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Decision

Matter of: Nexant Inc.

File: B-417421; B-417421.2

Date: June 26, 2019

James J. Regan, Esq., and James G. Peyster, Esq., Crowell & Moring LLP, for the protester.

Keith R. Szeliga, Esq., Katie A. Calogero, Esq., and Adam A. Bartolanzo, Esq., Sheppard Mullin Richter & Hampton LLP, for Deloitte Consulting, LLP, the intervenor.
John B. Alumbaugh, Esq., United States Agency for International Development, for the agency.

Kasia Dourney, Esq., Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the protester's technical proposal is denied where there is no basis to conclude that the agency's evaluation was unreasonable.
 2. Protest alleging that the agency's evaluation of the awardee's proposal was conducted on unequal basis is denied where the agency reasonably evaluated the awardee's proposal as meriting strengths and where that proposal was materially different from the protester's.
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DECISION

Nexant, Inc., of Washington, D.C., protests the award of a task order under request for task order proposals (RFTOP) No. 720-674-18-R-00026 to Deloitte Consulting, LLP, issued by United States Agency for International Development (USAID) to contract holders of the agency's Power Africa indefinite-delivery, indefinite-quantity (IDIQ) contract, for technical services to implement the West Africa Energy Program. The protester primarily argues that USAID unreasonably evaluated the protester's and awardee's technical proposals.

We deny the protest.

BACKGROUND

In June 2013, the United States government launched Power Africa, a partnership with African governments, bilateral and multilateral development agencies, and the private sector, aimed at increasing electricity access in sub-Saharan Africa, where more than 600 million people lack electricity. Agency Report (AR), Tab 3, Contracting Officer's (CO) Decl., at 1. On February 13, 2018, USAID awarded nine multiple-award IDIQ contracts for technical assistance and engineering consulting services to implement USAID's activities in support of Power Africa. Id. at 2. One of the contracts was awarded to Deloitte, and another was awarded to Nexant. Id.

On October 26, 2018, USAID issued the RFTOP to all nine of the Power Africa IDIQ contract holders. Id. The RFTOP contemplated the award of a task order to provide technical services to implement Power Africa's West Africa Energy Program (WAEP), to expand the supply of, and access to, grid-connected electricity services in West Africa, "with the ultimate goal of advancing development priorities including inclusive economic growth, security, and improved health and education outcomes." Id. at 1; AR, Tab 4, RFTOP Section C, Statement of Work (SOW), at 6. The WAEP included 23 countries in West and Central Africa and contained special requirements for Ghana, based on its "unique country context."¹ SOW at 6.

The SOW required the offerors to meet the following requirements:

[F]acilitate the financial closure of power transactions and strengthen the enabling environment for private sector investment in West Africa's power sector, as well as address the key constraints to such investment. Also, the Contractor must strengthen the human and institutional capacity of key national power sector entities, including utilities, expand on-grid connections, and increase regional power trade.

AR, Tab 4, RFTOP Section B.1. (Purpose), at 3. Specifically, the SOW contemplated achieving the following four objectives:

- (1) Increase the supply of power in West Africa;
- (2) Enable expanded end-user connection to the grid;
- (3) Improve the technical and institutional capacity and performance of select national utilities and other relevant national power sector entities; and

¹ Ghana has recently transitioned from a power deficit to a "pronounced oversupply . . . contracted at high cost." SOW at 18. Accordingly, the "overriding concern has shifted to improving the financial health of the electricity sector and reducing the cost of electricity for all consumers." Id.

(4) Accelerate the establishment of a high functioning regional power market.

SOW at 6. In addition, the RFTOP included a requirement for providing support functions to the Power Africa Coordinator's Office and USAID missions. Id. at 27-28.

