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Decision

Matter of: LinTech Global, Inc.

File: B-419107

Date: December 10, 2020

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DIGEST

Protest challenging award of a contract to a higher technically rated, lower-priced offeror is denied where the record shows that the agency's evaluation and source selection were reasonable and consistent with the solicitation.

DECISION

LinTech Global, Inc., of Farmington Hills, Michigan, protests the award of a contract to Nexagen Networks, Inc., of Marlboro Township, New Jersey, under request for proposals (RFP) No. N0018920R0023, issued by the Department of the Navy, for support services. The protester challenges the agency's evaluation of proposals and selection decision.

We deny the protest.

BACKGROUND

The solicitation was issued on May 7, 2020, as a small business set-aside under Federal Acquisition Regulation parts 12 and 15, contemplating the award of a fixed-price single indefinite-delivery, indefinite-quantity contract with a 5-year ordering term for support services for several programs of the Naval Information Forces. Agency

Report (AR), exh. 1, RFP at 1, 18, 61-63.¹ Award was to be made on a best-value tradeoff basis, and the procurement was to be conducted in two phases. *Id.* at 18. Phase I consisted of evaluation under the facility security clearance evaluation factor. Offers assigned an “acceptable” rating in phase I would move on to Phase II. *Id.* Under Phase II, proposals were to be evaluated on the following evaluation factors: technical approach, past performance, and price. The technical approach evaluation factor consisted of two equally weighted subfactors: Development, Security, and Operations (DevSecOps) framework support plan; and information technology service management (ITSM) approach.² *Id.* at 19. The solicitation advised that the technical approach factor was more important than the past performance factor and that, within Phase II, the non-price evaluation factors would be considered significantly more important than the price evaluation factor in the agency’s tradeoff decision. *Id.*

The agency received four offers, including from LinTech and Nexagen. A technical evaluation board (TEB) evaluated the proposals under the technical evaluation factor and the contracting officer evaluated the proposals under the past performance and price evaluation factors. Contracting Officer’s Statement and Legal Memorandum (COS/MOL) at 9. The results of the agency’s evaluation is as follows:³

	LinTech	Nexagen
Facility Clearance	Acceptable	Acceptable
Technical Approach	Good	Outstanding
DevSecOps Framework Support Plan	Good	Outstanding
ITSM	Good	Outstanding
Past Performance	Substantial Confidence	Satisfactory Confidence
Price	\$ 53,001,067.01	\$ 50,956,347.61

AR, exh. 14, Business Clearance Memorandum (BCM) at 21.

¹ The solicitation was amended once. Citations to the RFP are to the final version as amended.

² The solicitation does not specifically define “DevSecOps.” However, we understand the term to represent the philosophy of integrating security (Sec) practices into the DevOps process, a set of software development practices that combine software development (Dev) and information technology operations (Ops) to shorten the systems development life cycle. See *ACTA, LLC*, B-418352.3, B-418352.4, Aug. 28, 2020, 2020 CPD ¶ 290 at 8 n.6. The agency explains that a DevSecOps framework automates the software development lifecycle from planning to coding to testing to deploying the code. AR, exh. 18, TEB Decl. at 3.

³ The available adjectival ratings for the technical approach factor and its subfactors were: outstanding, good, acceptable, marginal, and unacceptable. RFP at 21-22. The available confidence assessment ratings for the past performance factor were: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, and no confidence. *Id.* at 22-23.

The contracting officer, who served as the source selection authority (SSA) for this procurement, considered the TEB's evaluation results, performed a detailed comparative assessment, and made a best-value tradeoff decision. *Id.* at 48-50. As a result, the SSA found that Nexagen's proposal represented the best value to the government because it offered the lowest price and had the highest rated non-price proposal. The SSA found the other two higher priced offers, including LinTech's, did not provide any advantage that justified the price premium. *Id.* at 50-51.

LinTech was notified of Nexagen's selection on September 1. A written debriefing was provided on September 2, and debriefings concluded on September 4. This protest followed.

DISCUSSION

LinTech challenges the agency's evaluation of its proposal under the technical factor, the awardee's proposal under the technical and past performance factors, and the selection decision. While we do not address every issue raised, we have considered all of the protester's arguments to the extent they have not been withdrawn or abandoned, and conclude that none furnishes a basis on which to sustain the protest.

