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Decision

Matter of: Fintrac, Inc.

File: B-311462.2; B-311462.3

Date: October 14, 2008

Tenley A. Carp, Esq., Victor G. Klingelhofer, Esq., and John J. O'Brien, Esq., Cohen Mohr LLP, for the protester.

Barbara A. Duncombe, Esq., G. Drew Fuller, Esq., and Suzanne Sumner, Esq., Sebaly Shillito + Dyer, for the intervenor.

John B. Alumbaugh, Esq., and Elizabeth A. Ransom, Esq., Agency for International Development, for the agency.

Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's revision to scoring methodology used to evaluate offerors' technical proposals is denied where the revision reasonably addressed an error in the agency's prior scoring methodology.

2. Protest challenging agency's evaluation of offerors' technical and cost proposals is denied where the record supports the reasonableness of the evaluations.

DECISION

Fintrac, Inc. protests the award of a contract to CNFA, Inc. by the United States Agency for International Development (USAID), under request for proposals (RFP) No. M-OAA-DCHA-AFP-07-0011, for assistance with the agency's Market Chain Enhancement Program (MarChE) in Haiti. The protester contends that USAID's evaluation of the offerors' technical and cost proposals was flawed, that the agency failed to provide meaningful discussions, and that the selection decision was flawed.

We deny the protest.

BACKGROUND

The RFP was issued in March 2007 and sought proposals to provide economic development assistance to Haiti. The MarChE program seeks to increase the number

of Haitians participating in sustainable economic activity. The RFP anticipated award of a cost-plus-fixed-fee contract with a 3-year base period, and two 1-year option periods.

The RFP stated that offerors would be evaluated on the basis of six evaluation factors. The RFP stated that the factors were listed “in descending order of importance,” but also assigned specific points to the factors; these points were inconsistent with the “descending order of importance” evaluation scheme, as follows: technical approach (25 points), personnel (20 points), corporate capability (10 points), work and milestone plan (35 points), and past performance (10 points). Id. at 96-97. When potential offerors pointed out the inconsistency, the agency amended to the solicitation to clarify that it would use the point scores to establish the relative importance of the factors. RFP amend. 3, Question and Answer (Q&A) No. 42. Under each of the technical evaluation factors, other than personnel, the RFP identified a number of subfactors.

Other relevant sections of the RFP advised that the agency would evaluate offerors’ proposed approaches to meet the requirements of the statement of work (SOW), which contained nine “tasks” for contract performance. In turn, each of the tasks identified more “requirements,” under which the solicitation identified a number of “standards.” RFP § C. With respect to costs, the RFP stated that cost would be evaluated for reasonableness, allowability, allocability, and cost realism. RFP at 96. The solicitation also stated that, for purposes of the selection decision, “[a]ll technical evaluation factors, when combined, are significantly more important than cost.” Id.

Initial Evaluation and Protest

USAID received proposals from six offerors, including Fintrac and CNFA, by the initial closing date of April 27, 2007. The agency’s evaluation of the offeror’s technical and cost proposals was conducted by a technical evaluation panel (TEC).

In September 2007, USAID established a competitive range of three offerors’ proposals, including proposals from Fintrac and CNFA. The agency notified Fintrac of the competitive range determination and conducted discussions regarding a number of issues. As relevant here, USAID advised Fintrac that its proposed salaries for six “local hire specialist positions” were not realistic, because they “appear to be between approximately [deleted] lower than the prevailing market rate.” Agency Report (AR), Tab 20, Discussions Questions, Sept. 27, 2007, attach. B, at 1. The agency further advised that “it is unlikely suitable candidates will be attracted to field locations at such low salaries.” Id. at 2. USAID also advised the protester that its proposal had a “significant weakness” because it did not identify “three non-traditional, non-agricultural products/services that would benefit from project support,” as required by the SOW at task 1, requirement 1.2. Id., attach. A, at 4. In its proposal revision, Fintrac increased its proposed salaries and revised its response to requirement 1.2.

