



Decision

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.

Matter of: Family Health International

File: B-414621

Date: July 28, 2017

James K. Kearney, Esq., Gary H. Nunes, Esq., and Joshua L. Rodman, Esq., Womble Carlyle Sandridge & Rice, LLP, for the protester.
Jason A. Carey, Esq., Andrew R. Guy, Esq., and Michael T. Wagner, Esq., Covington & Burling, LLP, for John Snow, Inc., the intervenor.
R. René Dupuy, Esq., United States Agency for International Development, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency’s technical evaluation of proposals is denied where the evaluation was reasonable and consistent with the stated evaluation criteria.

DECISION

Family Health International, of Durham, North Carolina, protests the award of a contract to John Snow, Inc. (JSI), of Boston, Massachusetts, under request for proposals (RFP) No. SOL-611-16-000001, issued by the United States Agency for International Development (USAID) for services in support of the “Supporting an AIDS-FREE ERA” (SAFE) program in the Republic of Zambia. The protester challenges the agency’s evaluation of technical proposals and award decision.

We deny the protest.

BACKGROUND

On January 7, 2016, USAID issued the RFP seeking services in support of its mission to support the SAFE program¹ in Zambia. RFP at 1-2. The solicitation anticipated the

¹ The SAFE program is funded under the U.S. President’s Emergency Plan for AIDS Relief (PEPFAR), which has the goal of achieving an AIDS-free generation worldwide, (continued...)

award of a cost-plus-fixed-fee completion-type contract, with a 5-year period of performance.

The RFP provided for award on a best-value basis considering the following four factors, in descending order of importance: strategic and technical approach, management approach, past performance, and cost. RFP, Section M, at 4. The strategic and technical approach factor, management approach factor, and past performance factor, when combined, were significantly more important than cost. Id.

Under the strategic and technical approach factor, the RFP also identified four subfactors of equal importance: service delivery; capacity building for service delivery; capacity building for financial management and transition; and performance monitoring and evaluation. Under the management approach factor, the solicitation identified two subfactors, also of equal importance: management and staffing plan; and key personnel. The solicitation explained that offerors would receive an overall summary rating for their non-cost proposals. The RFP further provided that, while cost would not be given a rating, it would be evaluated for completeness, reasonableness, and realism, and may be used in the best-value determination. Id. at 4.

USAID received proposals from five offerors, including Family Health and JSI. Family Health is the incumbent contractor for the requirement. Following an evaluation of initial proposals, the contracting officer established a competitive range of two offerors, Family Health and JSI. Agency Report (AR), Tab 11, Revised Technical Evaluation Committee (TEC) Memo, at 1; Contracting Officer (CO) Statement at 7. The agency provided the offerors in the competitive range with discussion letters, which described the weaknesses, significant weaknesses, and deficiencies identified by the agency in the offerors' proposals. AR, Tab 8, Discussions Letter, at 1-10. Family Health's discussion letter included 77 questions from the agency concerning both technical and cost issues. Id.

In response to the discussions letters, both offerors submitted final proposal revisions (FPRs). In evaluating Family Health's FPR, the agency concluded that Family Health adequately addressed the deficiencies, and significant weaknesses, as well as many of the weaknesses, identified under the strategic and technical approach factor and management approach factor during discussions. AR, Tab 11, Revised TEC Memo, at 8, 11. The agency found, however, that a few weaknesses under the strategic and technical approach factor had not been adequately addressed, and also identified a few new weaknesses under this factor based on information provided by Family Health in response to discussions.

(...continued)

and is designed to reduce HIV mortality, morbidity, and transmission, while improving nutrition outcomes and family planning integration in six USAID-supported provinces. RFP at 3, 11.

The final evaluation ratings and costs of Family Health’s and JSI’s proposals were as follows:²

	Family Health	JSI
OVERALL	SATISFACTORY	VERY GOOD
Strategic & Technical Approach	Satisfactory	Very Good
Service Delivery	Satisfactory	Very Good
Capacity Building for Service Delivery	Very Good	Exceptional
Capacity Building for Financial Management & Transition	Satisfactory	Exceptional
Performance Monitoring & Evaluation	Satisfactory	Satisfactory
Management Approach	Satisfactory	Very Good
Management & Staffing	Satisfactory	Exceptional
Key Personnel	Satisfactory	Satisfactory
Past Performance	Very Good	Very Good
TOTAL COST, Plus Fixed-Fee	\$141,217,353	\$149,452,429

AR, Tab 12, Source Selection Decision Document (SSDD), at 4, 9.