Evaluation of LinTech Under the Technical Approach Factor

LinTech contends that the agency failed to recognize strengths in its proposal, and the protester makes a number of arguments in this respect. In its initial protest, LinTech argued that the agency failed to assess six additional strengths for areas of its proposal that, according to the protester, exceeded the solicitation's requirements. Protest at 6-7. Although the agency responded to these arguments, LinTech's comments on the agency report did not address four of these areas. We, therefore, consider those arguments abandoned and dismiss them. 4 C.F.R. § 21.3(i)(3); *KSJ & Assocs., Inc.*, B-409728, July 28, 2014, 2014 CPD ¶ 222 at 5.

With regard to LinTech's argument that it should have received a strength for "incorporating certified/appraised [DELETED] processes within the DevSecOps approach," the agency explains that, of the processes proposed by LinTech, one aspect (utilization of [DELETED] and [DELETED] Method for developing requirements) was already recognized as a strength by the TEB.⁴ AR, exh. 18, TEB Decl. at 8. The agency also explains that the other processes, while meeting the performance work statement (PWS) requirements, did not rise to a strength. *Id.* In its comments, LinTech simply expressed its disagreement with the agency's assessment, maintaining that it should have been assessed two separate strengths, instead of a single one.

⁴ Although not defined in the record, we understand [DELETED] to stand for "[DELETED]" and the term "[DELETED]" as an acronym derived from the first letter of each of [DELETED] categories ([DELETED]).

Comments at 2-3. While the protester may disagree with the agency's assessment, without more, its disagreement is not sufficient to render the agency's evaluation unreasonable.⁵ *Team People LLC*, B-414434, B-414434.2, June 14, 2017, 2017 CPD ¶ 190 at 7. As a result, this allegation is denied.

Next, LinTech alleges that the agency treated offerors disparately by assessing three strengths to Nexagen's proposal for, what LinTech views as identical features in LinTech's proposal under the technical approach evaluation factor. Comments at 12-14. For each of these strengths, the agency explains in detail how the strengths, assessed only to Nexagen's proposal, were based on meaningful differences in the offerors' proposals and not the result of disparate treatment. Supp. MOL at 6-11.

It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Rockwell Elec. Commerce Corp.*, B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5. However, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

LinTech's disparate treatment arguments are without merit; the proposals are not meaningfully the same in the ways the protester suggests. In addition, the protester misreads the strengths assigned by the agency. LinTech first contends that its proposal should have also been assessed a strength under the DevSecOps framework support plan subfactor for proposing a holistic approach which, according to LinTech, the agency assigned to Nexagen for taking into consideration the needs of stakeholders' involvement and requiring stakeholder buy in. Comments at 12. LinTech argues that its proposal repeatedly recognized the need for a holistic approach that included stakeholder involvement but was not similarly assessed a strength. *Id.*

The agency explains that LinTech's argument is based on an oversimplification of the strength assessed to Nexagen. Supp. MOL at 8-9; see *also* AR, exh. 19, TEB 2nd Decl. at 1-3. Specifically, the agency explains that Nexagen was assessed a strength for having a holistic approach, which included in part the importance of stakeholder involvement. The agency also explains that Nexagen's holistic approach included a "detailed [DELETED], compliance with standards and policy, detailed information on the [DELETED], and a detailed [DELETED]." AR, exh. 19, TEB 2nd Decl. at 1. By contrast, LinTech's proposal noted compliance with standards and policy and various areas of stakeholder involvement, which the agency concluded was not sufficiently

⁵ LinTech also argues that it should have been assessed a strength for proposing to use the [DELETED] and [DELETED] Method. Protest at 7. As discussed above, the agency already assessed a strength to this aspect of LinTech's proposal. AR, exh. 12, TEB Report at 16. Accordingly, we dismiss LinTech's challenge as legally and factually insufficient. 4 C.F.R. §§ 21.1(c)(4) and (f).

comprehensive to be considered a holistic approach. *Id.* On this record, we agree with the agency that the offerors did not, as the protester argues, propose identical approaches that warranted the assessment of an identical strength.