In February 2008, USAID conducted a second round of discussions with the offerors whose proposals were in the competitive range. As relevant here, the agency advised Fintrac that Haitian law required offerors to provide severance benefits equal to 1 month of salary per year of service. AR, Tab 34, Discussions Questions, Feb. 6, 2008, encl. A, at 2. The agency also advised the protester that its proposal still contained a significant weakness because it did not adequately identify non-traditional products/services as required by the SOW at task 1, requirement 1.2. Id. at 1. In its final proposal revision, Fintrac increased its proposed costs to comply with the agency's information concerning the severance pay requirements, and again revised its proposal concerning requirement 1.2.

In its evaluation of final proposal revisions, USAID weighted the evaluation factors as it indicated in its amendment to the solicitation. The agency also weighted the subfactors under each evaluation factor in descending order of importance. Contracting Officer (CO) Statement at 4. At the conclusion of the evaluation, the technical proposals and most probable cost were assessed as follows:

	FINTRAC	CNFA
TOTAL SCORE (100 points)	88.1	89.0
Most Probable Cost	\$25,687,783	\$23,999,834

AR, Tab 46, Initial Source Selection Decision (SSD), at 6-7, 12, 22.

Given these results, USAID concluded that the technical proposals were essentially equal. Thus, the difference between the proposed costs became the primary discriminator; given CNFA's lower proposed costs, the agency selected its proposal for award. Id. at 27. The agency noted that although CNFA was a not-for-profit entity and did not propose a fee, its costs were considered "realistic, complete, convincing, and consistent with the cost of activities with similar scope and expected results in rural areas." Id. at 28.

USAID notified Fintrac of the award decision on March 18, and provided a debriefing on April 1. On April 4, Fintrac filed a protest with our Office, and on May 5, the agency took corrective action in response. Because the agency's corrective action rendered the protest academic, it was dismissed on May 6.

Reevaluation and the Second Award Decision

During the course of the reevaluation, the CO concluded that the initial scoring methodology of weighting the subfactors in descending order of importance was inconsistent with the solicitation. The CO instead instructed the TEC to treat the subfactors as equal in weight. CO Statement at 4. Despite this change, the offerors were not permitted to revise their proposals. The use of the new scoring methodology resulted in a higher score for CNFA, and a lower score for Fintrac.

The results of the final revaluation were as follows:

	FINTRAC	CNFA
Work and Milestone Plan (35 points)	30.2	33.4
Subfactor (a)	8.52	10.06
Subfactor (b)	10	11.67
Subfactor (c)	11.67	11.67
Technical Approach (25 points)	19.25	23.1
Subfactor (a)	4.5	7.4
Subfactor (b)	6.44	7.37
Subfactor (c)	8.33	8.33
Personnel (20 points)	16.0	15.2
Corporate Capability (10 points)	9.5	9.3
Subfactor (a)	2.0	1.81
Subfactor (b)	2.5	2.5
Subfactor (c)	2.5	2.5
Subfactor (d)	2.5	2.5
Past Performance (10 points)	9.7	8.6
Subfactor (a)	1.36	1.07
Subfactor (b)	1.36	1.07
Subfactor (c)	1.36	1.07
Subfactor (d)	1.36	1.07
Subfactor (e)	1.43	1.43
Subfactor (f)	1.43	1.43
Subfactor (g)	1.43	1.43
TOTAL (100 points)	84.7	89.6
Proposed Cost	\$(deleted)	\$23,999,834
Fixed Fee	\$(deleted)	\$0
Most Probable Cost	\$25,687,783	\$23,999,834

AR, Tab 53, Revised SSD, at 7, 20, 38.¹

¹ The specific points awarded for each factor and subfactor, and the most probable cost calculations, are listed here as they appear in the revised SSD. We note that certain of the evaluation factor scores reflect rounding-off judgments by the agency. In addition, the SSD incorrectly listed the score for CNFA under subfactor (a) of the work and milestone plan as 10.6 points instead of 10.06 as indicated in the final TEC report. USAID confirms that 10.06 points is the correct score.

