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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Nexagen Networks, Inc.

File: B-411209.7

Date: June 20, 2016

Rajesh Parikh, for the protester.

Debra J. Talley, Esq., Department of the Army, U.S. Army Materiel Command, for the agency.

Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation requirements as unduly restrictive and reflecting bias in favor of the incumbent contractor is denied where the record supports the agency's position that the requirement is reasonably necessary to meet the agency's needs.

DECISION

Nexagen Networks, Inc. (Nexagen), of Aberdeen, Maryland, challenges the terms of task order request (TOR) SSES-R-2057, issued by the Department of the Army for certain information technology services. Nexagen argues that the solicitation's requirements for experience with Oracle Endeca Information Discovery (OEID) is unduly restrictive of competition and reflects bias in favor of the incumbent contractor.

We deny the protest.

BACKGROUND

The solicitation was issued on February 12, 2016, under Federal Acquisition Regulation (FAR) part 16 to firms that had been awarded a Systems and Software Engineering Support Next Generation (SSES Nexgen) indefinite-delivery/indefinite-

quantity (IDIQ) contract¹ for data strategy, services, and software support.² TOR at 1. The TOR contemplated the issuance of a single, cost-plus-fixed-fee task order, with a one-year base period and one surge option. TOR at 1, 15. Award was to be made on a best-value basis, considering the following factors: technical/risk factor and cost/price. Id. at 13, 15. Proposals were to be submitted as separate technical and cost/price volumes. Id. at 5. The technical volume was to include four chapters: technical approach, technical proficiency, management plan, and proposed level of effort. Id. at 5-7. The solicitation stated that the technical/risk factor was significantly more important than cost/price. Id. at 13.

As relevant here, in the technical proficiency chapter of the technical volume, offerors were instructed to provide two examples of “software engineering projects where either the [o]fferor or its teaming partner/subcontractor used [OEID] or equivalent in the commercial or [g]overnment market.” Id. at 6. Offerors were required to submit a description of the project and explain “why any similar technology submitted is relevant to [OEID].” Id. The solicitation stated that the agency would “evaluate the two (2) projects that used [OEID] or equivalent to determine the extent to which it demonstrates the offeror has an understanding of [OEID] or equivalent and its ability to utilize the platform or equivalent platform in performance of this contract.” Id. at 13.

Prior to the due date for task order proposals, Nexagen filed an agency-level protest arguing that as the TOR was written, the only vendor capable of satisfying the agency’s requirements was the incumbent contractor. See Agency Report (AR), Tab 2A, Agency-Level Protest. Nexagen raised four protest grounds, asserting that the agency should revise its requirements, evaluation factors, and basis for award. See id. at 4-7. Nexagen also contended that the agency failed to allow sufficient time to respond to the TOR and post the TOR on FedBizOpps, the official government-wide point of entry. See id. at 6-7. The agency-level protest was dismissed by the agency for lack of jurisdiction under FAR 16.505(a)(10)(i)(B). See AR, Tab 2B, Dismissal of Nexagen Agency-Level Protest. This protest followed.

¹ Three amendments were issued to the solicitation. All citations to the TOR are to the final version, as amended on March 22, 2016.

² The solicitation lists the requirements as providing support for Army strategic data initiatives; development and implementation of customer data centric solutions; and life cycle development and sustainment of test tools, business intelligence tools, and support to the Army Net-Centric Data Strategy Center of Excellence. TOR, Performance Work Statement (PWS) at 3.

DISCUSSION

Nexagen challenges the solicitation as unduly restrictive of competition and as reflecting bias in favor of the incumbent contractor. Specifically, Nexagen contends that the manner in which OEID has been implemented in the agency's Enterprise Management Decision Support System³ (EMDS) is "very unique and rare," and that the only vendor capable of satisfying this requirement would be the incumbent contractor that provided EMDS support. Protest at 5. In this regard, Nexagen asserts that the incumbent has an exclusive agreement with NuWave Solutions LLC (NuWave), the vendor that previously provided the OEID support.⁴ Id. Nexagen argues that only a firm that can offer NuWave as a subcontractor could be awarded a task order in this circumstance. Comments at 2.