LinTech next asserts that its proposal should have, similar to Nexagen's proposal, also been assessed a strength under the DevSecOps framework support plan subfactor for understanding the needs for an [DELETED] transition. Comments at 13. As support, LinTech again argues that its proposal repeatedly addressed the need for an [DELETED] approach, and that LinTech's proposal provided an example of this type of past experience "to demonstrate its understanding and capability." *Id.*

The agency explains that Nexagen was assessed a strength for demonstrating how it would transition from the existing development framework to a new DevSecOps framework. Supp. MOL at 10-11; AR, exh. 19, TEB 2nd Decl. at 4-6. By contrast, the TEB found that LinTech's proposal did not identify a detailed plan to transition to a new framework, but rather described an [DELETED] approach to software development-- which according to the agency, is an industry standard in any DevSecOps framework. Supp. MOL at 9. The agency explains that LinTech's [DELETED] approach to software development was not "a plan to transition an entire framework for the systems" and was not "an approach to take the systems from the as-is to a new framework." AR, exh. 19, TEB 2nd Decl. at 5-6. The agency also points out that the remaining references to transition in LinTech's proposal were in relation to hiring existing contractors and in relation to an ITSM framework. *Id.* at 4. Again, on this record, we agree with the agency that the offerors did not propose the same approach that warranted the assessment of the same strength.

Finally, LinTech argues that its proposal should have been assessed a strength under the ITSM subfactor for also recognizing the need for continuous improvement (CSI)⁶ across tasks. Comments at 13-14. Again, to support its argument LinTech asserts that its proposal made repeated references to continuous improvement "with six of those references appearing under Sub-factor II, ITSM Approach," as well as pointing to examples that purportedly addressed the importance of continuous improvement. *Id.* at 14. The agency explains that not only did Nexagen demonstrate an understanding that CSI was "a key component in an ITSM approach," but Nexagen also [DELETED] in its proposal, demonstrating a "wholeness in mature ITSM approaches" that exceeded the solicitation's requirements. Supp. MOL at 10-11; AR, exh. 19, TEB 2nd Decl. at 6-8. By contrast, the agency notes that LinTech proposed a more generic CSI approach by describing CSI, but not demonstrating how it would incorporate CSI into the PWS tasks in the manner Nexagen did. Supp. MOL at 10; AR, exh. 19, TEB 2nd Decl. at 7. On this record, we find nothing unreasonable about the agency's evaluation and agree with

⁶ The PWS defines "continual service improvement (CSI)" as an ITSM support activity. RFP at 66. In referring to CSI, the parties often shorten it and refer to it simply as "continual improvement." See, e.g., AR, exh. 12, TEB Report at 15; AR, exh. 19, TEB 2nd Decl. at 6; Comments at 14.

the agency that the offerors did not propose the same approach that warranted the assessment of the same strength.

Evaluation of Nexagen Under the Technical Approach Factor

The protester argues that Nexagen's proposal should have been assessed a deficiency under the DevSecOps framework support plan subfactor for failing to provide examples of its own experience to demonstrate an understanding of, and capability to meet, the requirements of the solicitation. Comments at 6-7; Supp. Comments at 1-3. According to the protester, the solicitation required offerors to provide examples of their own experience, not that of their subcontractors. *Id.* As a result, LinTech argues that because Nexagen's examples for "Team Nexagen," which includes not only Nexagen but also its subcontractors, Nexagen's proposal failed to satisfy a requirement of the solicitation. As such, LinTech contends that Nexagen's proposal should have been assessed a deficiency, assigned an unacceptable rating, and found ineligible for award. Comment at 7-8.

The agency explains that the solicitation did not prohibit offerors from relying on their subcontractors' experience to demonstrate an offeror's ability to meet the requirements of the solicitation. Supp. MOL at 2 (*quoting* RFP at 16). We agree.

Under the DevSecOps framework support plan subfactor, the solicitation stated that the offeror's proposed DevSecOps framework support plan would be evaluated on: (a) ability to demonstrate an understanding of PWS requirements; and (b) capability, comprehensiveness, and the degree to which the offeror demonstrates how the PWS requirements will be successfully accomplished. RFP at 19. The solicitation specifically instructed offerors to provide a support plan that will successfully accomplish all the requirements of the PWS and demonstrate an understanding and capability to meet all of the requirements of the PWS. Relevant here, the solicitation also stated that offerors "shall give examples where they have supported vision, approach, implementation, and provide DevOps/DevSecOps skills that continue to be a success." RFP at 16.