USAID again selected CNFA's proposal for award, concluding its technical proposal was rated higher than Fintrac's. Id. at 43. The agency noted that CNFA's proposal was lower cost as compared to Fintrac, and concluded that "no quantity or qualitative difference was found to sufficient[ly] justify the \$1,687,950 difference." Id. On June 20, the agency again advised Fintrac that its proposal had not been selected for award, and provided Fintrac a debriefing on July 3. This protest followed.

DISCUSSION

Fintrac challenges the reasonableness of USAID's evaluation of technical and cost proposals, the adequacy of the agency's discussions regarding Fintrac's proposed costs, and the reasonableness of the selection decision. For the reasons discussed below, we find no basis to sustain the protest.²

Evaluation and Scoring Methodology

As an initial matter, Fintrac argues that, during the reevaluation, USAID improperly changed the weights applied to the technical evaluation subfactors. Fintrac argues that the revised scoring methodology was inconsistent with the terms of the solicitation. We disagree.

As discussed above, the RFP set forth two conflicting bases for the evaluation of technical proposals. On the one hand, it stated that the factors were listed in descending order of importance; on the other hand, it identified point scores for factors that were inconsistent with a scheme of descending weight. USAID clarified this ambiguity in amendment 3 to the solicitation, stating that the point scores established the weight for the evaluation factors. RFP amend. 3, Q&A No. 42. As also discussed above, USAID concluded during the corrective action that the scoring methodology for the technical evaluation subfactors was flawed because although the RFP was silent as to the weight of the subfactors, the agency had weighted them in descending order of importance. The CO therefore instructed the TEC to evaluate

² In pursuing this protest, Fintrac raises several collateral issues. For example, Fintrac argues that the TEC evaluators did not follow the agency's instructions for completing individual evaluation worksheets. We think this argument lacks merit because the record shows that the TEC reports represented the consensus of its members, and that the TEC reports, as well as the SSD, adequately document the agency's evaluation judgments. We have reviewed all of the protester's arguments, and conclude that none provides a basis for sustaining the protest. Additionally, the protester raised several arguments in its initial protest that were addressed by the agency in its report, but were not subsequently addressed in the protester's comments on the agency report. We consider all such issues abandoned. See Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

offerors' proposals by giving equal weight to the subfactors. CO Statement at 4; Supp. CO Statement at 18.

Solicitations must advise offerors of the basis upon which their proposals will be evaluated. Lloyd H. Kessler, Inc., B-284693, May 24, 2000, 2000 CPD ¶ 96 at 3. Contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Kumasi Ltd./Kukawa Ltd. et al., B-247975.7 et al., May 3, 1993, 93-1 CPD ¶ 352 at 7.

The RFP clearly stated that the phrase “descending order of importance” applied to the major evaluation factors, as follows: “The following technical evaluation criteria shall be evaluated in descending order of importance. (a) Technical Approach, (b) Personnel. . . .” RFP at 96 (emphasis added). Although the solicitation initially contained a patent ambiguity regarding the weights accorded to the evaluation factors, this ambiguity was resolved in amendment 3 to the RFP. In contrast, the RFP was silent as to the weight of the subfactors. We have recognized where a solicitation does not disclose the relative weight of evaluation factors or subfactors in a FAR Part 15 procurement, they should be considered approximately equal in importance or weight. Bio-Rad Labs., Inc., B-297553, Feb. 15, 2006, 2007 CPD ¶ 58 at 6. Accordingly, we think the agency correctly decided to treat the subfactors as having equal weight during its reevaluation.

Evaluation of the Offerors' Technical Proposals

Next, Fintrac argues that USAID's evaluation of the offerors' proposals was unreasonable under three of the technical evaluation factors: (1) technical approach, (2) work and milestone plan, and (3) personnel. The protester also argues, and the agency concedes, that the scoring of CNFA's proposal under the personnel evaluation factor was incorrect and resulted in an additional 0.2 points for the awardee for which the agency cannot account. As discussed below, we conclude that neither this error, nor another minor error concerning the evaluation of Fintrac under the technical approach factor, resulted in any prejudice to Fintrac.