The solicitation anticipated the award of a cost-plus-fixed-fee completion task order, with an estimated value ranging between \$65 million and \$75 million, on a best-value tradeoff basis. AR, Tab 4, RFTOP at 1, 77. The RFTOP advised offerors that the procurement would be conducted under the procedures set forth in Federal Acquisition Regulation (FAR) part 16, and that FAR part 15 procedures would not apply. Id. at 1. The agency established an evaluation plan, with specific procedures and definitions to be followed by members of the technical evaluation committee in their evaluation of the strengths and weaknesses in the task order proposals. AR, Tab 8, Evaluation Plan, at 3. The evaluation plan defined a strength as an "aspect of the offer that provides significant confidence of successful contractor performance; or, conversely, an aspect of the technical offer that significantly decreases the risk of unsuccessful contractor performance." Id. at 10 (emphasis in original). Weakness was defined as a "flaw that significantly reduces the confidence of successful contractor performance; or, conversely, a flaw that appreciably increases the risk of unsuccessful contract performance." Id. at 11 (emphasis in original). Based on the agency's assessments of strengths and weaknesses, the agency assigned confidence ratings of substantial confidence, satisfactory confidence, limited confidence, or no confidence. Id.

The RFTOP advised the offerors that technical proposals would be evaluated on the basis of three factors, in descending order of importance: (1) staffing approach to achieve objectives; (2) key personnel; and (3) regional experience. AR, Tab 4, RFTOP at 78. For purposes of award, all non-price factors were "significantly more important than costs or price factors." Id. at 77 (emphasis in original).

For factor 1, staffing approach, the agency was to:

evaluate the extent to which the Offeror's staffing approach demonstrates that it is informed by a sound understanding and in-depth expertise and knowledge of region-specific issues and challenges; provides the resources and expertise that practically and realistically lead to achieving the objectives specified in the SOW and that align with analytically sound and strategic activities, tools, and interventions that are specific and appropriate for each region/country's needs; demonstrates flexibility and adaptability to overcome key enabling environment barriers or power sector constraints; and promotes long-term sustainability.

RFTOP at 78.

For factor 2, key personnel, the solicitation established five key personnel positions, including a chief of party and a deputy chief of party, for which the offerors were required to propose qualified individuals, capable of:

effectively achiev[ing] Task Order objectives on the extent to which they possess relevant and demonstrated professional experience (preferably in West Africa), technical skills and qualifications (especially those that demonstrate an understanding of the power sector in West Africa and its political dynamics), project management experience to effectively overcome potential implementation challenges, and the maximum use of qualified expertise from the countries within the West Africa region.

Id. at 78.

For factor 3, regional experience, the offerors were to provide up to five examples that demonstrate their West Africa regional-specific experience and expertise. Id. at 63. The agency was to evaluate:

the overall corporate experience of the Offeror, including teaming partners in performing a range of technical assistance, capacity building, and transaction support work which is similar in size, scope and complexity to the SOW in the West Africa region. This includes the Offeror’s experience with building technical and institutional capacity with relevant Power Africa stakeholders in the West Africa region.

Id. at 78.

The agency received proposals from three offerors by the closing date of December 10, 2018. AR, Tab 10, Memorandum of Negotiation,² at 5. The TEC evaluated the proposals submitted by Deloitte and Nexant³ as follows:

	Deloitte	Nexant
Staffing Approach	Satisfactory Confidence	Satisfactory Confidence
Key Personnel	Substantial Confidence	Limited Confidence
Regional Experience	Limited Confidence	Limited Confidence
Probable Cost	\$73,951,292	\$73,347,894

AR, Tab 10, Memorandum of Negotiation, at 6; AR, Tab 12, Task Order Decision Document, at 6.

² The Memorandum of Negotiation document summarizes the Technical Evaluation Committee’s (TEC) evaluation of the offerors’ technical proposals. See AR, Tab 10, Memorandum of Negotiation, at 1.

³ The third offeror’s proposal is not relevant to the issues raised in this protest and will not be discussed further.

Nexant received four strengths and three weaknesses for its proposed staffing approach, and two strengths and two weaknesses under the key personnel factor. AR, Tab 11, TEC's Memorandum to the Supervisory CO, at 13-21. In contrast, Deloitte received six strengths and three weaknesses for its proposed staffing approach, and three strengths and one weakness under the key personnel factor. AR, Tab 21, TEC's Memorandum, at 4-10; AR, Tab 12, Task Order Decision Document, at 6. Both offerors were evaluated and "considered equal" under the regional experience factor. AR, Tab 12, Task Order Decision Document, at 7.

