3, Personal Matrix. QED contends that the RFP did not limit offerors to proposing only five technical experts.

We find no merit to the protester's evaluation challenge under this subfactor. First, as the agency notes, the RFP provided that the experience of the firms' proposed senior technical advisors would be considered under a different subfactor. See RFP § M.3(c)(1). Therefore, the experience of QED's senior technical advisor could not be considered under this subfactor. With regard to QED's argument that the agency failed to consider the experience of the [DELETED] individuals identified in its proposal appendix, we agree that the RFP did not limit the number of technical experts that could be proposed under the identified functional labor categories. Nevertheless, we also find that USAID reasonably did not consider the [DELETED] individuals identified in QED's proposal appendix under this subfactor. QED did not state in its proposal that these [DELETED] individuals were proposed as its technical experts under this subfactor, but rather identified these individuals as [DELETED].<sup>8</sup> See QED's Technical Proposal, at 22. In this regard, QED did not provide resumes or signed statements of availability for any of these experts, as was required for technical experts in the identified labor categories. See RFP § L.9(c)(3)(ii). Furthermore, QED's proposal in fact identified five different technical experts under the functional labor categories, for which QED provided

---

<sup>8</sup> QED also states that the experts identified in its proposal appendix would provide [DELETED]. QED Technical Proposal at 22.

resumes and signed statements of availability, and it was these five technical experts that USAID evaluated under this subfactor. See QED's Technical Proposal at 23-25. QED does not challenge the agency's evaluation of the five technical experts identified in the protester's proposal.

QED also challenges the agency's evaluation of the firm's proposal under the past performance in using small businesses subfactor, for which QED's proposal received none of the 10 possible points.<sup>9</sup> QED complains that it was unreasonable to downgrade the protester's proposal for not identifying its experience with small business subcontracting where QED informed the agency that it had "recently graduated" from the section 8(a) program. QED argues that it should have either received all 10 points or been rated neutral under this subfactor. Protest at 5.

The record shows, as USAID contends, that QED failed to address this subfactor as required by the RFP. As noted above, large business offerors (such as QED) were required to provide, among other things, a narrative statement of the firm's use of small business subcontractors over the last 3 years and to provide small business references. RFP § L.9(c)(4)(B). Instead of providing the required substantive response, QED merely stated [DELETED]. See QED's Technical Proposal at 25. This, however, does not describe QED's experience in subcontracting with small businesses, or even state whether QED had subcontracted with small businesses in the past.<sup>10</sup> It is an offeror's responsibility to submit an adequately written proposal, and it runs the risk that the firm's proposal will be evaluated unfavorably when it fails to do so. See American Ordnance, LLC, B-292847 et al., Dec. 5, 2003, 2004 CPD ¶ 3 at 4.

We also do not agree with QED that the agency was required to rate the firm's proposal neutrally under this subfactor. Although FAR § 15.305(a)(2)(iv) requires an agency to assign a neutral rating where an offeror lack relevant past performance or past performance information is not available, here QED did not lack relevant past performance and past performance information was not unavailable. As noted above, QED was evaluated as having relevant past performance under the past

---

<sup>9</sup> The protester also initially challenged its score under the evidence of availability of key personnel subfactor, for which its proposal received 2.4 out of 3 possible points. The agency explained the score in its agency report, which the protester does not address.

<sup>10</sup> To the extent that QED believed that this solicitation requirement should not apply to the firm, as a recently-graduated small business, QED was required to timely challenge this solicitation requirement prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2010).



performance references subfactor.<sup>11</sup> USAID's concern under the other past performance subfactor was that QED provided no information or explanation of its small business subcontracting practices. In our view, an offeror cannot simply choose to withhold past performance information--and thereby obtain a neutral rating--where, as here, the solicitation expressly states that the information should be furnished and appears readily available. See Forest Regeneration Servs. LLC, B-290998, Oct. 30, 2002, 2002 CPD ¶ 187 at 5 n.6. In any regard, if, in fact, QED's relevant past performance history showed limited subcontracting with small businesses, we think that the agency could qualitatively assess this aspect of QED's relevant past performance.<sup>12</sup>

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

---

<sup>11</sup> QED provided past performance for a number of contracts, including one the firm is currently performing. As part of this information, QED identifies a number of subcontractors. See, e.g., QED Technical Proposal, app. 7, Past Performance Reports.

<sup>12</sup> QED also challenged its score under the small disadvantaged business participation program target factor, for which its proposal received 2.5 out of 5 possible points. USAID concedes that it miscalculated an aspect of the protester's proposal under this evaluation factor. See Contracting Officer's Statement at 7. However, this concession does change the agency's conclusion that QED's proposal contained significant weaknesses and a deficiency such that QED's proposal was not among the most highly rated proposals.