Family Health’s technical proposal received a rating of satisfactory under the strategic and technical approach factor, based on various strengths and a few weaknesses assessed. AR, Tab 11, Revised TEC Memo, at 7, 11-12, 16-17, 18-19. The source selection authority³ (SSA) concluded that “[t]he weaknesses identified by the TEC are considered to be of moderate risk to successful contract performance.” AR, Tab 12, SSDD, at 6. Under the management approach factor, Family Health’s proposal also received a rating of satisfactory based on various strengths and no weaknesses assessed. AR, Tab 11, Revised TEC Memo, at 7, 22-30. Based on these two satisfactory ratings, and a very good rating in past performance, Family Health’s proposal received an overall technical rating of satisfactory. Id. at 7.

JSI’s proposal received a rating of very good under the strategic and technical approach factor and the management approach factor, based on various strengths and no weaknesses assessed; JSI also received a rating of very good under the past performance factor. AR, Tab 12, SSDD, at 7-8. JSI’s proposal received an overall technical rating of very good. Id. at 7.

² Proposals were evaluated under the non-cost factors as exceptional, very good, satisfactory, marginal, unsatisfactory, and neutral. AR, Tab 12, Revised TEC Memo, at 3-4.

³ The contracting officer was also the SSA for this procurement. AR, Tab 12, SSDD, at 12; CO Statement at 22.

The SSA stated that Family Health “presented a satisfactory technical proposal,” with “several strengths noted.” *Id.* at 11. The SSA concluded, however, that Family Health proposed “ineffective approaches and as a result, may increase the risk of the contractor successfully meeting program target.” *Id.* The SSA stated that JSI’s technical proposal, which was rated overall as very good, “provided the best approach with the most strengths ensuring outstanding contract performance,” and “repeatedly exceeded [Family Health’s] strategic and technical approach.” *Id.* at 10. With regard to overall cost, the SSA stated that “JSI’s cost proposal reflects a realistic cost estimate and good understanding of the SAFE implementation conditions, demands and mitigation of anticipated risk factors.” *Id.* at 10. The SSA also acknowledged that Family Health’s proposal “rank[ed] first in terms of cost” with a total evaluated cost of \$141,217,353, which [was] \$8,235,076 lower than the highest ranked offeror,” JSI. *Id.* The SSA explained that “even though [Family Health] met many of the requirements of the RFP, and offered an overall [cost] that was less than JSI,” it was “worth it to the Government to pay the [cost] premium for JSI’s proposal,” in light of “the many advantages of JSI’s proposal.” *Id.* at 11. The SSA concluded that JSI’s proposal represented the best value to the government, and awarded the contract to that firm. This protest followed.

DISCUSSION

The protester argues that USAID’s evaluation of the offerors’ technical proposals was unreasonable. Specifically, Family Health challenges weaknesses assigned to its proposal under the strategic and technical approach factor. The protester also asserts that USAID applied an unstated evaluation criterion in its technical evaluation by “wrongly presum[ing] that practices currently in use or routinely used could not be viewed as state-of-the-art.” Protester’s Comments at 5. Family Health also contends that the agency failed to conduct meaningful discussions. Finally, the protester argues that the agency’s best-value tradeoff and source selection were unreasonable. For the reasons discussed below, we conclude that USAID reasonably evaluated the technical proposals in accordance with the solicitation.⁴

In reviewing a protest challenging the agency’s evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency’s discretion. Del-Jen Educ. & Training Grp./Fluor Fed. Sols. LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency’s evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror’s disagreement with an agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing,

⁴ Although we do not address all of the protester’s arguments, we have considered each and find that none provides a basis to sustain the protest.

B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Additionally, although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor which might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 18; Chenega Tech. Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 5.

Strategic and Technical Approach Factor

Family Health challenges numerous weaknesses assigned to its proposal under three subfactors of the strategic and technical approach factor: service delivery, capacity building for service delivery, and capacity building for financial management and transition.⁵ For the reasons discussed below, we find no basis to sustain the protest.

Service Delivery Subfactor

Family Health first challenges two weaknesses assigned to its proposal under the service delivery subfactor, arguing that its proposal deserved a very good, rather than satisfactory rating under this subfactor.

Under the service delivery subfactor, the RFP provided that the agency would evaluate the extent to which an offeror “[p]roposes state-of-the-art delivery,” and “[s]ufficiently emphasizes substantive, ongoing engagement of major stakeholders to ensure [the Government of the Republic of Zambia’s] involvement in the design, implementation, and monitoring of HIV/AIDS programming.” RFP § M, at 5.