After reviewing the TEC's report and deliberating with the TEC, the selection authority concluded that Deloitte's technically superior, albeit slightly more expensive proposal⁴ represented the best value to the government. AR, Tab 12, Task Order Decision Document, at 3. On March 15, 2019, the agency notified Nexant that it was not selected for award. Protest at 7. After requesting and receiving a debriefing, Nexant filed this protest with our Office.⁵

DISCUSSION

Nexant challenges five of the six weaknesses identified by the agency in its proposal. Protest at 2, 20-21. In its supplemental protest, Nexant also alleges disparate treatment, claiming that it should have received the same strengths as Deloitte under the staffing approach factor, and that Deloitte should have received the same weaknesses as Nexant under the key personnel factor. Supp. Protest at 2-9. We have considered all of the allegations raised by Nexant and find no basis to sustain the protest. Below, we discuss Nexant's principal contentions.

Evaluation of Nexant's Proposal

Nexant challenges several aspects of the agency's evaluation of its proposal, arguing that the agency applied unstated evaluation criteria. For example, Nexant argues that the weaknesses assigned to its proposal under the staffing approach factor were unreasonable, and claims that the agency unlawfully penalized Nexant for failing to address staffing plan details that were not required in the solicitation. Protest at 9-11. Similarly, Nexant contends that the agency's assessment of Nexant's key personnel improperly required qualifications that the solicitation did not identify. Protest at 14-18. We find no merit to these arguments.

⁴ The selection authority noted that the total cost of Deloitte's proposal was "less than one percent higher" than Nexant's proposal. AR, Tab 12, Task Order Decision Document, at 7.

⁵ The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

As an initial matter, the evaluation of proposals is a matter within the discretion of the contracting agency. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4; Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. MicroTechnologies, LLC, *supra*; STG, Inc., B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 4-5. A protester's disagreement with the agency's judgment, by itself, does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

Assignment of Weakness under the Staffing Approach Factor

The agency assigned a weakness to Nexant's proposed staffing approach, noting that it was "extremely weak on details regarding how the program will be staffed . . . making it difficult to assess where staffing resources would be concentrated." AR, Tab 11, TEC's Memorandum, at 15.

Nexant argues that the solicitation did not require offerors to include any details regarding the proposed staffing approach, but merely encouraged it; yet, the agency assigned a weakness to Nexant's proposal under this evaluation factor for lack of sufficient detail. Protest at 10. The protester calls such an approach "the textbook definition of an unstated minimum requirement." *Id.* In further support of its argument, Nexant notes that a detailed "staffing plan" with specific numerical commitments was a post-award deliverable to be provided to USAID within 75 calendar days after award, as part of the first "Annual Work Plan." *Id.* at 9.

The agency responds that although the solicitation did not require the offerors to provide "country-level staffing detail," it required that proposals discuss how staff would be deployed in relative proportions, and that, due to the lack of detail in Nexant's proposal, the agency was unable to determine which markets would be likely to receive the most attention. Memorandum of Law (MOL) at 19, 20; AR, Tab 11, TEC's Memorandum, at 15. Accordingly, the agency states that lack of detail in Nexant's proposal regarding its staff distribution resulted in an appreciable difference in the agency's level of confidence regarding Nexant's ability to achieve the SOW's objectives. MOL at 19.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to, or encompassed by, the established factors. Northrop Grumman Sys. Corp., B-414312 *et al.*, May 1, 2017, 2017 CPD ¶ 128 at 12; *see also* Global Analytic Info. Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 4 (agencies may apply evaluation considerations that are not expressly outlined in the RFP, where those considerations are reasonably and logically encompassed within the stated evaluation criteria, as long as there is a clear nexus between the stated criteria and the unstated consideration).

Here, section L of the solicitation instructed offerors that the proposals “must demonstrate how the combination of their understanding, expertise, and knowledge of region-specific issues and challenges informs their strategy for deploying staff to achieve the objectives” outlined in the SOW, and that “[f]or each outcome and lower-level IR [Intermediate Results], the Offeror must describe how its staffing approach aligns with analytically sound and strategic activities, tools, and interventions that are specific and appropriate for each region’s needs and adaptive to overcome key enabling environment barriers or power sector constraints, including unanticipated changes such as geopolitical, economic or other events, which could affect implementation and the achievement of Task Order objectives.” RFTOP at 62. It provided further that “[w]hile country-level staffing detail is not required for West Africa Region, Offerors must discuss (in terms of relative proportions) how staff is deployed.” *Id.* (emphasis added).