On this record, LinTech's arguments provide no basis to sustain the protest. There is nothing in the solicitation that requires examples provided under this subfactor to only have been performed by the prime contractor. In this regard, the RFP does not contain any evaluation criteria requiring the agency to assess an offeror's reliance on (or lack thereof) subcontractors. Nothing in the RFP stated that an offeror could not satisfy this requirement through the use of subcontractors. *See Johnson Controls Sec. Sols.*, B-418489.3, B-418489.4, Sept. 15, 2020, 2020 CPD ¶ 316 at 13; *see also Sigmatech, Inc.*, B-415028.3, B-415028.4, Sept. 11, 2018, 2018 CPD ¶ 336 at 7 ("[I]n the absence of an express provision in the [solicitation] stating that the agency would assess risk based on the use of subcontractors, we find no basis to conclude that the agency unreasonably failed to assign such risk."). In sum, the RFP did not prohibit offerors from relying on their subcontractors' experience. Accordingly, this protest ground is denied.

Evaluation of Nexagen Under the Past Performance Factor

LinTech argues that the agency should have assigned Nexagen's proposal a limited confidence rating under the past performance factor because: (1) Nexagen did not, and could not, provide three recent references with more than a single year of performance as required by the solicitation; and (2) the references should not have been found to be relevant because the magnitude of Nexagen's past performance was not similar to the current effort. Comments at 8-12; Supp. Comment at 3-4. The agency explains that the record reflects that the agency reasonably assigned a "satisfactory confidence" rating to Nexagen's proposal. Supp. MOL at 2-6.

The evaluation of an offeror's past performance is within the discretion of the contracting agency; our Office will, however, question an agency's evaluation of past performance where it is unreasonable or undocumented. *Northrop Grumman Sys. Corp.*, B-412278.7, B-412278.8, Oct. 4, 2017, 2017 CPD ¶ 312 at 16; *Solers, Inc.*, B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 8. Our Office will examine an agency's evaluation of past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. *Richen Mgmt., LLC*, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. *AT & T Corp.*, B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19.

The solicitation advised that past performance would be evaluated based on recency, relevancy, and quality. RFP at 20. Offerors were required to submit up to three references, performed within the past five years, demonstrating at least one year of competed performance prior to the closing date of the solicitation. RFP at 17, 20. The solicitation advised that the "aggregate of each offeror's past performance references in terms of scope and magnitude will result in the assessed overall relevance of that offeror's past performance."⁷ *Id.* at 20. If an offeror's aggregate past performance was determined to be somewhat relevant, or greater, then each past performance reference under the offeror's past performance submission that contributed to the determination of aggregate relevance (*i.e.*, each reference that is rated at least somewhat relevant) would be evaluated to determine the quality of the offeror's performance under that reference. *Id.* at 21. The solicitation advised that quality of the past performance would be assessed based on information through various sources, including questionnaires and existing data sources such as the Contractor Performance Assessment Reporting System. *Id.* Finally, the solicitation stated that confidence assessment ratings would be assessed based on the overall quality of the recent and relevant past performance and

⁷ The solicitation defined "somewhat relevant" as "[p]resent/past performance effort involved some of the scope and magnitude of effort this solicitation requires." RFP at 22. "Relevant" was defined as "[p]resent/past performance effort involved similar scope and magnitude of effort this solicitation requires." *Id.*

will also consider the currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance.⁸ *Id.*

Nexagen submitted three references. While all three references contained performance within the five year period, one reference did not have at least one year of completed performance and was not considered in the evaluation. AR, exh. 14, BCM at 34. The other two references had exactly one year of completed performance and were considered to be recent by the agency. With regard to scope, one reference was found to be essentially the same in scope as the effort here because Nexagen provided the same services outlined in the PWS, while under the other reference, Nexagen provided the same services in six of the eight critical areas outlined in the PWS. *Id.* at 34-35. With regard to magnitude, the agency found that while the references' aggregate annual value (\$3.1 million) was lower than the independent government estimate for the base year of the contract (\$[DELETED] million), the references were considered relevant because the aggregate scope was essentially the same.⁹ *Id.* Finally, the agency considered information provided in the past questionnaires and concluded that Nexagen demonstrated a reasonable expectation that the offeror will successfully perform the requirements. As such, the agency asserts that Nexagen's past performance warranted a "satisfactory confidence" rating. *Id.*

