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Decision

Matter of: International Development Group Advisory Services, LLC

File: B-416551; B-416551.2

Date: October 15, 2018

C. Peter Dungan, Esq., and Christopher S. Denny, Esq., Miles & Stockbridge P.C., for the protester.

Eric J. Marcotte, Esq., Jeffrey Lowry, Esq., Kelly Buroker, Esq., and Tamara Droubi, Esq., Vedder Price, P.C., for Chemonics International, Inc., the intervenor.

R. René Dupuy, Esq., United States Agency for International Development, for the agency. Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals is denied where the record demonstrates that the agency's evaluation was reasonable and not disparate.

2. Protest that the agency engaged in misleading discussions with the protester is denied where the record shows that the agency did not mislead the protester.

DECISION

International Development Group Advisory Services, LLC (IDG), of Arlington, Virginia, protests the award of a contract to Chemonics International, Inc., of Washington D.C., under request for proposals (RFP) No. SOL-121-17-000007, issued by the U.S. Agency for International Development (USAID) for services to support the USAID Competitive Economy Program (CEP) in the Ukraine. IDG challenges the agency's evaluation of proposals and conduct of discussions.

We deny the protest.

BACKGROUND

On March 13, 2017, USAID issued the RFP under the procedures of Federal Acquisition Regulation (FAR) part 15; the RFP contemplated the award of a single cost-plus-fixed-fee contract for a five-year period of performance. Agency Report (AR) Tab 5, RFP at 1.

The stated purpose of the CEP is to encourage startup businesses and small and medium sized enterprises (SMEs), increase domestic market competition, and support the competitiveness of Ukraine firms in international markets with a mission to create a more robust Ukrainian economy. Id. at 10. To achieve this purpose, the CEP will be comprised of five component activity areas that either facilitate trade, or promote the competitiveness of Ukraine's economy and its firms. Id.

The RFP contemplates that award will be on a best-value tradeoff basis considering cost and non-cost factors, including past performance. Id. at 113. The four technical factors, technical approach, key personnel, management plan, and institutional experience, were equally weighted, and all non-cost factors, when combined, were significantly more important than cost or price. Id.

The technical approach factor required offerors to detail their technical approach and methodology by addressing the requirements of the statement of work (SOW), including the five activity components,¹ guiding principles,² mandatory factors,³ and gender issues.⁴ Id. at 106. Proposals were to be evaluated based on the extent to which they provided a technically sound, realistic, and contextually appropriate approach to implementing the work described in the SOW; the likelihood that the proposed approach would lead to successful implementation; and the rigor and feasibility of the plan to monitor and evaluate the activity in order to measure progress to achieve expected results of the program. Id. at 113. Proposals also were to be evaluated on the extent to which the guiding principles, mandatory factors, and gender issues were integrated into the approach. Id.

For the key personnel factor, the RFP required a discussion of the approach to staff the contract with key personnel based on the minimum qualifications identified by the RFP. Id. at 106. Three positions were designated as key, including, as relevant here, the

¹ The SOW stated that the CEP was comprised of five component activity areas that could be categorized as either promoting the competitiveness of Ukraine's economy and its firms--Component 1, a better business-enabling environment, Component 2, support for emerging industries, and Component 3, an export promotion capability--or facilitating trade--Component 4, World Trade Organization participation and compliance, and Component 5, faster and lower-cost trade across Ukraine's borders. RFP at 11-21.

² The RFP identified six guiding principles, including, for example, flexibility in implementation, education for future leaders, and European Union integration. Id. at 11.

³ The RFP identified four mandatory factors, including, for example, sustainability and anti-corruption. Id. at 22-24.

⁴ The RFP required a contractor to place considerable focus on integrating gender considerations into program implementation in accordance with USAID's commitment to advance gender equality and pursue gender as a key development issue. Id. at 21.

Chief of Party (COP). Id. at 34. The COP was required to meet five qualifications, including, as relevant here, demonstrating “at least 7 years of successfully managing complex economic growth assistance projects in [the] Europe and Eurasia region, including Ukraine.” Id. at 35. Proposals would be evaluated for the quality and appropriateness of proposed key personnel, including whether they met the minimum qualification identified by the RFP. Id. at 113.

The RFP required offerors to present a management plan addressing three areas: (1) a mobilization plan detailing how the offeror would mobilize quickly, (2) a staffing plan describing how the offeror would properly staff the contract, and (3) a plan for pushing for Ukrainian personnel to be placed in positions of increasing responsibility, i.e., a plan for utilizing Ukrainian expertise. Id. at 106-07. The agency would evaluate the quality and effectiveness of the offeror’s management plan. Id. at 113.