The evaluation of an offeror's proposal or quote, including experience, is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest of an agency's evaluation of proposals or quotes, including technical evaluations, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its evaluation of the relative merit of competing proposals or quotes does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

1. Work and milestone plan

Fintrac argues that USAID unreasonably identified a weakness in its work and milestone plan based on a discrepancy in its proposal regarding the requirement to assist businesses. The protester also contends that the agency unreasonably ignored a weakness in CNFA's proposal. We find no merit in these arguments.

The RFP required offerors to submit a work and milestone plan to show how they would meet each of the contract performance requirements. Subfactor (a) of this evaluation factor stated that offerors were required to link the plan to the deliverables schedule of the SOW. As described above, the SOW contained nine "tasks" for contract performance, each of which had a number of "requirements," which in turn had a number of "standards." Task 2 requires the contractor to assist small and medium Haitian firms with "compet[ing] at the national and international level." RFP at 25. Requirement 2.3, standard 2 of this task sets a goal that, at a minimum, "Five Hundred (500) business services providers identified receive support in management functions, marketing and operations." *Id.* at 26.

The agency identified two weaknesses in Fintrac's proposal under subfactor (a) regarding requirement 1.5, and requirement 2.3; the protester challenges the agency's later evaluation. In its evaluation of Fintrac's proposal under requirement 2.3, the agency concluded:

[T]here is a discrepancy in the number of Business Service Providers offered up: in the Technical Approach text 1000 [Business Service Providers] will be assisted whereas in the Results Framework Summary Table the number is 500. Although this could be attributed to a typo it may also mean that Technical Approach overstates results.

AR, Tab 53, Revised SSD, at 24. As a result, the agency assessed a weakness in Fintrac's proposal in this area.

Fintrac argues that the reference to 1,000 businesses in its proposal was merely a typographical error, and that USAID should have understood the proposal to mean 500. Alternatively, the protester argues that it should not have been penalized for proposing to assist more business than required under the solicitation. USAID argues that it assessed a weakness because the protester's proposal either demonstrated a lack of understanding of the requirements, or overstated the results to be achieved during contract performance. In this regard, the agency states that there are not likely to be more than 500 businesses in Haiti eligible to participate in such an assistance program. Supp. CO statement at 8.

We think the record here supports the evaluation. To the extent there was a discrepancy between the protester's description of the number of businesses it would assist, we do not think the agency was required to treat it as a typographical error to be resolved in the protester's favor, as there was no clear indication which

figure was the correct number. Further, we think the agency could reasonably conclude that proposing to assist 1,000 businesses showed a lack of understanding of the requirements of the solicitation.

With regard to the evaluation of CNFA's proposal, Fintrac argues that USAID did not reasonably consider weaknesses in the awardee's description of certain contract deliverables in this area of its proposal. In fact, the agency did cite this concern in its evaluation of CNFA's proposal under subfactor (a) of the work and milestone factor, stating as follows: "A number of deliverables are not included in the revised Plan . . . and the proposal lacks specificity regarding the Deliverables schedule." AR, Tab 53, Revised SSD, at 8. Based on this weakness, CNFA received only 10.06 out of a possible 11.67 points under subfactor (a). To the extent that Fintrac argues that CNFA should have received a lower score, the protester's disagreement with the agency's judgment provides no basis to sustain the protest.

In sum, for this subfactor, we think that USAID reasonably identified two weaknesses in Fintrac's proposal, and one weakness in CNFA's proposal. On this record, we think that the agency's scores were reasonable.

2. Personnel

Next, Fintrac contends that USAID's evaluation of both offerors' proposed personnel was unreasonable. The protester argues that the agency improperly downgraded its proposal based on the qualifications of its proposed personnel, and also failed to consider the lack of a letter of commitment from one of CNFA's proposed personnel. We find no merit to these arguments.