The TEC identified two weaknesses in Family Health’s initial proposal under this subfactor. The first weakness, which the TEC later removed after discussions, concerned Family Health’s failure to propose state-of-the-art approaches. The second weakness was based on Family Health’s “youth-friendly corner” approach. AR, Tab 10, Initial TEC Evaluation, at 23. The TEC explained that this approach “has been proven to be ineffective in reaching hard-to-reach youth,” and is “unlikely to contribute to the [President’s Emergency Plan for AIDS Relief’s] ambitious youth targets.” Id.

⁵ Family Health’s protest also challenged the agency’s evaluation of its proposal under the performance monitoring and evaluation approach subfactor. Protest at 16-18. Although the agency responded to this argument, Family Health failed to rebut or otherwise substantively address the agency’s response in its comments; as a result, we view these contentions as abandoned. Enterprise Sols. Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9 n.6. The initial protest also argued that the agency employed an undocumented evaluation methodology based on undefined adjectival ratings and a subjective weighting of factors. In responding to the agency report, Family Health withdrew this argument. Protester’s Comments at 20 (“[Family Health] withdraws this ground of protest.”).

In responding to the weakness about Family Health's approach to use youth corners, Family Health acknowledged that "[y]outh-friendly corners have indeed been tried and have not always been used as much as expected by youth." AR, Tab 9, Discussions Response, at 6. Family Health explained that the issues with youth corners stem, in part, from the services being provided by "older people" rather than "representatives of the youth cohort," as well as the fact that the services offered are not always "as comprehensive as needed to meet the unique needs of adolescents and youth." Id. Family Health also noted that the hours of operation of the corners "may not [be] optimal," especially for those attending school, and that the location of the corners--mainly in health facilities--may "deter adolescents and young people from accessing them." Id. To mitigate these issues, Family Health stated that it would both "collaborate with other partners/projects working with adolescents and youth"--which the offeror stated would provide mobile outreach services in locations selected by youth--and "re-brand/re-model the way these services are offered in youth-friendly corners" to create a "conducive environment for youth to access these services and also facilitate formation of youth clubs at both health facility and community levels." Id.

After evaluating Family Health's FPR and discussions response, the TEC concluded, as noted above, that Family Health provided sufficient additional detail to fully address the first weakness identified regarding the lack of state-of-the-art approaches. AR, Tab 11, Revised TEC Memo, at 7, 8. With regard to the second weakness, however, the TEC, found that Family Health failed to adequately address the "use of remote, static youth corners," and therefore that the weakness remained. Id. at 7. Specifically, the TEC explained that "while the revised proposal . . . makes an effort to move youth friendly services out of the facility, static sites, regardless of location, have been found to be ineffective." Id. at 10. In addition, the TEC noted that it was "not clear that the re-branding approach to other partners' youth friendly service models adds value to [the] existing approaches." Id. The TEC therefore retained the weakness, noting its concerns about whether Family Health was "proposing solutions that were based on the best available evidence and current policy." Id. at 7.

The TEC's final evaluation also identified a new weakness in Family Health's FPR under this subfactor concerning Family Health's reliance on dispensing only one month of prescription drugs to Community ARV [HIV/AIDS anti-retroviral drugs] Adherence Groups. The TEC explained that the current dispensing guidelines "allow three months of drugs to be dispensed at the pharmacy." Id. at 12. The TEC concluded that a "state-of-the-art approach would seek to allow [the community distribution groups] to collect multiple months of prescriptions for their groups," and therefore, assessed a weakness to Family Health's proposal for this issue. Id. The TEC explained that the two weaknesses under this subfactor raised "additional concerns about whether the Offeror was proposing solutions that were based on the best available evidence and current policy." Id. at 7. Accordingly, the TEC concluded that Family Health's overall rating under this factor should remain satisfactory. Id.

The protester disagrees with the agency's evaluation of these two weaknesses, arguing that its FPR either adequately addressed the agency's concerns, or presented a state-of-the-art approach.

Based on our review of the record, we find nothing unreasonable regarding the agency's evaluation of the two weaknesses. For the first weakness, concerning Family Health's proposed approach to use youth-friendly corners, the protester asserts that its discussions response "directly responded" to the agency's concern, but that this information was ignored by the TEC in deciding to retain the weakness. Protester's Comments at 9, 11. The record reflects, however, as noted above, that the TEC specifically considered, and relied upon, the information provided in Family Health's discussions response concerning its youth corner approach in determining that the agency's concerns had not been adequately addressed. See AR, Tab 9, Discussions Response at 6 (proposing to mitigate the self-identified issues with the approach by "collaborat[ing] with other partners/projects working with adolescents and youth," and "re-brand[ing]/re-model[ing] the way these services are offered in youth-friendly corners"); Tab 11, Revised TEC Memo, at 10 (referencing Family Health's proposed approaches to "move youth friendly services out of the facility, and "re-brand [the] approach to other partners' youth friendly service models").