The agency received four proposals, including IDG’s and Chemonics’s, by the closing date.⁵ The agency conducted discussions with offerors in the competitive range and final proposal revisions (FPR) were due by January 24, 2018. AR, Tab 15, TEC Report, at 1. The TEC evaluated all final proposal submissions and assigned adjectival ratings for each factor.⁶

The final ratings were as follows:

⁵ IDG was not initially included in the competitive range and protested its exclusion with the agency. AR, Tab 15, Technical Evaluation Committee (TEC) Report, at 1. The agency took corrective action by establishing a revised competitive range of three offerors, including IDG. Id.

⁶ Technical proposals would be rated, from highest to lowest, as exceptional, very good, satisfactory, marginal, and unsatisfactory. Id. at 5-6. As relevant here, a proposal rated as exceptional would be comprehensive, thorough, and of exceptional merit; meet and fully exceed the government’s expectations or RFP requirements with very low or no overall risk of unsuccessful performance; and demonstrate strengths that significantly outweighed any weakness that may exist. Id. at 5. A proposal rated as very good would have a strong grasp of the requirements; meet RFP requirements with a low risk of unsuccessful performance; and demonstrate strengths that significantly outweighed any weaknesses that exist. Id. Past performance would be assigned a confidence rating based on an offeror’s recent and relevant past performance record. Id. at 4. From highest to lowest, confidence would be rated as substantial, satisfactory, limited, and none. Id. As relevant here, satisfactory confidence indicated that the government had a reasonable expectation of successful performance. Id. Additionally, a neutral score would be given to offerors with no, or a limited record, of relevant past performance; a neutral rating would not be rated as favorable or unfavorable. Id.

	Chemonics	IDG
Technical Approach	Exceptional	Very Good
Key Personnel	Very Good	Exceptional
Management Plan	Very Good	Very Good
Institutional Experience	Exceptional	Very Good
Past Performance	Satisfactory Confidence	Neutral
Most Probable Cost	\$41,959,487	\$43,571,456

AR, Tab 18, Source Selection Decision Document (SSDD), at 20-21.

After evaluating proposals, the contracting officer (CO), acting as the source selection official, made a comparative assessment of proposals and concluded that Chemonics’s highest-rated, lowest-priced proposal represented the best value to the government. Id. at 21, 24. With regard to Chemonics’s proposal, the agency noted, and identified the basis for, Chemonics’s exceptional ratings for the technical approach and institutional experience factors. Id. at 21-22. For IDG, the agency similarly noted and identified the basis for its exceptional key personnel rating, and identified as concerns IDG’s excessive use of home office staffing, the lack of clarity on revisions to grants management staffing, and the limited amount and appropriateness of its institutional experience. Id. at 23.

On June 25, USAID made award to Chemonics. After requesting and receiving a debriefing, IDG protested to our Office.

DISCUSSION

The protester raises multiple objections to the award of the contract to Chemonics. Specifically, IDG asserts that the agency engaged in misleading discussions regarding the evaluation of IDG’s proposal under the management plan factor. IDG also contends that the agency improperly evaluated its proposal under the technical approach and institutional experience factors, and improperly evaluated Chemonics’s key personnel.⁷ Additionally, IDG asserts that the agency engaged in disparate treatment in the evaluation of IDG’s and Chemonics’s proposals under the technical approach factor. Although our decision does not individually address all of IDG’s allegations, we have fully considered all of the protester’s arguments and find no basis to sustain its protest.⁸ We discuss a few representative examples below.

⁷ The protester withdrew its challenges to the agency’s cost realism evaluation of Chemonics’s proposal. Supp. Comments at 2 n.1.

⁸ To the extent the protester asserts that various responses from the agency are post-hoc explanations of the TEC’s evaluation, we note that under certain circumstances, our Office will accord lesser weight to post-hoc arguments or analyses due to concerns that
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Misleading Discussions

IDG argues that the agency misled it during discussions regarding its staffing level under the management factor. Protest at 16-17. This argument is based on the agency's initial evaluation conclusion that IDG's proposal had the following weakness:

Weakness: Overall home office involvement appears excessive as demonstrated by the chart in the offeror's original proposal (P35). A home office grants manager with a 4-person Ukrainian grants management team is not justified.

AR, Tab 15, TEC Report, at 70. In response to the discussion question, the protester explained how labor for home office personnel (in Arlington, Virginia) was billed and that the only labor directly charged would be for very occasional trips by three home office personnel. AR, Tab 13B, IDG Discussions, at 27. Additionally, IDG stated that it reduced the number of home office trips, including trips by the home office grants manager, and the grants management team, including the number of Ukrainian staff. Id.