Further, section M of the solicitation instructed that the agency would evaluate the extent to which the offerors’ staffing approach:

demonstrates that it is informed by a sound understanding and in-depth expertise and knowledge of region-specific issues and challenges; provides the resources and expertise that practically and realistically lead to achieving the objectives specified in the SOW and that align with analytically sound and strategic activities, tools, and interventions that are specific and appropriate for each region/country’s needs

RFTOP at 78 (emphasis added).

Based on our review of the record, the solicitation clearly advised that the agency would assess whether the offeror’s proposed staffing approach would sufficiently “demonstrate how the combination of their understanding, expertise, and knowledge of region-specific issues and challenges informs their strategy for deploying staff to achieve the objectives” outlined in the SOW, and whether “it is informed by a sound understanding and in-depth expertise and knowledge of region-specific issues and challenges.” RFTOP at 62, 78. Consistent with these stated criteria, the agency reasonably assessed a weakness to Nexant’s proposed staffing approach, based on finding that “the logistics and specifics of Nexant’s proposed staffing structure were unclear” and that the protester’s proposal did not include sufficient detail identifying how the program would be staffed to “practically and realistically lead to achieving WAEP objectives.” AR, Tab 11, TEC’s Memorandum, at 15; RFTOP at 78.

Further, while the RFTOP stated that the country-level staffing detail was not required, it expressly did require offerors to provide information as to how staff would be deployed, in terms of relative proportions, and how the overall proposed staffing approach would align with analytically sound and strategic activities, tools, and interventions that are specific and appropriate for each region/country’s needs. RFTOP at 62, 78. In this context, in light of the requirements covering a large territory of West Africa, spanning 23 different countries, with diverse technical needs, we agree with the agency that insufficient detail in the protester’s proposal regarding geographic prioritization of staff

presented a challenge for the agency to assess the optimal effectiveness of deploying offeror's resources. In sum, the agency's concerns were clearly related to, and encompassed by, the stated evaluation criteria; Nexant's assertions to the contrary are without merit.

Assignment of Weaknesses under the Key Personnel Factor

By way of another example, Nexant argues that USAID unreasonably evaluated proposals under the key personnel factor. Protest at 14-18. The protester contends, again, that the agency's evaluation of its key personnel relied on numerous unstated qualification requirements not identified in the solicitation, and that the assignment of two weaknesses to Nexant's proposal under the key personnel factor was improper. For the reasons discussed below, we find no basis to sustain this protest ground.

Nexant contends that the terms of the solicitation did not specify that the chief of party (COP) position was meant by the agency to be a "technical position" that would require the COP to "have experience performing all aspects of the SOW work,"⁶ but rather, described the role of COP as a "managerial and administrative-focused position." Protest at 15. The protester asserts that it would have proposed a different candidate for the COP position had the solicitation correctly identified the agency's minimum requirements. Id. at 17.

The agency responds that the protester's challenge is based on an incorrect reading of the RFTOP, noting that the RFTOP provided that the COP was responsible for "ensur[ing] achievement of task order results" and for managing "overall task order requirements . . . undertaken to achieve this task orders's objectives." MOL at 26-27; RFTOP at 33.

We agree. The record here does not support Nexant's allegations that the agency's evaluation of the protester's proposal under this factor was unreasonable. Specifically, section M of the RFTOP stated that:

USAID will evaluate Key Personnel based on the quality and appropriateness of the proposed individuals to effectively achieve task order objectives on the extent to which they possess relevant and demonstrated professional experience (preferably in West Africa), technical skills and qualifications (especially those that demonstrate an understanding of the power sector in West Africa and its political dynamics), project management experience to effectively overcome potential implementation challenges, and the maximum use of qualified expertise from the countries within the West Africa region.

Id. at 78.