Specifically, the TEC concluded that "while the revised proposal and answer to [discussion question 2] makes an effort to move youth friendly services out of the facility," the concern remains that "static sites, regardless of location, have been found to be ineffective." AR, Tab 11, Revised TEC Memo at 10. In addition, the TEC noted that it was "not clear that [Family Health's] re-branding approach to other partners' youth friendly service models adds value to existing approaches." Id. Ultimately, the TEC found that Family Health's "use of remote, static youth corners" raised concerns about "whether the Offeror was proposing solutions that were based on the best available evidence and current policy." Id. at 7. Although Family Health contends that its response adequately addressed the agency's concerns, the protester's disagreement with the agency's evaluation, without more, does not demonstrate that the evaluation was unreasonable or otherwise provide a basis to sustain the protest. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

With regard to the second weakness, the protester disagrees with the agency's conclusion that Family Health's approach to collect a 1-month supply of prescription drugs is not a "state-of-the-art approach," arguing that this approach is consistent with "international standards" and "informed by the latest scientific literature and expert opinion." Protester's Comments at 12. As an initial matter, we note that the "standards" and "literature" relied upon by the protester in its comments in support of this argument were not referenced or addressed in Family Health's FPR or discussions responses, and therefore, were not available for the TEC's consideration at the time of the evaluation. Rather, the record reflects that the TEC explained that the "[c]urrent [HIV/AIDS anti-retroviral drugs] dispensing guidelines allow three months of drugs to be dispensed at the pharmacy." AR, Tab 11, Revised TEC Memo, at 9-10. The TEC's statement is supported by Task 1.3.1 of the RFP, which provided, in pertinent part, that the contractor must provide material and technical assistance, including but not limited to a "three month supply of [HIV/AIDS anti-retroviral drugs]." RFP at 21. In addition, in response to the protest, the contracting officer further explains that "[w]hen a [participant] picks up multiple months of drugs, it means that there are fewer required interactions with the health facility." CO Statement at 10. The contracting officer adds

that “[f]ewer interactions means that fewer people stand in line for services,” and therefore, “less time is spent at a facility on a particular patient.” Id. The contracting officer also states: “In Zambia, like many countries in the region, facilities struggle to keep up with demand and are often overcrowded,” and therefore, “any reduction in patient/facility interactions has the potential to shorten waiting times, increase the numbers of recipients seen, and improve quality of care.” Id. While the protester disagrees with the agency’s position, such disagreement does not render the evaluation unreasonable, or provide a basis to sustain the protest. On this record, and in light of the agency’s conclusion that a multi-month approach is consistent with current dispensing guidelines, we see nothing unreasonable about the agency’s assessment of a weakness for Family Health’s one-month approach based on the agency’s concerns that the offeror may not be proposing a solution that is based on the best available evidence and current policy. Id. at 7.

Capacity Building for Service Delivery Subfactor

Family Health next challenges a weakness assigned to its proposal under the capacity building for service delivery subfactor. As relevant here, under the capacity building for service delivery subfactor, the RFP provided, in pertinent part, that the agency would evaluate the extent to which the offeror “[p]roposes effective and realistic strategic plans for providing state-of-the-art technical assistance that will assist the [Government of Zambia (GRZ)] to reach service delivery goals.” RFP § M at 5.

The USAID initially assessed five weaknesses to Family Health’s proposal under this subfactor. AR, Tab 10, Initial TEC Evaluation, at 24-27. After discussions, the agency concluded that four of the weaknesses had been fully resolved.⁶ AR, Tab 11, Final TEC

⁶ Family Health points to the number of weaknesses adequately resolved in its FPR under the capacity building for service delivery subfactor after discussions to support its argument that the agency unreasonably inflated the awardee’s rating under the management approach factor. Specifically, the protester notes that the TEC similarly eliminated the same number of weaknesses in the awardee’s FPR after discussions, but under the management approach subfactor. Protester’s Comments at 18. Family Health further notes that, although its proposal received five strengths under the capacity building for service delivery subfactor, the awardee received only four strengths under the management approach factor. Id. Accordingly, the protester contends that it was unreasonable for the awardee to receive an exceptional rating under the management approach subfactor, while it received a rating of only very good under the capacity building for service delivery subfactor. Id. Based on our review of the record, we find no merit to the protester’s argument. As noted previously, although four of the weaknesses in Family Health’s proposal under the capacity building for service delivery subfactor were resolved after discussions, the TEC concluded that one weakness under this subfactor concerning the protester’s proposed capacity building specialist remained. AR, Tab 11, Revised TEC Memo, at 14. As discussed in detail in this decision, we conclude that the agency’s evaluation of this weakness was reasonable. With regard to the awardee, the record reflects that, in contrast, its FPR did
(continued...)