USAID's evaluation of Fintrac's proposed personnel identified two weaknesses concerning the experience of four proposed personnel candidates: tourism specialist, market analyst, alliances manager, and tourism sector manager. AR, Tab 53, Revised SSD, at 28. The agency concluded that the resumes for these individuals did not demonstrate relevant experience. AR, Tab 53, Revised SSD, at 28.

Fintrac argues that the RFP stated that only "key personnel" would be evaluated, and thus these four individuals—who were not designated as "key"—should not have been assessed. In this regard, the protester notes that the term "key personnel" was not defined in the RFP, and that offerors were instructed to designate which personnel they deemed "key." See RFP amend. 3, Questions and Answer No. 32. Further, Fintrac points out that the RFP did not require the submission of resumes for individuals who were not identified as key personnel. RFP at 84. Thus, although Fintrac submitted the resumes in question, it argues that the agency was not permitted to evaluate them.

As an initial matter, we think this argument is untimely because it could have been raised in Fintrac's initial protest. Instead, this contention was raised for the first time in the protester's comments on the agency report. Bid Protest Regulations,

4 C.F.R. § 21.2(a)(2) (2008) (protests must be filed within 10 days of date when protester knew or should have known of the basis for its protest). In this regard, the protester knew based on its debriefing that the agency found a weakness in its proposed personnel, and thus knew or should have known the basis for this protest argument. See AR, Tab 48, Fintrac Debriefing, Apr. 1, 2008, at 4.

In any event, we have reviewed the RFP and disagree with the protester's interpretation. The RFP neither explicitly states nor implies, as the protester argues, that only key personnel would be evaluated. Instead, the RFP at Section M states that personnel will be evaluated as follows:

USAID will evaluate the personnel proposed as it relates to the offeror's capability in performing the tasks required under this solicitation. The evaluation will be based on the relevant qualifications of the offeror's proposed personnel as demonstrated by their professional capability/experience, appropriate academic credentials and training, relevant field experience, and any other experience relevant to the SOW.

RFP amend. 3, at 96.

While Fintrac may not have been required to submit resumes for these individuals, we will not conclude that the agency acted improperly in reviewing them. On this record, we find no merit to the protester's argument.

With regard to the evaluation of CNFA's proposed personnel, Fintrac argues that the awardee failed to provide a required letter of commitment for its proposed agriculture sector coordinator, a position CNFA had identified as "key." The RFP required offerors to submit resumes and letters of commitment for all proposed key personnel. RFP at 84.

CNFA's initial proposal included a letter, dated April 17, 2007, from its proposed agriculture sector coordinator, in which he committed to serve in that position for the duration of the contract. AR, Tab 10, CNFA Initial Proposal, Apr. 27, 2007, at annex IV. When USAID conducted discussions with the offerors on September 27, 2008, it asked for a signed statement from each individual proposed as a key employee reconfirming his or her availability. CNFA submitted a letter from its proposed agriculture sector coordinator, dated October 4, 2007, in which he confirmed his commitment to perform.

When USAID conducted a second round of discussions with the offerors on February 6, 2008, it again instructed offerors to submit updated signed statements of commitment from key personnel by February 15. In its final proposal revision, CNFA resubmitted the October 4, 2007, letter of commitment for its proposed agriculture sector coordinator, along with a letter from a CNFA official explaining that the proposed individual "has been traveling in a remote area for the past week

[and] has been unable to access e-mail/fax to return his electronic signature on the updated letter.” AR, Tab 39, CNFA FPR, Feb. 15, 2008, at 45. CNFA stated that it had “spoken extensively with [the proposed individual] by phone and he . . . reconfirmed his commitment to this project and intention to serve in the appointed position and availability to start upon contract award.” Id. The agency states that it accepted CNFA’s representations concerning the availability of its proposed agriculture sector coordinator, and did not assess any weaknesses or deficiencies concerning the lack of a newly-signed letter. Supp. CO Statement at 19.