The agency's evaluation of IDG's response concluded that the weakness had not been addressed. The agency noted that the home office staffing remained unchanged based on the chart and associated narrative in the revised proposal and, therefore, the concern of excessive home office involvement remained. AR, Tab 15, TEC Report, at 70. Additionally, specific to grants management, the agency found the revised proposal lacked clarity because the description of the "grants management process" indicated that the Ukrainian grants manager would lead a team of procurement staff, technical advisors, and grants managers, specialists, and assistants, while the organizational chart describing grants staffing stated that the Ukrainian grant unit would consist of only two grants managers. Id. Finally, the agency stated that the reduction of the Ukrainian-based grants management team would result in further reliance on home office support and decision-making, which raised the risk of inefficiency in the grants

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judgments made "in the heat of an adversarial process" may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. However, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details will generally be considered in our review of evaluations and award determinations, so long as those explanations are credible and consistent with the contemporaneous record. ITT Fed. Servs. Int'l Corp., B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 6. In this case, we conclude that the CO's explanations are credible, and consistent with the TEC report conclusions and with the contents of IDG's proposal.

management process. Id. Based on the revised consensus evaluation, the agency rated the management plan as very good.⁹ Id. at 68.

IDG contends that the agency conducted misleading discussions concerning its staffing level by “unequivocally communicat[ing]” that IDG’s level of effort was unnecessary and excessive, which resulted in IDG adjusting its staffing.¹⁰ Protest at 17.

In response, the agency explains that it understood that home office staff would be deeply involved in activities that “should fall almost entirely under the purview of the [k]ey [p]ersonnel in Ukraine in order to effectively implement the project.” Memorandum of Law (MOL) at 24. The agency also states that the reduction of Ukrainian-based staff in the revised proposal further shifted operations and decision making to the home office, which exacerbated the concerns it raised in the discussion question and would detract from the project’s aim of developing local capacity. Id.

The protester contends that the agency’s response constitutes a post-hoc explanation of the TEC’s evaluation and conflicts with the concerns expressed during discussions regarding the cost of home office personnel and the level of effort of the Ukrainian-based grants management team. Comments and Supp. Protest at 13. Essentially, IDG argues that if the discussion question had simply stated that the involvement of the home office grants manager was unjustified, rather than referencing the entire grants management team, then IDG would have addressed the home office involvement on the grants management team and not reduced the involvement of Ukrainian-based team. Id. at 14.

The FAR requires agencies to conduct discussions with offerors in the competitive range concerning, “at a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR § 15.306(d)(3). Discussions must be meaningful, equitable, and not misleading. J.A. Jones/Bell, A Joint Venture, B-286458, B-286458.2, Dec. 27, 2000, 2001 CPD ¶ 17 at 4. That is, in order for discussions to be meaningful, the agency need only lead an offeror into the areas of its proposal requiring amplification or

⁹ The agency increased the rating from marginal because the revised proposal addressed three of four initial weaknesses, resolved the sole significant weakness, and warranted two new strengths. AR, Tab 15, TEC Report, at 68.

¹⁰ IDG explains that similar instructions were given in the discussion questions regarding cost, in that the agency stated that there was a duplication of the grants manager position based on the proposed subcontractor also offering a grants manager. Additionally, the agency stated “IDG proposed a heavy grants management team” and “[a] home office grants manager with a 4-person Ukrainian grants management team is not well-justified. Please revise or provide further justification.” AR, Tab 13B, IDG Discussions, at 34.

revision. CEdge Software Consultants LLC, B-408203, July 19, 2013, 2013 CPD ¶ 177 at 7.

We find no merit to the protester's arguments. In this regard, the discussion question clearly stated that "home office involvement was excessive," and IDG reduced only Ukrainian staffing. Additionally, despite the protester's various arguments to the contrary, we have no basis to question the propriety of the agency's discussions where it reasonably led the protester to the area of its proposal requiring revision. In short, the requirement that discussions be meaningful does not obligate an agency to spoonfeed an offeror. Insignia-Spectrum, LLC, B-406963.2, Sept. 19, 2012, 2012 CPD ¶ 304 at 5.

Technical Evaluation

The protester challenges the agency's evaluation of proposals. Below, we discuss the protester's challenges to the agency's evaluation of IDG's proposal under the technical approach factor and Chemonics's proposal under the key personnel factor.