Memo at 13-17. With regard to the fifth weakness, the TEC initially found that “[t]he role and function of [Family Health’s] embedded Capacity Building Specialists is unclear,” and that “there is no mention of how these individuals will work with other stakeholders, including Systems for Better Health.” AR, Tab 10, Initial TEC Evaluation, at 25. During discussions, the agency asked Family Health to clarify “the role of the embedded Capacity Building Specialists,” as well as how the capacity building specialists “may coordinate with other stakeholders who are providing capacity building support.” AR, Tab 8, Discussions Letter, at 2.

In responding to this weakness, Family Health provided additional information regarding the role of its proposed capacity building specialists, and how they will coordinate with other stakeholders, including other implementing partners and the various levels of the Government of Zambia. Included in this explanation, and as relevant here, Family Health stated that “[t]he [Capacity Building] Specialists will assure a stronger reporting relationship to [the Ministry of Health Headquarters] and will have a formal supervisory relationship to DMOs [District Management Offices].” AR, Tab 9, Discussions Response, at 10.

In evaluating Family Health’s FPR, the TEC concluded that the initial weakness had been “partially addressed,” explaining that Family Health’s revised proposal “provided additional detail clarifying the role of the embedded Capacity Building Specialists.” AR, Tab 11, Revised TEC Memo, at 15. The TEC also stated, however, that it was unclear from Family Health’s response “how the Specialist would perform his/her duties without supervisory authority of [the Government of Zambia].” Id. at 14. In this regard, the TEC explained that “USAID[-]supported Implementing Partners,” such as the Capacity Building Specialist, “do not have the authority to formally supervise [Government of Zambia] officials.” Id. at 15. The TEC therefore expressed concern about the statement in Family Health’s response that: “[T]he Capacity Building Specialist will have a formal supervisory relationship to [the Government of Zambia] District Medical Offices.” Id.; Tab 9, Discussions Response, at 12. Based on this concern, the TEC assigned a weakness, finding that, “it is unclear how this position would function if the position relies on supervisory authority.” AR, Tab 11, Revised TEC Memo, at 15.

The protester challenges this weakness, arguing that Family Health’s response to the agency’s discussions questions “fully addressed the [a]gency’s concerns.” Protester’s Comments at 13. In making this challenge, the protester does not dispute either that Family Health’s discussions response stated that the capacity building specialist would have a “formal supervisory relationship” to the Government of Zambia’s District Medical Offices, or the TEC’s statement in the revised evaluation that the capacity building specialist does not have the authority to formally supervise Government of Zambia

(...continued)

not have any remaining weaknesses under the management approach subfactor after discussions. Id. at 50. Accordingly, we disagree with the protester that the agency’s evaluation was unequal, improper or failed to comply with the RFP.

officials. Id. at 13-15. Rather, Family Health cites to seven paragraphs in its discussions response, addressing the initially-assessed weakness, that the protester contends also adequately addresses the retained weakness. Id. at 13-14.

Based on our review of the record, we find nothing unreasonable regarding the agency's assessment of the weakness. Although the protester asserts that Family Health's discussions response "specifically and thoroughly addressed the retained weakness," it is not apparent from Family Health's discussions response letter or the protester's submissions to our Office in connection with this protest, how the cited provisions in the discussions response letter address the agency's specific concern about how the specialists will perform their duties without the authority to supervise Government of Zambia officials. In this regard, although the protester block quotes Family Health's complete response to the agency's initial discussion question, the text does not include any information that appears to address the agency's concern, and the protester does not provide any explanation to demonstrate how the cited text, in fact, responds to the assessed weakness. As our Office has recognized, offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Hallmark Capital Grp., LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9. Here, the protester failed to do so. To the extent Family Health believes that its response adequately addressed the agency's concerns, the protester's disagreement with the agency's evaluation does not demonstrate that the evaluation was unreasonable or otherwise provide a basis to sustain the protest. Ben-Mar Enters., Inc., supra. This protest allegation is denied.