Although we agree with the protester that CNFA did not submit an updated signed statement of commitment from this individual, Fintrac’s contention that CNFA did not confirm the availability of its proposed key personnel candidate elevates form over substance. The record shows that CNFA submitted two letters of commitment, and stated in writing that the individual had confirmed his availability. In short, we see nothing unreasonable in the agency’s decision to accept CNFA’s representation on this matter. We also note, for the record, that Fintrac has not alleged, or submitted evidence to suggest, that the representation was inaccurate.

3. Technical approach

Next, Fintrac argues that the agency unreasonably assessed a weakness in its proposal under subfactor (a) of the technical approach evaluation factor. The protester also argues that the agency unreasonably awarded CNFA’s proposal a higher evaluation score, despite identifying similar weaknesses in its proposal.

The technical approach evaluation factor stated that USAID would “evaluate how well the offeror’s program technical approach relates” to three subfactors. RFP at 96. Subfactor (a) stated that offerors would be evaluated based on the following standard: “The technical approach as demonstrated by program strategy and methodology taking into account each result, requirement, standard and target, the rationale, any key principles for selection of strategies, activities and approaches.” Id. As relevant here, SOW requirement 1.2 requires the contractor to achieve the following result in contract performance: “Screening, identification, and testing of specific products based on value chain analysis leads to at least three new, non-traditional, non-agricultural products/services benefiting from increased sales and exports of at least 30% annually.” RFP at 23.

In its evaluation of Fintrac’s proposal under subfactor (a), the agency identified four weaknesses in the following areas: SOW requirement 1.2, concerning the identification of non-traditional, non-agricultural value chains; requirement 2.4, concerning assisting Haitian firms in national and international competition; requirement 3.1, concerning improving the business environment; and requirement 5.1, concerning protecting and increasing the assets of the poor. AR, Tab 53, Revised SSD, at 24-25. The protester challenges only the evaluation of its proposal under SOW requirement 1.2, and does not challenge the agency’s evaluation concerning the other three weaknesses.

With regard to requirement 1.2, USAID concluded that Fintrac's proposal had a weakness concerning the development of non-traditional, non-agricultural value chains, as follows:

The TEC found that while Fintrac had indeed finally identified three non-agricultural value chains, it found FINTRAC's response equivocal and [found] that [it] did not make a strong and convincing case that it had properly screened, identified and tested any of them. Each of the proposed value chains merited a brief description not exceeding two paragraphs and no further text elaborating a technical approach to support[] the value chain was provided.

AR, Tab 53, Revised SSD at 25.

The agency also expressed concern that one of the proposed three value chains, wherein farmers would build homes with Fintrac support, would be "condition[ed] on the future success of Fintrac's work elsewhere." Id. In this regard, the agency states that the RFP required a proposed approach that must "stand on its own" rather than be dependant on the contractor's continued support. AR, Tab 52, Revised TEC Report, at 7.

Fintrac argues that USAID's evaluation was unreasonable because the requirement to screen, identify and test value chains was a performance requirement, and that offerors were not required to demonstrate achievement of these results as part of their proposal. The agency contends that this element of its evaluation was minor because it was only one of several that comprised the weakness concerning requirement 1.2, and therefore had little or no effect on the overall competition.

We agree with the protester that the RFP anticipated that screening and testing was a performance requirement, and not a requirement of the proposal. Thus, we conclude, there is no basis for this specific aspect of the weakness assessed in Fintrac's proposal. However, we also agree with the agency that this criticism was only one element of the weakness relating to Fintrac's proposal under requirement 1.2. In this regard, the agency also criticized Fintrac's proposal for a home building value chain, and the lack of substantive detail regarding all three value chains.

We do not think that the agency's error in assessing a weakness for Fintrac's proposal regarding screening, identification and testing of value chains prejudiced Fintrac. CNFA's score for subfactor (a) was 2.9 points higher than Fintrac's. As discussed above, the agency evaluation of the protester's proposal identified four weaknesses, and the screening criticism was only part of one of those four. In contrast, CNFA's proposal had one weakness. We do not think the record here shows any possibility that the agency's error affected the overall outcome of the competition, i.e., enables Fintrac to overcome CNFA's 2.9 point advantage under subfactor (a) of the technical approach factor, or the awardee's 4.9 point overall

advantage under the technical evaluation. In this regard, our Office will not sustain a protest absent a showing of competitive prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see also, Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996).

