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Decision

Matter of: International Business & Technical Consultants, Inc.

File: B-310424.2; B-310424.3; B-310424.4

Date: September 23, 2008

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., Mary Pat Gregory, Esq., and Matthew L. Haws, Esq., Smith Pachter McWhorter, PLC; and Robert Sonenthal, Esq., and Nina G. Nathani, Esq., Sonenthal and Overall, PC, for the protester.
John E. Jensen, Esq., Daniel S. Herzfeld, Esq., and Orest J. Jowyk, Esq., Pillsbury Winthrop Shaw Pittman LLP, for The QED Group, LLC, an intervenor.
Warren D. Leishman, Esq., Adam J. Bushey, Esq., and Elizabeth A. Ransom, Esq., Agency for International Development, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of protester's technical proposal is denied where record demonstrates that evaluation was reasonable and consistent with stated evaluation criteria.
 2. Protest that agency failed to hold meaningful discussions with protester is denied where record shows that discussions either were adequate to lead protester into areas of its proposal with which agency was concerned, or that allegations concern minor weaknesses that agency was not required to discuss.
 3. Raising limited cost-related questions with awardee during second round of discussions, while requesting protester's revised proposal without further questions, did not constitute improper disparate discussions; agency conducted detailed initial discussions with both offerors and found revised proposals acceptable, and only remaining questions concerned matters unique to awardee's cost proposal.
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DECISION

International Business & Technical Consultants, Inc. (IBTCI) protests the award of a contract to The QED Group under request for proposals (RFP) No. M-OAA-DCHA-DOFDA-06-1568, issued by the Agency for International Development (AID) for contractors to implement anticorruption programs pursuant to AID's Encouraging Global Anticorruption and Good Governance Efforts (ENGAGE) program. IBTCI

asserts that the agency improperly evaluated its technical proposal and failed to provide it with meaningful discussions.

We deny the protest.

The solicitation provided for the award of up to five contracts, including one set aside for small business concerns, the award in issue here. The solicitation provided that award under the set-aside would be made on a “best value” basis considering the following evaluation factors: technical understanding (with subfactors for technical soundness of analysis/proposed programmatic strategies, inclusion of innovative approaches, understanding of different strategic approaches, and understanding of issues through discussion of specific relevant experiences); institutional capability (ability to evaluate country conditions, ability to implement and manage multiple complex international governmental integrity and anticorruption projects, ability to maintain relationships with host country counterparts, and ability to monitor implementation and impact of multiple complex projects); personnel (background, skills, and experience of proposed management personnel, the senior technical advisor and the contract manager, and background skills and experience of candidates proposed in each functional labor category); past performance; small disadvantaged business (SDB) participation program; and price. RFP § M.

Three small business offerors submitted proposals and, following discussions and the submission and evaluation of final proposal revisions, QED’s proposal was ranked first technically with a score of 62.69 and a price of \$5,771,170, and IBTCI’s was ranked second with a score of 57.14 and a price of \$5,646,280. The agency performed a best value analysis and selected QED for award. IBCTI protests that decision.

TECHNICAL EVALUATION

IBTCI raises numerous challenges to the evaluation of its technical proposal under each factor. In reviewing a protest against an agency’s proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Phillips Med. Sys. N. Am. Co., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have reviewed the record and find that IBTCI’s arguments are without merit. We discuss several of those arguments below.

Inclusion of Innovative Approaches Subfactor

Under the inclusion of innovative approaches subfactor (under the technical understanding factor), proposals were evaluated, among other things, based on approaches responsive to complex anticorruption strategies and programming challenges with regard to political corruption. RFP § M at 12. The agency assigned IBTCI’s proposal a weakness based on the technical evaluation committee’s (TEC)

finding that “[t]he revised proposal responds . . . with a complete and nuanced discussion of political corruption and program approaches to address it . . . , [but] there is still very little specificity about what programs in the three categories would look like.” Final Proposal Evaluation at 3.