On this record, we find the agency's evaluation reasonable and LinTech's arguments provide no basis to sustain the protest. Here, the solicitation instructed offerors to submit up to three past performance references that were performed within a 5-year period with at least one year of performance completed. The two references considered by the agency satisfied these requirements. Nexagen's insistence that the agency should have considered other factors such as "Nexagen could only provide a total of two years[] worth of recent experience" and that Nexagen was "incapable of providing recent references with more than a single year of performance," are considerations not borne out of the solicitation requirements and would have been inconsistent with the solicitation's stated evaluation factors.

⁸ The solicitation defined a "limited confidence" rating as "[b]ased on the offeror's recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort." RFP at 23. The solicitation defined a "satisfactory confidence" rating as "[b]ased on the offeror's recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort." RFP at 22.

⁹ The solicitation defined "relevant" as "[p]resent/past performance effort involved similar scope and magnitude of effort this solicitation requires." RFP at 22. By contrast "very relevant" was defined as "[p]resent/past performance effort involved essentially the same scope and magnitude of effort his solicitation requires," while "somewhat relevant" was defined as "[p]resent/past performance effort involved some of the scope and magnitude of effort this solicitation requires." *Id.*

Similarly, LinTech's claim that to be determined "relevant," a past performance reference was required to be similar in both scope and magnitude, respectively, is not supported by the solicitation. Here, the solicitation clearly contemplated that relevancy would be determined in the aggregate, considering both scope and magnitude together. RFP at 20. The record shows--and LinTech does not dispute--that Nexagen demonstrated experience in the full scope of PWS tasks, despite the smaller magnitude of its earlier efforts, when compared to the solicitation. Finally, the information from the past performance references support the agency's finding that the agency has a reasonable expectation that the offeror would successfully perform the required effort. In this regard, the agency received comments of excellent for one reference, satisfactory for the other, and both respondents indicated that they would hire Nexagen again. While LinTech may disagree, the protester's disagreement alone provides no basis to disturb the agency's evaluation here. *AT & T Corp., supra*. Accordingly, this protest ground is denied.

Best-Value Tradeoff Determination

Finally, LinTech argues that the best-value tradeoff decision is flawed because it relied on flawed underlying evaluations and is not supported by the record. Comments at 15. Again, we disagree.

Selection officials have considerable discretion in making price/technical tradeoff decisions. *DGC, Int'l*, B-410364.3, Apr. 22, 2015, 2015 CPD ¶ 136 at 6. The propriety of the tradeoff does not turn on the differences in ratings and/or cost/prices *per se*, but on whether the selection official's judgment concerning the significance of the differences was rational and consistent with terms of the solicitation. *Id.* In this context, the documentation supporting the decision must be sufficient to establish that the selection official was aware of the relative merits and costs of the competing proposals. *General Dynamics-Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8-9.

Here, the record demonstrates that the SSA's best-value tradeoff decision was based on a detailed qualitative comparison of the proposals, consistent with the stated evaluation scheme, and identified discriminators between the proposals under each factor. AR, exh. 14, BCM at 48-50. As part of the SSA's tradeoff decision, the SSA acknowledged that LinTech received the highest past performance rating. *Id.* at 50. However, the SSA found that given the solicitation's stated relative importance of evaluation factors--technical approach was more important than past performance--LinTech's superior past performance record was not substantial enough to outweigh the superiority of Nexagen's technical approach. As a result, the SSA concluded that Nexagen offered the highest-rated overall proposal under the non-price factors. *Id.* Moreover, because LinTech's price was higher than Nexagen's price, the SSA found that Nexagen's proposal offered the best-value to the government.

Given that LinTech has not prevailed on its substantive challenges to the agency's evaluation, and the record shows that the agency's selection decision had a reasonable

basis and was properly documented, we see no basis to disturb the selection decision here.

The protest is denied.

Thomas H. Armstrong
General Counsel