



## Decision

**Matter of:** Kathleen N. Cole & Associates, LLC

**File:** B-419129

**Date:** October 29, 2020

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Kathleen N. Cole, for the protester.

John B. Alumbaugh, Esq., and Eugene J. Benick, Esq., United States Agency for International Development, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging solicitation's requirement to provide both English and Spanish consultant services to improve supervisory skills for the agency's staff in Peru on the basis that the dual language requirement is unduly restrictive of competition is denied where the agency's requirement is reasonably related to its needs.

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### DECISION

Kathleen N. Cole & Associates, LLC, a small business, of Brevard, North Carolina, challenges the terms of request for quotations (RFQ) No. 72052720Q00002, issued by the United States Agency for International Development (USAID), for consultant services to improve supervisory skills at the agency's Mission in Peru.<sup>1</sup> The protester alleges that the requirement for the services to be provided in both English and Spanish is unduly restrictive of competition.

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<sup>1</sup> The term "Mission" refers to the USAID body of persons sent to perform a service in a cooperating country. See USAID Automated Data System (ADS), Glossary of ADS Terms, at 165, available at <https://www.usaid.gov/who-we-are/agency-policy/glossary-ads-terms> (last visited Oct. 28, 2020). The USAID Mission in Peru, which is based in the U.S. Embassy Compound in Lima, focuses on strengthening governance to: promote licit livelihoods in coca-growing regions; improve sustainable resource management; and enhance integrity and reduce corruption. See USAID/Peru, Frequently Asked Questions, available at <https://www.usaid.gov/peru/frequently-asked-questions> (last visited October 28, 2020).

We deny the protest.

## BACKGROUND

On August 19, 2020, USAID issued the RFQ pursuant to the simplified acquisition procedures of Federal Acquisition Regulation subpart 13.5 seeking quotations for consultant services to improve USAID/Peru's supervisory skills and offering a wide range of individual, team, and Mission-wide performance management approaches to enhance staff morale and effectiveness through a strong culture of leadership, learning, and accountability. RFQ at 1. The USAID/Peru staff is composed of approximately 103 employees, including 76 Foreign Service Nationals, who are mostly Peruvian citizens averaging 17 years of service with USAID.<sup>2</sup> RFQ, amend. No. 1, at 4. The RFQ anticipates the issuance of a fixed-price purchase order with a 2-year period of performance to the vendor whose quotation represents the best value to the government, considering each vendor's strategic and technical approach, management approach, past performance, and price. RFQ at 3, 10. The anticipated award range is between \$151,000 and \$499,999. *Id.* at 3. The initial closing date for quotations was September 9. *Id.* at 1.

On September 4, the agency issued amendment 1 to the RFQ. Among other changes, amendment 1 extended the closing date until September 14, and incorporated responses to vendors' questions on the RFQ. RFQ, amend. 1, at 2-10. In response to vendors' questions, USAID confirmed that offerors will be required to provide the required services in both English and Spanish. *Id.* at 3, 9.

On September 12, the protester submitted its quotation in response to the RFQ. See Protest, exh. 2, Protester Quotation. On September 13, the protester filed this protest with our Office challenging the terms of the RFQ.

## DISCUSSION

The protester primarily alleges that the requirement to provide services in both English and Spanish is unduly restrictive of competition. Specifically, the protester argues that the dual language requirement is unnecessary because the protester believes "that Mission personnel are bilingual and that in many situations USAID provides translators." Protest at 1. In response to the protest, USAID argues that the requirement for the contractor to provide services in both English and Spanish is reasonably necessary to fulfill the agency's minimum needs because the services will be provided to the USAID Mission's staff in Peru, including to several native Spanish speakers. For the reasons that follow, we find that the agency has established that the dual language requirement

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<sup>2</sup> Approximately 30 percent of these Foreign Service Nationals are in Unit Chief or Project Manager positions. RFQ, amend. No. 1, at 19.

is reasonably related to the agency's needs, and, therefore, find no basis on which to sustain the protest.<sup>3</sup>

The Competition in Contracting Act of 1984 requires that agencies specify their needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 41 U.S.C. § 3301(a)(1). The determination of a contracting agency's needs and the best method for accommodating them is a matter primarily within the agency's discretion. *Gallup, Inc.*, B-410126, Sept. 25, 2014, 2014 CPD ¶ 280 at 5. A protester's disagreement with the agency's judgement concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. *CompTech-CDO, LLC*, B409949.2, Jan. 6, 2015, 2015 CPD ¶ 62 at 4. Moreover, the fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. *Allied Protection Servs., Inc.*, B-297825, Mar. 23, 2006, 2006 CPD ¶ 57 at 3.

Here, we find that USAID has reasonably established that the requirement for the services to be provided in both English and Spanish is reasonably necessary to meet the agency's requirements to serve its native Spanish speaking staff. As addressed above, the majority of the Mission's personnel are native Peruvians, including a significant number in Unit Chief and Project Manager positions. Specifically, the contracting officer explains that the RFQ:

[S]tated that the services to be performed were for USAID staff in our Perú Mission, the mission staff includes local employees. Local staff are native Spanish speakers with varying levels of English proficiency and hold positions within the Mission that range from clerks to senior specialists. Although our local staff are generally bilingual, proficiency levels among them vary. Moreover, as is true with any native language, individuals are more comfortable communicating in their native language and our staff is no different. This is particularly true when the information being conveyed involves a complex subject matter.

Contracting Officer's Statement at 1.

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<sup>3</sup> Alternatively, the protester requests that our Office recommend that the agency reimburse the protester for the costs that it incurred to prepare its quotation due to USAID's failure to explicitly include the Spanish requirement in the initial RFQ. We find no basis to recommend reimbursement of the protester's costs. As we have recognized, an offeror always runs the risk that an agency may need to amend or even cancel a solicitation; the cost of preparing its proposal thus is a cost of doing business with the government which an offeror reasonably should expect to incur. *Anamar Environmental Consulting, Inc.--Costs*, B-411854.4, B-411854.7, Nov. 9, 2016, 2016 CPD ¶ 327 at 9.

Additionally, the agency notes that the RFQ does not require the consultants themselves to provide the services in English and Spanish. Rather, vendors could propose to utilize Spanish translators or another approach to fulfill the agency's requirements. *Id.* at 2. On this record, we find that the agency has reasonably established that the requirement for services to be provided in both English and Spanish is reasonably related to the agency's needs, and is not otherwise unduly restrictive of competition.<sup>4</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>4</sup> The protester also argues that Spanish language services will not likely be necessary because its proposed approach is tailored to USAID leadership staff that are likely "sufficiently bi-lingual to handle complex communications and effectively work with USAID in the United States as well as in other countries." Comments at 1. We do not find, however, that the protester's disagreement with the agency about its preferred target audience (or those individuals' level of English proficiency) for the services being acquired is sufficient to demonstrate that the agency's requirements are unduly restrictive of competition.