IBTCI asserts that, since the TEC found that its discussion of “political corruption and the program approaches to address it” was “complete and nuanced,” it was inconsistent and unreasonable for AID to assign the proposal a weakness for its discussion of the approaches to addressing political corruption. Protester Comments at 19.

This argument is without merit. While the agency found that IBTCI’s proposal provided a complete discussion of political corruption and program approaches addressing that corruption, it downgraded the proposal for failing to discuss the details of actual programs that would be implemented. For example, the proposal lists as one type of program addressing political corruption, “those aimed at creating an informed, demanding, and democratically oriented electorate.” Revised Proposal at 4. IBTCI’s proposal goes on to state that this type of program addresses the demand end of the corruption equation, and describes the benefits of these programs and provides general information about them; for example, it states that “[m]ost interventions of this kind are carried out in collaboration with civil society organizations. . . .” *Id.* What is missing from this program description is a more specific explanation of the practical details of the actual programs that will be implemented. This is precisely the weakness identified by the agency. Accordingly, we find nothing unreasonable in the agency’s evaluation in this area.¹

Ability To Evaluate Country Conditions

Under the ability to evaluate country conditions subfactor (under the institutional capability factor), proposals were evaluated based on, among other things, the offeror’s demonstrated ability to draw on subcontractors and other institutions for expertise and to develop innovative program approaches to address emerging issues in anticorruption and government integrity. RFP § M at 12. The agency downgraded IBTCI’s proposal on the basis that, while it provided information regarding the

¹ Under the strategic approach subfactor (under the technical approach factor), AID found that IBTCI’s proposal failed to discuss the impact of weak institutions in rebuilding states. Final Evaluation at 3. In its report, the agency acknowledges that this comment was inaccurate based on an oversight brought about by the poor organization of the protester’s proposal, but maintains that this correction would have no real effect on the overall evaluation of IBTCI’s proposal. AR at 6. As this was only one of several evaluated weaknesses in IBTCI’s proposal under this subfactor, based on the record, there is no reason to believe that it impacted the overall evaluation.

experience of its consortium members, their experience was in complementary program areas, not in comprehensive anticorruption assessments. Final Proposal Evaluation at 4.

IBTCI argues that, since the RFP did not specifically require offerors to provide examples of comprehensive anticorruption assessments, it was improper for the agency to downgrade its proposal for this reason. The protester also argues that, since the evaluation factor concerns institutional capability, experience performing any type of comprehensive assessment should have been given the same evaluation credit as anticorruption assessments.

The evaluation in this area was reasonable. First, while the RFP did not expressly require examples of anticorruption assessment experience of “subcontractors and other institutions,” such experience clearly was relevant to addressing the factor as described in the RFP—demonstrated ability to draw on subcontractors and other institutions for expertise and to develop innovative program approaches to address emerging issues in anticorruption and government integrity. RFP § M at 12. The fact that an RFP does not explicitly provide for considering certain information does not preclude the agency from considering it where, as here, the information is reasonably related to or encompassed by the stated criteria. See MCA Research Corp., B-278268.2, Apr. 10, 1998, 98-1 CPD ¶ 129 at 8. More generally, there was nothing improper in the agency’s considering whether IBTCI’s proposal provided evidence of experience performing anticorruption assessments—rather than assessments generally—given that the requirement specifically concerns anticorruption programs. See generally Human Resource Sys., Inc.; Health Staffers, Inc., B-262254.3 et al., Dec. 21, 1995, 96-1 CPD ¶ 35 at 3 (where solicitation provides for evaluation of experience, agency properly may consider extent of offerors’ directly related experience).

Background, Skills, and Experience Subfactor

Under the personnel factor, the subfactor concerning management personnel called for offerors to demonstrate the quality and appropriateness of the background, skills, and experience of, among others, the proposed senior technical advisor (STA), including professional experience. RFP § M at 13. The RFP advised that overall credentials and developing country experience would be considered. Id. The TEC found many strengths in the protester’s proposed STA, but also identified as a weakness his lack of long-term, on-the-ground experience in assignments in developing countries. Evaluation at 13. IBTCI maintains that this weakness was unwarranted because the RFP did not require that the STA have long-term, on-the-ground experience. The protester asserts that such experience is unnecessary in any case, since the STA position is based in Washington and has primary responsibility for Washington-based activities.

