



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** PN&A, Inc.

**File:** B-406368

**Date:** April 23, 2012

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Paula Penn-Nabrit for the protester.  
Charmaine A. Howson, Esq., Gabriel D. Soll, Esq., William Mayers, Esq., and Michael Ling, Esq., Department of Energy, for the agency.  
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency misevaluated protester's quotation is denied where the record reasonably supports evaluation that the protester's quotation was unacceptable in several respects and the protester has provided no basis to question the reasonableness of the agency's evaluation.

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### DECISION

PN&A, Inc., of Westerville, Ohio, protests the award of a contract by the Department of Energy, National Nuclear Security Administration (NNSA) to the Center for Professional Development, Inc. (CPD), of Oakland, California, under request for quotations (RFQ) No. DE-SOL-0003482 to provide leadership and development support in order to advance the new OneLeadership and Development Initiative (OLI) for NNSA's workforce.

We deny the protest.

### BACKGROUND

The solicitation, which was issued on November 11, 2011, provided for the award of an indefinite-quantity, fixed unit price contract with minimum guaranteed and maximum ceiling amounts. RFQ at 2. This procurement was conducted under Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items and FAR Part 13.5, Test Program for Certain Commercial Items, and was set aside for

small businesses.<sup>1</sup> The RFQ's performance work statement (PWS) requires the completion of five detailed tasks. RFQ, attach. 1, PWS at 1-6. The solicitation stated that the agency did not intend to conduct discussions. RFQ at 2.

The solicitation advised vendors that the government intended to award a contract to the responsible offeror whose offer conformed to the solicitation and was determined to be most advantageous to the government, price and other factors considered. RFQ at 3. The evaluation factors, listed in descending order of importance, were past performance, technical analysis of task/labor/unit price matrix including supporting resumes, oral presentation, and price. RFQ at 3-4.

With regard to the technical analysis evaluation factor, the types and quantities of labor hours and the labor mix, including supporting resumes, were to be evaluated to determine the vendor's ability and performance risk to accomplish the tasks in accordance with the PWS. RFQ at 3.

With regard to the oral presentation, the RFQ stated that "[t]he vendor's presentation must demonstrate its expertise, understanding of and ability to perform the work." RFQ at 2. The RFQ also stated that:

The Vendor's Oral Presentation will be evaluated on its demonstrated expertise, understanding, and ability to perform the PWS tasks and deliverables. The Vendor's Program Manager and Contract Manager will be evaluated on demonstrated expertise, understanding and ability to manage the contract and perform the PWS.

RFQ at 3.

Twelve quotations were received by the closing date, including those of PN&A and CPD. No discussions were held.

The technical evaluation panel (TEP) evaluated the quotations and oral presentations. Following the oral presentations, the TEP requested clarifications during the following week by telephone from three of the vendors, including CPD. AR, Tab 9, Source Selection Decision (SSD), at 2.

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<sup>1</sup> At the time this solicitation was issued, FAR subpart 13.5 authorized the use of simplified procedures for the acquisition of commercial supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5.5 million. On January 1, 2012, the authority under this subpart expired. Notwithstanding the expiration of this authority, contracting officers are permitted to award contracts under solicitations issued before the authority expiration. See FAR § 13.500(d).

The TEP ranked CPD's quotation the highest technically. CPD's quotation received an exceptional rating under the past performance factor and excellent ratings under the technical analysis and oral presentation factors. PN&A's quotation was rated lower than almost all of the other quotations, with an exceptional rating under the past performance factor, but unacceptable ratings under the technical analysis and oral presentation factors.<sup>2</sup> Id. at 4. PN&A's exceptional past performance rating was based on its "exceptional quality services, on-time and on-budget." Id. at 30.

The unsatisfactory rating of PN&A's quotation under the technical analysis factor was given because the "information provided contains deficiencies, weaknesses, and/or information gaps, serious concerns exist on the part of the [TEP] about the vendor's ability to perform the required work." Specifically, the TEP determined that PN&A's quotation demonstrated unsatisfactory expertise in its team composition. The TEP noted that while three of the four resumes submitted showed some minimal expertise in leadership and development, the experience presented did not relate directly to requirements contained in the PWS. The TEP also found that PN&A's proposed labor mix did not demonstrate the firm's ability to facilitate/execute a major effort. The TEP also found that PN&A did not demonstrate an understanding of the PWS. Id. at 31.