Capacity Building for Financial Management and Transition Subfactor

Next, Family Health challenges two weaknesses assigned to its proposal under the capacity building for financial management and transition subfactor, arguing that without these weaknesses, its proposal would have received a rating higher than satisfactory.

As relevant here, the RFP provided that, under this subfactor, the agency would evaluate the extent to which the offeror proposes "effective and realistic strategic plans to build the financial management capacity of the [Government of Zambia] at the national, provincial, and district levels that address existing bottlenecks which prevent existing resources from reaching their targeted programs." RFP § M, at 5.

The TEC's evaluation of Family Health's initial proposal identified a weakness under this subfactor, finding that the proposal "[did] not specifically identify other donors or USAID funded projects working in financial management strengthening, nor how SAFE will collaborate with them." AR, Tab 10, Initial TEC Evaluation, at 27. After discussions, in the final evaluation, the TEC concluded that Family Health "provided a satisfactory response identifying donors or USAID funded projects for collaboration," and therefore determined to remove the original weakness. AR, Tab 11, Revised TEC Memo, at 18. The TEC also explained, however, that Family Health's response to the original weakness raised additional concerns with regard to implementation, which the TEC assessed as two new weaknesses. Specifically, the TEC explained that, while "[t]he revised proposal describes how the Offeror will identify other implementing partners

working in financial management strengthening,” it does not provide “a clear definition of roles and responsibilities between partners, nor how each stakeholder will leverage its expertise.” Id. at 19-20. The TEC concluded that this failure “reflect[s] a lack of knowledge of different donor funded partners who are working in this area,” and accordingly assessed a weakness under this subfactor. Id. at 20.

In addition, the TEC assigned a second weakness based on statements in the revised proposal that “SAFE will participate in the Health Sector Advisory Group and other Donor Meetings with the Ministry of Health.” Id. Specifically, the TEC found that this approach was “not realistic” because “[t]hese meetings are traditionally limited to donors and [Government of Zambia] officials.” Ultimately, despite the weakness, the TEC concluded that Family Health’s FPR sufficiently responded to the RFP’s requirements under this subfactor, and therefore, raised Family Health’s rating under this subfactor from marginal to satisfactory. Id.

The protester argues that the agency’s assessment of the two weaknesses was unreasonable because Family Health’s response to the original weakness adequately addressed both of the agency’s new concerns. Specifically, the protester quotes five paragraphs in Family Health’s discussions response letter, addressing the initially-assessed weakness under this subfactor, and asserts that the cited paragraphs also adequately address the two new weaknesses. USAID responds that nothing in Family Health’s FPR or response to the discussions letter, including the five cited paragraphs, addresses the two new concerns identified by the TEC during the final evaluation. The agency therefore maintains that its assessment of the two weaknesses was reasonable.

Based on our review, we conclude that the agency’s evaluation of the weaknesses was reasonable. With regard to the first weakness--no clear definition of roles and responsibilities between partners--the record reflects that the TEC concluded that Family Health failed to provide a clear definition of the roles and responsibilities between implementing partners, and how each stakeholder will leverage its expertise. Although the protester contends that the five paragraphs in Family Health’s response to the agency’s discussions questions adequately addressed this concern, it is not evident from the discussions letter or the protester’s submissions to our Office in connection with this protest, that the cited portion adequately addresses this issue. In this regard, although the protester points generally to the five cited paragraphs, the protester does not assert, or otherwise demonstrate, how the cited portion responds to the agency’s concern. On this record, we find no basis to conclude that the agency’s assessment of the weakness was unreasonable.

As for the second weakness--unrealistic approach to meeting participation--we also find that the agency’s evaluation was reasonable. As noted above, in assessing this weakness, the TEC determined that Family Health’s proposed approach to participate in donor meetings was “not realistic” because the meetings are traditionally limited to donors and Government of Zambia officials. In response, the protester acknowledges that its discussion response stated that Family Health will participate in donor groups, such as the Health Sector Advisory Committee (HSAC). Protester’s Comments at 16.

The protester asserts, however, that Family Health's participation in the donor groups is "indirect" because it is "accomplished through Committee members such as the Clinton Health Access Initiative (CHAI)." Protester's Comments at 16. In this regard, the protester states that Family Health is "formally represented at HSAC meetings through CHAI, and 'participates' by providing input and raising issues through CHAI." Id. The protester also contends that Family Health "has attended numerous meetings called by, and at the invitation of the Ministry of Health, and other [Government of Zambia] organizations," and therefore, it was unreasonable for the agency to conclude that Family Health's approach to participate in donor meetings was not realistic.⁷ Id. at 17.