AID explains that, notwithstanding the STA's physical location, it is important for the STA to have long-term, on-the-ground experience because the agency believes it provides useful insights, strengthens capabilities, and broadens understanding regarding the complexities of working in different cultural and political contexts, as well as with the unique and varied challenges international development implementers may face on the ground dealing with sensitive issues of corruption, government transparency, and imposing oversight mechanisms. Supplemental Agency Report at 2. More specifically, the agency believes that such experience will aid the STA in designing and providing advice regarding implementation programs by exposing the STA to many management and relationship building challenges that are part of implementing long-term, on-the-ground programs in foreign countries. *Id.* at 3.

In response, the protester argues that the nature of the experience, not the length of the experience, should dictate its value. The protester also argues that, since the agency states that certain skills and experience "may" rather than "shall" arise from long-term assignments, the agency itself recognizes that there is no basis for distinguishing between long- and short-term experience.

The evaluation was reasonable. First, while the RFP did not specifically distinguish long- from short-term experience, there was nothing improper in the agency's considering all experience of the proposed STA. Again, agencies are required to identify the evaluation factors and significant subfactors, but they are not required to identify all areas of each that might be taken into account, provided that any unidentified areas are reasonably related to or encompassed by the stated criteria. MCA Research Corp., *supra*. Further, the protester's semantic argument based on the agency's use of the term "may" is disingenuous. The question, in our view, is not whether a proposed individual definitely would benefit from certain experience, but whether the agency has established a reasonable nexus between the required experience and the tasks the individual will perform under the contract. As noted, the agency has fully explained the specific benefits it believes are to be gained from long-term experience in management and relationship-building challenges, and the protester has not established that there is no reasonable nexus between the experience and the contract. While it is implicit, we think, that, as IBTCI asserts, the nature of the experience is important, that fact does not establish that the length of the experience is not a valid consideration.

Past Performance

AID evaluated IBTCI's past performance on a project in the Ukraine as a weakness (among other weaknesses), Final Proposal Evaluation at 5, based on a performance evaluation submitted by the Cognizant Technical Officer (CTO), which provided average and below average ratings and negative commentary regarding IBTCI's judgment. Final Evaluation at 5. The protester claims that relying on this evaluation was improper because the CTO transmitted the information to the agency in an

e-mail, instead of sending the contractor performance report (CPR) that was completed during IBTCI's performance of the project.²

This argument is without merit. The agency explains that the CTO prepared a draft CPR during IBTCI's performance of the contract and sent it to IBTCI for comments. SAR at 9. The CTO took the protester's comments, including its dispute of negative ratings, into consideration, adjusted the ratings, provided a response to the comments, and forwarded the material to the contracting officer. Id. For some unexplained reason, no final CPR was ever prepared. When AID subsequently asked the CTO to provide an evaluation of IBTCI's past performance, the CTO completed the past performance questionnaire based on the draft she had sent to the contracting officer. Id. There is no requirement that past performance evaluations be based on official CPR's, see Del Jen Int'l Corp., B-297960, May 5, 2006, 2006 CPD ¶ 81; Global Solutions Network, Inc., B-298682.3, B-298682.4, June 23, 2008, 2008 CPD ¶ 131, and we see nothing in the agency's explanation, or elsewhere in the record, that calls into question the validity of the information in question. Accordingly, AID's consideration of the past performance evaluation provided by the CTO was unobjectionable.