In response, the agency explains that while the EMDS system requires OEID support, the agency determined that there are other types of software that are OEID-equivalent, and vendors that possess OEID experience and/or OEID-equivalent experience. See AR, Combined Contracting Office Statement of Facts and Memorandum of Law (COSF/MOL) at 3-4; AR, Tab 8, Online Research Regarding Oracle Endeca Competitors and Alternatives; AR, Tab 8A, Online Research Regarding Commercial Firms Utilizing Oracle Endeca. As a result, the TOR instructed offerors to provide, in the technical proficiency chapter of the technical volume, two examples of "software engineering products where either the [o]fferor or its teaming partner/subcontractor used [OEID] or equivalent in the commercial or [g]overnment market" to determine the extent to which "it

³ EMDS is a web-enabled, database-driven system operated on the Secret Internet Protocol Router Network (SIPRNet) network. TOR, Appendix C, System Descriptions at C-3. EMDS pulls disparate data from multiple authoritative data source systems in near real-time, to deliver an Army-wide common operating picture of Global Force Readiness information for planning, assessment, and forecastings. Id. OEID is listed as one of 11 support tools and applications as a front end data analytics tool. Id. at C-4.

⁴ Nexagen's protest to our Office raises identical arguments as those raised in its agency-level protest. Compare Protest with AR, Tab 2B, Agency-Level Protest. The agency furnished detailed responses to the protester's arguments in its report to our Office. When the protester filed its comments on the report, however, it did not take issue with, or seek to rebut, the agency's responses, other than those discussed herein. Under these circumstances, we consider the protester to have abandoned the arguments that it failed to further address. Emergint Techs., Inc., B-408410.3, Apr. 4, 2014, 2014 CPD ¶ 123 at 5 n.4. While the protester incorporates by reference its response to the agency's request for summary dismissal in its comments, that response did not specifically address the agency's responses in the agency report. See Response to Agency's Request for Summary Dismissal.

demonstrates the offeror has an understanding of [OEID] or equivalent and its ability to utilize the platform or equivalent platform in performance of this contract.” See AR, COSF/MOL at 2-3; see also TOR at 6, 13 (emphasis added).

Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency’s needs. See Streit USA Armoring, LLC, B-408584, Nov. 5, 2013, 2013 CPD ¶ 257 at 4. We examine the adequacy of the agency’s justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7. A protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s judgment is unreasonable. Exec Plaza, LLC, B-400107, B-400107.2, Aug. 1, 2008, 2008 CPD ¶ 143 at 5.

We find that the agency has established that the requirement for OEID or OEID-equivalent experience is reasonable. First, Nexagen has not refuted the agency’s assertion that the EMDS system requires OEID support. COSF/MOL at 3. Further, the solicitation allowed for offerors to demonstrate an understanding of, and ability to utilize, not only OEID but also any equivalent products; permitted an offeror to rely on the experience of a teaming partner or subcontractor to meet this requirement; and permitted such experience to have been gained in a commercial or government market—all provisions that potentially enhance competition. TOR at 6.

While in its comments on the agency report, Nexagen challenges the government’s statements regarding equivalency, arguing that they “cannot be reasonably taken at face value,” we find no meaningful support in the record for the protester’s contention. See Comments at 3. Moreover, to the extent Nexagen’s premise is that there is no equivalent software available, that alone would not demonstrate that the TOR’s requirement is unduly restrictive. Again, the issue is not whether the specification restricts competition, but whether the specification is reasonably necessary to meet the agency’s actual needs. Even where specifications are based on a particular product--or, as Nexagen alleges here, a particular firm’s capabilities or experience--we have found that this type of requirement is not improper in and of itself; nor will an assertion that a specification was “written around” features offered by a particular firm provide a sustainable basis for protest if the record establishes that the specification is reasonably related to the agency’s minimum needs. See Persistent and Determinant Technologies LLC, B-408342, Aug. 22, 2013, 2013 CPD ¶ 198 at 2.

We also do not find that Nexagen has made the requisite showing to establish bias. In its comments, Nexagen claims that agency officials made statements during the transition of a previous task order that because NuWave implemented EMDS using OEID in a customized fashion, the agency purportedly had concerns about

transitioning to another contractor at the time and suggested adding NuWave as a subcontractor on that task order. See Comments at 2-3. In this regard, a protester's contention that contracting officials are motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Veterans Healthcare Supply Solutions, Inc., B-411904, Nov. 12, 2015, 2015 CPD ¶ 354 at 8. This is because government officials are presumed to act in good faith. Id. Where as here, Nexagen provides no evidence supporting its allegations beyond statements purportedly made by government officials, we will not sustain the protest on the basis of these allegations.

The protest is denied.

Susan A. Poling
General Counsel