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. See e.g., Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Family Health Int'l, B-414621, July 28, 2017, 2017 CPD ¶ 356 at 4. A protester's disagreement with the agency's evaluation judgments does not render those judgments unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Technical Approach Factor

The protester challenges four of the eight weaknesses assessed to its technical approach factor. For each challenged weakness, IDG primarily contends that the agency ignored conspicuous information in the protester's proposal. Protest at 11, 13, 14. Based on the record before us, we find no merit to these challenges.

For example, one weakness identified in IDG's initial proposal reflected the agency's assessment of whether IDG was proposing to use a grants-under-contract mechanism (or small subcontracts) to target Ukrainian private-sector firms, prioritized according to their potential to directly or indirectly move the industry forward, as required by the RFP under Component 2 (support for emerging industries). The TEC found that the initial proposal listed business service providers (BSPs) and services, without sufficiently focusing on private-sector firms, and that this represented a risk to implementation of grant activities. AR, Tab 15, TEC Report, at 64. The record reflects that during discussions, the agency advised IDG that the list of potential grant activities lacked sufficient private-sector firm focus due to targeting BSPs and services rather than firms,

and that this lack of focus in the proposed approach presented a risk of unsuccessful contract performance. AR, Tab 13B, IDG Discussions, at 16. IDG revised its proposal to provide a narrative response that essentially asserted that the use of intermediaries was “the best way to translate CEP into SME financing--not to directly provide capital to SMEs as grants.” Id. at 17. The agency concluded that the revised proposal did not address the agency’s concern and instead continued to list/target BSPs and services as potential recipients of Component 2 grants, which lacked the private sector focus required by the RFP. IDG’s FPR was assessed a weakness because the TEC concluded that this approach remained a risk to successful implementation. AR, Tab 15, TEC Report, at 64.

The protester asserts that the weakness was not warranted because the agency failed to consider its revised approach to “target specific ‘gazelle’ firms that serve as [SMEs].”¹¹ Comment and Supp. Protest at 18. The agency responds that it did consider this aspect of IDG’s FPR, but determined that IDG’s approach, specifically the targeting of gazelle firms, further highlighted IDG’s intent to target BSPs because the graphic in IDG’s revised proposal identified BSPs as the direct recipients of Component 2 grants. Supp. MOL at 15. Our review of the record leads us to conclude that the agency not only considered the information identified by the protester, but also reasonably assessed a weakness for IDG’s failure to submit an adequately written proposal with sufficient detail to demonstrate an understanding of, and ability to meet, solicitation requirements. See CALIBRE Sys., Inc., B-414301.3, Sept. 20, 2017, 2017 CPD ¶ 305 at 5. IDG’s disagreement with the agency’s judgment in this regard does not demonstrate that it was unreasonable.

Key Personnel Factor

IDG contends that Chemonics’s key personnel should have been found unacceptable because its proposed COP failed to offer “at least 7 years of successfully managing complex economic growth assistance projects in [the] Europe and Eurasia region, including Ukraine,” as required by the RFP.¹² Comments and Supp. Protest at 3-4. IDG interprets the quoted language as requiring the proposed COP to have been physically present in the referenced regions in order for the experience to qualify. Id. at 5. The protester contends that “USAID was very clear to offerors . . . that experience must be gained in the region, including actually inside the country of Ukraine” and cites the following agency response to a question and answer (Q&A) from a pre-proposal conference with the CO:

¹¹ The record refers to gazelle firms as “successful high-growth firms generating employment and . . . economic growth.” See e.g., AR, Tab 15, TEC Report, at 56.

¹² IDG initially challenged other key personnel proposed by Chemonics, but withdrew those allegations. See Comments and Supp. Protest at 3 n.2. Accordingly, we do not further discuss the withdrawn challenges in this decision.

Question: Just a question back on the qualifications of the COP It states that experience in the European Eurasia [region], including Ukraine, is [--] I'm not sure if it's preferable or required or accepted. The specifics about experience in Ukraine, is that preferred or required?

Answer: [. . .] That is required.

Comments and Supp. Protest at 4-5. Additionally, IDG contends that Chemonics proposed a COP whose resume listed a position that did not constitute management experience. Id. Specifically, IDG challenges the position in which the proposed COP provided home office oversight and technical input for a diverse portfolio of projects including a two-year, \$8 million Trade, Investment and Business Acceleration Project (TIBAP) in Ukraine to improve the business environment and assist with Ukraine's World Trade Organization post-acceleration activities. Id.

In response, the agency asserts that nothing in the RFP required the COP to be physically present in the relevant regions, and instead, the RFP language refers to where the project took place. Supp. Legal Memorandum, at 3-4. The agency also states that such projects require many types of management, both in-country and from the home office. Id. at 3. With regard to the pre-proposal conference Q&A, the agency asserts that its answer indicated that having management experience on these types of projects was required, not preferred. Id. at 4.