⁶ The TEC concluded that Nexant's proposed COP lacked experience related to three of the four objectives of the WAEP. AR, Tab 11, TEC's Memorandum, at 19.

Further, the solicitation provided position descriptions for all five key personnel, stating that the COP would be required to “manage task order performance and ensure achievement of task order results, quality standards, and schedules required under the task order.” RFTOP at 33. Moreover, the COP was to “define and manage overall task order requirements, including . . . quality control of all tasks and assignments undertaken to achieve this task order’s objectives,” and “must have the ability to speak for the contractor on all matters.” Id. On this record, we think the solicitation was sufficiently clear that the COP was required to have subject matter expertise with regard to the matters encompassed by the SOW--especially given the scope and complexity of the WAEP--so that he/she could define, frame and ensure a seamless execution of the solicitation’s objectives.

Next, Nexant objects to the relevancy assessment with regard to the prior experience of Nexant’s proposed COP and the deputy chief of party (DCOP), complaining that the agency improperly concluded that they had limited experience managing programs comparable to WAEP in scope, scale, or complexity. Protest at 16-18. Nexant claims that the position descriptions for the COP and DCOP positions “did not contain any of the qualification requirements” that USAID now relies on to assign a weakness to Nexant’s proposal. Id. at 17.

Based on our review of the record, we disagree. The position description for the DCOP indicated that she/he should serve as the operations lead for the task order’s entire period of performance, providing oversight of daily operations and procedures. RFTOP at 34. The position description for the COP position, as discussed above, advised the offerors that the COP would be required to “define and manage overall task order requirements” as well as to “manage task order performance and ensure achievement of task order results, quality standards, and schedules required under the task order.” RFTOP at 33. As noted above, section M of the solicitation instructed that the evaluation of the key personnel would be based on “the quality and appropriateness of the proposed individuals to effectively achieve Task Order objectives.” Id. at 78. Consistent with our discussion above, we find that the agency’s concerns regarding the COP’s and DCOP’s lack of experience managing programs of comparable scope, scale, or complexity are reasonably related to the stated evaluation criteria. Accordingly, the protester’s disagreement with the agency’s evaluation of Nexant’s key personnel does not provide a basis to sustain the protest.

Evaluation of Deloitte’s Proposal and Unequal Treatment Allegation

Finally, in its supplemental protest, Nexant claims that certain strengths assigned to Deloitte’s proposal under the staffing approach factor should have also been assigned to Nexant’s proposal. Supp. Protest at 2-3. For example, Nexant contends that its proposal merited additional strengths because, similar to Deloitte’s, Nexant’s proposal also anticipated “distributing staff in [DELETED] and [DELETED]” and proposed utilization of “[DELETED].” Id. at 2-5. The protester further argues that a weakness assessed to its key personnel proposal should have been assessed to Deloitte as well,

as Deloitte's proposal also did not discuss the "dollar-size of [Deloitte's key personnel] respective experience." *Id.* at 5-6. We have reviewed all of Nexant's assertions regarding allegedly unequal treatment and find no basis to sustain its protest. One representative example is discussed below.

The agency explains that although the protester's proposal made some references to staff distribution in Francophone West African countries, it did not provide any details as to how the protester would deploy its French-speaking resources to achieve the SOW requirements. Supp. MOL at 9-10. In contrast, Deloitte's proposal included both the details, and specific "business reasons as to why it was distributing staff to [DELETED] and [DELETED]"; for example, the agency points out that Deloitte's proposal recognized the importance of [DELETED] status as logistical and commercial/financial hub for Francophone West Africa, the strong contribution it was intended to make to WAEP's results, and the availability of qualified Francophone local professional staff in [DELETED]. *Id.* at 9. We think the agency reasonably found that Nexant's proposed staff distribution did not merit a strength, and conclude that the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. See, e.g., Abacus Tech. Corp.; SMS Data Prods. Grp., Inc., B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 11. Here, our review of the record reveals that there were material differences between Nexant's and Deloitte's proposals; specifically, the differences in the level of detail contained in both proposals. For that reason, Nexant's disparate treatment allegations are without merit.

The protest is denied.

Thomas H. Armstrong
General Counsel