SDB Participation Program Factor

Under the SDB participation program factor, proposals were evaluated based on the extent to which SDB concerns were specifically identified, the extent of commitment to using SDB concerns, the complexity and variety of the work SDB concerns are to perform, past performance in complying with goals for SDB concerns, monetary targets for SDB participation, and the extent of SDB participation in terms of the value of the total acquisition. RFP § M at 14-15. IBTCI questions why its proposal did not receive full credit under this factor, since it offered a participation target rate of [DELETED] percent of the total contract value--which was higher than the target

² IBTCI also argues that it was improper for the TEC to rely on the e-mail from the CTO because the individual had been the CTO for only a short time, and there is no evidence in the record that she had personal knowledge of the events on which she based her evaluation or that she consulted with someone with personal knowledge of the events. The protester also asserts that the Ukraine project is too old to provide a meaningful measure of its past performance. Arguments such as this must be raised no later than 10 days after the protester was or should have been aware of them. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2008). IBTCI was aware of the negative comments on its performance of the Ukraine project no later than July 28, when it filed its comments on the agency report, but did not raise these arguments until August 11, more than 10 days later. Accordingly, the arguments are untimely and will not be considered.

in its initial proposal and addressed a question under this factor raised by the agency during discussions--and was not assessed any weaknesses or deficiencies.

The evaluation in this area was reasonable. First, as noted above, the evaluation under this factor encompassed a number of considerations, not just the SDB participation target rate; thus, the fact that IBTCI offered a particular participation target rate, by itself, does not call into question the rating under the factor. Moreover, there is no requirement that a proposal that meets requirements without any weaknesses receive all available evaluation credit. See Roy F. Weston, Inc., B-274945 et al., Jan. 15, 1997, 97-1 CPD ¶ 92 at 15. The agency explains that, under this open-ended factor, proposals offering a higher percentage target, a greater number of SDB subcontractors, or SDB subcontractors performing a greater variety of complex work received more credit. Thus, again, the mere fact that the protester proposed a certain participation target rate in no way establishes that its proposal should have received some higher evaluation rating.³

DISCUSSIONS

IBTCI asserts that the discussions provided by AID were inadequate in several respects.

Discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify deficiencies and significant proposal weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. Lockheed Martin Corp., B-293679 et al., May 27, 2004, 2004 CPD ¶ 115 at 7. However, agencies satisfy this requirement where they lead offerors into the areas of their proposals that require amplification, Professional Perf. Dev. Group, Inc., B-279561.2 et al., July 6, 1998, 99-2 CPD ¶ 29 at 5; agencies are not required to afford offerors all encompassing discussions or to discuss every aspect of a proposal that receives less than the maximum score, and are not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 4. Agencies also need not afford an offeror additional opportunities to cure a weakness that remains in its proposal after it was brought to the offeror's attention during previous discussions. Portfolio Disposition Mgmt. Group, LLC, B-293105.7, Nov. 12, 2004, 2004 CPD ¶ 232 at 2.

³ IBCTI challenges the point scores its proposal received under various subfactors. However, since the RFP did not provide an objective scale under which certain scores would be assigned for certain proposal elements, this amounts to no more than a disagreement with the agency's judgment; this is not sufficient to show that the evaluation was unreasonable. I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 2.

We have reviewed all of the protester's arguments and find them to be without merit. We discuss several of those arguments below.

Discussion Of Political Corruption

During the initial evaluation, the TEC was concerned with the adequacy of IBTCI's discussion of political corruption, and therefore informed IBTCI during discussions that "[t]he proposal does not adequately address the problem of political corruption. Please provide additional discussion of responses to political corruption."

Discussion Questions at 1. In its revised proposal, IBTCI addressed the question by discussing three categories of political corruption; however, the agency found that the proposal failed to include details about what anticorruption programs in the three categories would look like, and assessed a weakness on this basis. Final Proposal Evaluation at 3. IBTCI asserts that the agency was required to point out this weakness during discussions. However, it is clear that, by advising the protester that its proposal "does not adequately address the problem of political corruption. Please address additional discussion of responses to political corruption," the agency led IBTCI into the area of its concern—the discussion of political corruption. This is all the agency was required to do; it was not required to point out to IBTCI during a successive round of discussions that it was not completely satisfied with its response. See Portfolio Disposition Mgmt. Group, LLC, *supra*.