IDG disagrees with the agency's interpretation and contends that it is more reasonable to expect someone to successfully manage a complex project in a foreign country if they are actually in the country full-time. Supp. Comments at 2. IDG also offers RFP provisions to support its interpretation; for example, the contractor was required to "provide a resident [COP] that is dedicated 100% to the contract," and to delegate to the COP "sufficient authority to . . . make decisions without the need [for] approval from the [c]ontractor's home office." Id. at 3 (citing RFP at 35).

As a general matter, where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of the provisions; to be reasonable, an interpretation must be consistent with such a reading. ProActive Techs., Inc.; CymSTAR Servs., LLC, B-412957.5 et al., Aug. 23, 2016, 2016 CPD ¶ 244 at 13. An interpretation is unduly narrow where it is not supported by the language of the RFP. See Interactive Info. Solutions Inc., B-415126.2 et al., Mar. 22, 2018, 2018 CPD ¶ 115 at 9.

In our view, we find nothing unreasonable regarding the agency's interpretation of the solicitation language. The plain language of the RFP neither explicitly indicates that the experience had to be performed in-country, nor precludes the COP from gaining qualifying experience from a home office. Additionally, to the extent the RFP may require the COP to manage this requirement in-country, the RFP did not place a similar constraint on the experience offered to meet the requirement to demonstrate management of complex economic growth assistance projects. Finally, we find

unavailing the protester's contention that the pre-proposal conference Q&A was asking whether the experience had to have been performed in Ukraine, especially where the plain language of the question does not indicate that experience had to be "actually inside the country."

Having concluded that the protester's interpretation of the RFP was unreasonable, and that no ambiguity existed, we review the agency's evaluation to determine whether it was consistent with the agency's interpretation of the terms of the solicitation. BICALLIS, LLC, B-415639, Feb. 1, 2018, 2018 CPD ¶ 90 at 5.

Here, the agency concluded that Chemonics's proposed COP demonstrated nine years of experience based on four positions. Supp. MOL at 3. Based on our conclusion above, we find no merit to the protester's contention that various positions should not count towards the seven-year requirement because they were not performed in-country. Additionally, to the extent the protester contends that the proposed COP's TIBAP position did not constitute management experience, we find no basis to sustain the protest. In this regard, the record shows that the agency concluded that the proposed COP's experience exceeded the requirements for the position. AR, Tab 18, SSDD, at 8. Based on the record, IDG's contention that the agency did not adequately explain how this position comprises management experience constitutes disagreement, but fails to show that the agency's evaluation was unreasonable. Ben-Mar Enters., Inc., *supra*, at 7.

Disparate Treatment

IDG alleges that the agency engaged in disparate treatment under the technical approach factor and offers three examples to support its arguments.

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing offerors. LCPtracker, Inc.; eMars, Inc., B-410752.3 *et al.*, Sept. 3, 2015, 2015 CPD ¶ 279 at 6.

In our view, none of the examples show that the agency evaluated competing proposals in a disparate manner. For example, IDG contends that both IDG and Chemonics discussed how they would partner with academic institutions to build trade compliance capacity in Ukraine under the technical approach factor for Component 4 (World Trade Organization participation and compliance). Thus, IDG argues that, like Chemonics, IDG should have received a separate strength for its approach. Comments and Supp. Protest at 10. The crux of the agency's response is that IDG was also given credit for its approach to supporting academia, but that it was regarded as one element among others that contributed to the significant strength the TEC assessed for component 4 overall. *See* Supp. MOL at 7. Moreover, the agency contends that considering all other aspects of IDG's and Chemonics's proposals under the technical approach factor, neither IDG's, nor Chemonics's technical approach ratings for this factor would have changed based on the addition or subtraction, respectively, of this one strength from the agency's evaluation. *Id.*

In this regard, the record shows that under the technical approach factor, the agency assigned Chemonics's proposal 1 significant strength, 9 strengths, and no weaknesses. AR, Tab 15, TEC Report, at 15-16. IDG's proposal under this factor was assessed 1 significant strength, 14 strengths, and 8 weaknesses. Id. at 62-65. As stated above, we found no merit either to the challenge of the agency's evaluation of four of the weaknesses assessed to IDG's proposal under the technical approach factor or the two other allegations of disparate treatment. Accordingly, we fail to see how the addition of a 15th strength would have affected the rating for this factor or the evaluation in total. In this regard, competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. 22nd Century Tech., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 9.

The protest is denied.

Thomas H. Armstrong
General Counsel