With regard to the oral presentation factor, the TEP assigned PN&A's quotation a unsatisfactory rating because it "demonstrated unsatisfactory expertise, little understanding of the scope of the PWS, and no clear execution plan." The TEP found that "PNA's presentation did not demonstrate its key personnel's expertise in leadership and development nor understanding and ability to perform the PWS tasks and deliverables." Id. at 32.

The SSD indicated that PN&A submitted the lowest price of \$1,115,980 as compared to CPD's price of \$1,559,235. In the SSD, the contracting officer documented a price/technical trade-off that concluded that CPD's highest-rated, higher-priced quotation represented the best value to the government of the quotations received. The award was made to CPD. This protest followed on January 27.

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<sup>2</sup> The solicitation provided that the following adjectival ratings would be used in evaluating past performance: exceptional, very good, satisfactory, marginal and unsatisfactory. The following adjectival ratings would be used in evaluating the technical analysis and oral presentation factors: excellent, good, satisfactory, marginal and unsatisfactory. RFQ at 4-5.

## DISCUSSION

PN&A protests its proposal's unsatisfactory ratings under the technical analysis and oral presentation factors.<sup>3</sup> According to PN&A, the "exceptional" past performance rating that it received "for work performed within the [a]gency, in projects and endeavors virtually identical to those outlined in the RFQ," rendered "irrational" its unsatisfactory technical ratings. Protester's Comments at 5.

In reviewing a protest against the propriety of an evaluation, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations; a protester's mere disagreement with the evaluation does not show that it lacked a reasonable basis. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Here, we first note that PNA's past performance rating has no bearing on the two unsatisfactory ratings that PN&A received for different technical factors because these factors evaluate different areas. While PN&A, in its protest submissions, summarized the contents of its technical quotation and oral presentation, and disagreed with the agency's evaluation, it has advanced no cogent arguments that show that the unsatisfactory ratings given its quotation were unreasonable. Based upon our review of the record, including PN&A's quotation and oral presentation, we have no reason to question the agency's evaluation.

PN&A also asserts that by seeking clarifications from CPD, but not from PN&A, DOE treated offerors disparately in its conduct of oral presentations. PN&A points out in this regard that the solicitation stated that the TEP may request clarifications "[f]ollowing the [oral] presentation," not a week after the oral presentation. Protester's Comments at 18; see RFQ at 3. The protester also seems to argue that the agency engaged in discussions rather than clarifications with the other vendors, which would then require that the agency hold discussions with all vendors. Protester's Comments at 19.

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<sup>3</sup> Although we do not specifically address all of PN&A's issues and arguments, we have fully considered all of them and find that they provide no basis on which to sustain the protest. We note as well that PN&A was not represented by counsel in this protest. Accordingly, our Office did not issue a protective order, and PN&A was provided only a redacted version of the agency report. In resolving the protest, we reviewed, in camera, unredacted copies of all evaluation and source selection documents and have based our decision on the full record. As some of the information reviewed by our Office is source selection sensitive and proprietary in nature, our discussion of the evaluation is necessarily limited.

Agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no automatic right to clarifications regarding proposals. See A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6. Here, the agency states that its decision to engage in clarifications with some vendors but not others was the direct result of the information or lack of information presented in the oral presentations. Supplemental Agency Report at 4. Given that PN&A's oral presentation was unacceptable, we find the agency reasonably exercised its discretion in not engaging in clarifications with that firm, given that PN&A would have had to materially revise its proposal to be considered acceptable.

We also agree with the agency that the post-oral presentation communications that it had with CPD were clarifications, not discussions. Our Office examined, in camera, the documentation surrounding these communications and find that CPD did not revise its quotation as a result of these communications. Instead, CPD's exchanges with the agency were limited to providing additional explanation for what it had previously proposed and thus did not constitute discussions. See Northeast MEP Servs., Inc., B-285963.9, Mar. 8, 2001, 2001 CPD ¶ 66 at 4. The fact that these exchanges took place one week after CPD's oral presentation is not relevant, given that CPD was not given the opportunity to change its quotation as a result of these communications.

Lastly, the protester argues that the agency was biased against PN&A. The protester, however, presents no evidence supporting this allegation other than its own inferences and speculations. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5. We find no basis to find the agency was biased or acted in bad faith.

The protest is denied.

Lynn H. Gibson  
General Counsel