Fintrac also argues that it was treated unequally because CNFA received a higher score under subfactor (a), despite the agency's evaluation that the awardee also did not provide enough detail regarding requirement 1.2. In this regard, the agency concluded that CNFA's proposal contained the following weakness: "Requirement 1.2 was only partially met by identifying three new non-agricultural value chains: textiles, transport & logistics and construction. Because the FPR lacks specificity, the TEC has determined that a weakness still exists." AR, Tab 53, Revised SSD, at 9. We think the protester's argument here lacks merit. As discussed above, Fintrac received four weaknesses under subfactor (a) of the technical approach evaluation factor--three of which it does not challenge in this protest. CNFA, in contrast, received only one weakness under subfactor (a), concerning the adequacy of its description for requirement 1.2. On this record, we think that the agency reasonably evaluated both offerors as lacking detail regarding their proposals for non-traditional, non-agricultural value chains, and we find no merit to the protester's argument that the two offerors should have received equivalent scores.

4. Scoring error in CNFA evaluation

Finally, Fintrac argues that USAID's corrective action resulted in an improper 0.2 point increase to CNFA's proposal under the personnel factor. CNFA's proposal initially received 15 points, but after the corrective action its score in this area was 15.2 points. As the protester correctly notes, the personnel evaluation factor had no subfactors, and was therefore not reevaluated by the agency during the corrective action--the purpose of which was to correct the improper weighting of the technical evaluation subfactors. The agency acknowledges the changed point score, and states that it cannot account for the 0.2 point increase to CNFA's proposal. Supp. CO Statement at 19.

Notwithstanding this error, we find no basis to sustain the protest. Given the fact that CNFA's proposal received 2.9 more points than Fintrac for this subfactor, and had an overall 4.9 point technical point advantage, we do not think this additional 0.2 point difference--or the minor error concerning one of the four weaknesses assessed against the protester's proposal for subfactor (a) of the technical approach factor--prejudiced the protester.

Evaluation of CNFA's Decision Not to Propose a Fee

Next, Fintrac argues that USAID used an undisclosed evaluation criterion in selecting CNFA for award. In its initial protest, Fintrac argued that USAID's evaluation of CNFA's proposed costs was not in accordance with the RFP because

CNFA did not propose a fee. In USAID's response to the protest, the CO stated that the RFP did not require offerors to propose a fee or prohibit not-for-profit entities from submitting proposals without a fee.³ As relevant here, the agency noted that although not-for-profit entities such as CNFA were not "motivated" by earning a profit, the agency had no concerns that such offerors posed a risk to contract performance in the absence of such motivation. CO Statement at 37.

Fintrac contends that CO's remarks indicate that the agency had a bias in favor of not-for-profit entities. USAID argues that the protester takes the CO's statement concerning the risk posed by a non-profit entity out of context. We agree with the agency. The agency's response addressed the narrow issue of whether it was reasonable to conclude that an offeror that did not seek to earn a profit from performing the contract could realistically perform the contract. We do not think the statements referenced by the protester indicate bias in favor of non-profit offerors. Moreover, the protester does not allege or identify any contemporaneous evaluation or source selection documents where the alleged bias might have manifested itself.⁴ On this record, we find no merit to the protester's arguments.