Adverse Past Performance Information

IBTCI argues that the discussions were not meaningful because the agency did not provide the protester with the opportunity to respond to adverse past performance information concerning the Ukraine project. In this regard, where, as here, an agency holds discussions, it is required to allow an offeror to respond to adverse past performance information that it did not previously have an opportunity to address. Federal Acquisition Regulation (FAR) § 15.306(d). As discussed above, IBTCI was given the opportunity to respond to the adverse past performance information when the CTO prepared the draft CPR. AID was not obligated to provide IBTCI with another opportunity to respond to that past performance information. Del Jen Int'l Corp., *supra*.⁴

⁴ IBTCI argues that the agency improperly identified as a weakness that its proposed team seemed to be put together on speculation, with team members that have little or no past affiliation with the protester. The agency reports, however, and our review confirms, that this was not considered a major weakness or deficiency in the protester's proposal. Accordingly, the agency was not required to raise this matter during discussions. See MarLaw-Arco MFPD Mgmt., *supra*.

On September 18, 2007, after receiving and evaluating initial proposals, AID sent discussion letters containing technical and cost questions to each of the three offerors in the competitive range with responses due by October 18. On January 28, 2008, after reviewing the revised proposals, AID sent additional letters to each offeror requesting final proposal revisions (FPRs) by February 1. The letter that was sent to IBTCI stated that review of its revised technical proposal did not reveal any further concerns, but that IBTCI was free to revise its proposal in any way it chose. Discussion Letter, January 28, 2008. While the letter sent to QED also stated that there were no further technical concerns, it provided four questions concerning QED's cost proposal. Discussion Letter, January 28, 2008. QED was also advised that it could modify its proposal in any way it chose. Id.

IBTCI argues that the agency held disparate discussions with it and QED because it pointed out weaknesses or deficiencies to QED that were in its proposal during the second round of discussions, but did not similarly point out any weaknesses or deficiencies to IBTCI.

We find that the discussions were not objectionable. Following the first round of discussions, although the scores of both the awardee (62.69) and the protester (57.14) remained relatively low, the agency considered both proposals technically acceptable for award. Negotiation Memorandum at 10. This being the case, the agency was under no obligation to revisit the issues that had already been addressed when it reopened discussions. See Professional Perf. Dev. Group, B-279561.2 et al., supra. At 5 n.3 (when agency reopens discussions it is not required to advise offerors of continuing concerns in areas that have already been subject of adequate discussions).

In its January 28 letter to QED, the agency asked four questions related to two cost issues. The first three questions concerned a new negotiated indirect cost rate agreement (NICRA) that had not been finalized when QED submitted its revised proposal. Discussion Letter, January 28, 2008. Since these questions concerned changed circumstances unique to QED's proposal--QED's new NICRA--and were tailored to those unique concerns, raising these questions did not trigger any obligation on the agency's part to ask IBTCI similar questions, or to reiterate questions raised with the protester during the initial discussions. FAR § 15.306(d)(1); see also The H.J. Osterfeld Co., B-257630, Oct. 24, 1994, 94-2 CPD ¶ 150 at 5 (agency should tailor discussions based on specific deficiencies or weaknesses in each offeror's proposal).

The fourth question raised with QED, which stated that "Your proposed U.S. fixed daily rates appear high at the Junior Level. Please address this issue," reiterated a concern raised by the agency during initial discussions. Discussion Letters, September 18, 2007 and January 28, 2008. However, while an agency may not have continuing discussions with only one offeror regarding a certain concern where it

has the same concern with other proposals, The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114, an agency properly may reiterate a cost concern with one offeror--where that concern applies only to that offeror, and the agency has no remaining concerns for the other offeror. Portfolio Disposition Mgmt. Group, LLC, supra, at 2.

The protest is denied.

Gary L. Kepplinger
General Counsel