Although the protester's explanations about Family Health's "indirect" participation in the donor groups, and experience attending such group meetings, provide responses to the agency's concern, these explanations are only provided by the protester in its comments responding to the agency report; they were not provided contemporaneously to the agency in Family Health's FPR or response to discussions questions, and therefore, were not available for the TEC's consideration. As a result, the protester has failed to provide a basis upon which to sustain the protest. Hallmark Capital Grp., LLC, supra. (It is the protester's obligation to provide a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency).

In sum, on this record, we find nothing unreasonable regarding the agency's assessment of any of the weaknesses under the above-discussed technical subfactors.

Unstated Evaluation Criterion

The protester also contends that the agency applied an unstated evaluation criterion in its evaluation under the strategic and technical approach factor concerning whether the offerors' proposed approaches were "state-of-the-art," and that the use of this criterion contributed to the agency unreasonably rating Family Health's proposal as only satisfactory under this factor. For the reasons discussed below, we find no merit to this argument.

As relevant here, under the first two technical subfactors, the RFP provided that the agency would evaluate the extent to which offerors proposed "state-of-the-art" approaches. RFP § M, at 5. The protester essentially argues that the agency applied an unstated evaluation criterion by improperly crediting only "new" approaches as being state-of-the-art, based on the presumption that practices "currently in use or routinely used" could not be state-of-the-art. In support of this argument, the protester points to the agency's evaluation of its initial technical proposal, as well as the agency's discussions questions to Family Health. See, e.g., Protester's Comments at 5 ("The

⁷ In addition, the protester argues that other sections of Family Health's proposal included references to instances where Family Health attended such meetings. Protester's Comments at 17.

initial review of proposals by the [TEC] did not properly apply RFP evaluation criteria.”), and (“The TEC’s apparent belief that continuation of current activities, or approaches already in use, cannot qualify as state-of-the-art approaches also underlies the [a]gency’s discussion questions leading up to [FPRs].”). The protester, however, thereafter acknowledges that “[i]n its final evaluation memorandum, the TEC retreated from its initial conclusion that [Family Health’s] proposed approaches ‘are not state-of-the-art,’” and therefore, the TEC “presumably concluded that [Family Health’s] approaches incorporated innovative techniques and qualified as state-of-the-art, consistent with instructions in the [Source Selection Plan].” Protester’s Comments at 6.

Based on the record, we see no indication that the agency failed to evaluate proposals in accordance with the RFP. Although the protester contends that the agency based its evaluation on an undisclosed presumption that an offeror’s proposed approach could not qualify as state-of-the-art if it relied on practices currently being used, the protester bases this allegation on statements in the agency’s initial technical evaluation and discussions questions. As noted above, however, the protester acknowledges that, after discussions, the TEC retreated from its “initial conclusion that [Family Health’s] proposed approaches ‘are not state-of-the-art,’” and ultimately found that Family Health adequately proposed state-of-the-art approaches as required by the RFP. Protester’s Comments at 6. The protester does not otherwise cite to anything in the record to support its assertion, or otherwise demonstrate, that the agency evaluated proposals using an undisclosed evaluation method, and we have not found anything in the record to indicate that the agency evaluated proposals as asserted by the protester. Rather, the record reflects that the TEC, in finding that an approach was not state-of-the-art, articulated a rationale for the determination that was based on the details of the approach, not on whether the approach was “new.” See, e.g., AR, Tab 11, Revised TEC Memo, at 12 (concluding that protester’s approach was not state-of-the-art because it was not in line with current drug dispensing guidelines); id. at 10 (finding protester’s approach for youth corners was not state-of-the-art based on concerns that this model had been found ineffective, and it was not clear that the plan to re-brand the approach would add value). Furthermore, as discussed in detail above, we conclude that the agency’s evaluation in this regard was reasonable.⁸ The protester’s argument fails to provide a basis upon which to sustain the protest.

⁸ To the extent the protester’s argument is a challenge to the agency’s consideration of proposed innovative measures, we note that the RFP itself advised that the agency’s evaluation would consider innovative approaches. See, e.g., RFP § L.7, at 127-28 (The technical proposal must thoroughly describe the offeror’s proposed technical approach for service delivery, including . . . “[b]old and innovative technical approaches and activities.”). In any event, our Office has recognized that where, as here, a solicitation indicates the relative weights of evaluation factors, the agency is not limited to determining whether a proposal is merely technically acceptable; rather, the agency may evaluate proposals to distinguish their relative quality by considering the degree to which they exceed the RFP’s requirements (as well as considering the extent to which offerors used innovative measures to respond to those requirements) or will better

(continued...)