Discussions Regarding Fintrac's Proposed Costs

Finally, Fintrac argues that the discussions conducted by USAID regarding its proposed costs were unequal and misleading in two areas. The protester contends that (1) discussions were unequal because they improperly instructed Fintrac to increase its proposed salaries, but did not do the same for CNFA, and (2) the agency incorrectly instructed Fintrac to increase its costs for severance pay based on local Haitian legal requirements. Fintrac argues that these discussions improperly

³ On this point, we agree with the agency. The RFP stated that the agency would evaluate offerors proposed costs as follows: "COST: The price of the proposal is the total estimated cost, plus fee." RFP at 96. We see no difference between proposing a fee of \$0, and CNFA's proposed approach of omitting any reference to a fee. Furthermore, the record shows that USAID conducted a detailed cost realism analysis, and concluded that CNFA would be able to perform the contract based on its proposed costs. See AR Tab 53, Revised SSD, at 18-23, 44.

⁴ To the extent that Fintrac contends that the CO Statement indicates a general bad-faith intent to favor not-for-profit offerors, we find no basis for this allegation. Government officials are presumed to act in good faith, and a protester's claim that contracting officials were 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. Harris Enters., Inc., B-311143, Mar. 27, 2008, 2008 CPD ¶ 60 at 3. The protester offers no evidence supporting its claim, and its speculation as to the agency's intentions is insufficient to support a finding of bad faith.

induced it to increase its proposed costs, and that absent these increases, Fintrac's proposed costs would have been lower than CNFA's. For the reasons discussed below, we disagree; we also think certain of these assertions are untimely.

Discussions, when conducted, must be meaningful, that is, they may not be misleading and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8.

As an initial matter, we think the protester's arguments are wholly unpersuasive. In its initial protest, Fintrac argued that if the agency had not misled the company into raising its proposed salaries, the protester's overall proposed price would have been \$24,231,505. Protest at 30. In its comments on the agency report, the protester cites a different figure, arguing that its overall cost would have been \$24,479,725.⁵ Protester's Comments on AR at 23. Neither amount, however, is less than CNFA's proposed cost of \$23,999,834. On this record, even if we agreed with Fintrac—and we do not—we conclude that there was no possible prejudice to Fintrac based on the agency's actions here. McDonald-Bradley, *supra*; see also, Statistica, 102 F.3d at 1681.

With regard to the discussions, USAID did not, as the protester contends, instruct the protester to increase its proposed salaries to any particular level. Instead, the agency stated that it was concerned that, for certain labor categories, Fintrac had proposed salaries that were lower than the prevailing market rates—in some cases only [deleted] of those rates. See AR, Tab 20, Discussions Questions for Fintrac, Sept. 27, 2007, attach. B, at 1. For this reason, the agency stated that it was concerned that “it is unlikely that suitable candidates will be attracted to field locations at such low salaries.” *Id.* at 2. Furthermore, the record shows that, although USAID stated that Fintrac's proposed salaries were below the local prevailing wages, Fintrac's proposal revision did not actually raise its salaries to those levels. See AR, Tab 24, Revised Fintrac Cost Proposal, Nov. 2, 2007, Table 2, at 1. Moreover, the agency and intervenor both argue, and Fintrac does not dispute, that CNFA's proposed salaries for positions equivalent to those identified to Fintrac during discussions were higher than Fintrac's initial and revised proposed salaries.

⁵ Fintrac does not explain why the figures listed in its protest and comments on the agency report differ, nor does the protester provide a detailed explanation as to how it calculated either amount.

With regard to the severance pay issue, we conclude that this protest argument was not timely raised. Fintrac argued in its initial protest that the agency's discussions on September 27, 2007, misled the protester into raising its proposed personnel salaries. In its comments on the agency report, Fintrac raised a new argument that the agency's discussions on February 6, 2008, misled the protester into increasing severance pay for proposed personnel. These two arguments are clearly distinct. Fintrac knew or should have known of the basis for its argument concerning the agency's interpretation of the severance pay requirements at the time of its July 7, 2008, protest. Specifically, the protester knew at that time that the agency's interpretation regarding the severance pay issue had caused it to increase its proposed costs. On this record, we find that Fintrac's allegation that the discussions were misleading is untimely. 4 C.F.R. § 21.2(a)(2).

In sum, we see nothing in this record that supports sustaining Fintrac's protest.

The protest is denied.

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