Discussions

Family Health also asserts that USAID failed to conduct meaningful discussions with regard to three technical weaknesses assessed by the agency. For the reasons discussed below, we conclude that this argument is untimely.

As noted above, the agency conducted discussions with the protester through the issuance of 77 questions, which notified Family Health of the weaknesses, significant weaknesses, and deficiencies the agency identified in Family Health's initial proposal. AR, Tab 8, Discussions Letter, at 1-10. In its protest, Family Health raised only a general, broad allegation that discussions were not meaningful; it did not identify any specific weaknesses or areas of its proposal that it contends were not raised during discussions. In the agency report, USAID provided a substantive response to the protester's assertions. In its comments responding to the agency report, the protester raises for the first time, three issues, evaluated as weaknesses, of which Family Health was apprised during its debriefing, and which the protester alleges should have been, but were not, disclosed during discussions.⁹ See Protester's Comments at 20-24.

The protester's new arguments regarding the agency's discussions could have been made in its initial protest filing. Because the protester failed to raise these issues at that time, they are untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (requiring protest issues be filed within 10 days after the basis is known or should have been known); Lanmark Tech., Inc., B-410214.3, Mar. 20, 2015, 2015 CPD ¶ 139 at 5 n.2 (piecemeal presentation of protest grounds, raised for the first time in comments, are untimely).

In any event, there is no merit to the protester's allegations as the record reflects that two of the weaknesses were based on new information introduced by Family Health in its revised proposal in response to the agency's initial discussions questions, and the protester has failed to cite to any information in the record, or Family Health's initial proposal, that demonstrates otherwise. See Research Analysis & Maint., Inc., B-410570.6, B-410570.7, July 22, 2015, 2015 CPD ¶ 239 at 10 (an agency is not required to reopen discussions to afford an offeror an additional opportunity to revise its proposal where a weakness is first introduced in the firm's revised proposal). With regard to the third weakness, the protester asserts that, if the agency had asked "a more thorough" technical question, Family Health would have provided a more thorough

(...continued)

satisfy the agency's needs. McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 8.

⁹ Specifically, the protester challenges the agency's failure to raise the following three concerns during discussions: (1) Family Health's proposed approach to collect only one month of prescription drugs, rather than multiple months of drugs; (2) Family Health's lack of a clear definition of the roles and responsibilities between implementing partners, and how each stakeholder will leverage its expertise; and (3) Family Health's proposed approach to participate in donor meetings. Protester's Comments at 20-21.

description of its specific approach. To satisfy the requirement for meaningful discussions, however, an agency need only lead an offeror into the areas of its proposal requiring amplification or revision. Grunley Constr. Co., Inc., B-407900, Apr. 3, 2013, 2013 CPD ¶ 182 at 8. Here, the agency clearly met this requirement.

Tradeoff Analysis and Source Selection Decision

Finally, Family Health argues that the agency's tradeoff analysis and source selection decision failed to weigh the benefits associated with each proposal, and was not adequately documented. As discussed below, we find no merit to these arguments.

In a best-value procurement, it is the function of the selection official to perform a cost/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher cost, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the evaluation criteria. CACI Enter. Sols., Inc., B-412648, B-412648.2, Apr. 25, 2016, 2016 CPD ¶ 111 at 10. A protester's disagreement, without more, with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Here, the record shows that the SSA considered the respective merits of the individual proposals in accordance with the RFP criteria, and concluded that JSI's proposal offered specific technical advantages that were worth the approximately 5.6 percent price premium. AR, Tab 12, SSDD, at 9-11. Specifically, the SSA listed the technical advantages offered by JSI's proposal, and explained that, JSI's proposal "repeatedly exceeded [Family Health's] strategic and technical approach," and therefore is worth the additional cost "to mitigate performance risk." Id. at 10. The SSA acknowledged that Family Health's proposal "rank[ed] first in terms of cost," but also found that JSI's proposed costs reflected "a realistic cost estimate and good understanding of the SAFE implementation conditions, demands and mitigation of anticipated risk factors." Id. at 10, 11. Ultimately, the SSA concluded that JSI presented a "superior technical proposal," and that its "many advantages" were worth paying a cost premium. Id. at 11.

Based on this record, we find no merit to the protester's arguments that the SSA failed to weigh the benefits of each proposal, or that the agency failed to document the tradeoff analysis and selection decision.

The protest is denied.

Susan A. Poling
General Counsel