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Decision

Matter of: Information Ventures, Inc.

File: B-401448.5; B-401448.6

Date: May 13, 2010

Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for the protester.

Jennifer S. Zucker, Esq., and Elizabeth M. Gill, Esq., Patton Boggs LLP, for Biotechnical Services, Incorporated, the intervenor.

Michael I. Goulding, Esq., and Jonathan A. Baker, Esq., Department of Health and Human Services, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's determination that the protester's proposal was unacceptable was reasonable and consistent with the solicitation's evaluation scheme.

DECISION

Information Ventures, Inc. (IVI) of Philadelphia, Pennsylvania, protests the award of a contract to Biotechnical Services, Incorporated (BSI) of North Little Rock, Arkansas, under request for proposals (RFP) No. NIHES2008050, issued by the Department of Health and Human Services, National Institutes of Health, National Institute of Environmental Health Sciences, for technical report preparation services.

We deny the protest.

BACKGROUND

The RFP, issued on July 15, 2008 as a small business set-aside, contemplated the award of a cost-plus-fixed-fee contract for a 5-year base period with five 1-year options for technical report preparation services. The contractor was to serve as a resource for the preparation of two types of technical reports describing National Toxicology Program (NTP) studies of the toxicology and carcinogenicity of selected chemicals. The difference between the two types of peer-reviewed, book-style

reports was primarily in length and the type of review process the reports would undergo. The long reports are book-length monographs that provide an overview of the literature on the biological effects of a particular substance or set of chemicals, and the full details of long-term NTP studies of the effects of the test chemical in rodents. The short reports were to describe a variety of toxicity studies in rodents. RFP § B, at 4.

Award under the RFP was to be made on a best-value basis considering the following evaluation factors listed in descending order of importance: technical, cost, and past performance. Under the technical factor, the RFP listed the following five point-weighted subfactors: (1) soundness of technical approach–30 points, (2) experience and ability of proposed staff–30 points, (3) facilities and equipment–20 points, (4) project management–15 points, and (5) editorial quality of the proposal–5 points. All evaluation factors, other than cost, were significantly more important than cost. RFP § M, at 61-63.

Eight proposals, including those of IVI and BSI (the incumbent contractor), were submitted in response to the RFP by August 18. A special emphasis panel (SEP), composed of nine voting non-government members (with some non-voting government members), evaluated the proposals and assigned each a numerical and an adjectival rating.¹ The proposals of IVI, BSI, and another offeror were included in the competitive range and received the following scores and ratings:

	Score	Adjectival Rating	Cost
BSI	95.56	Acceptable	\$15,607,918
IVI	90.44	Acceptable	\$17,273,618
Third Offeror	85.89	Acceptable	\$18,024,062

Agency Report (AR), Tab 7, Evaluation Report, Dec. 10, 2009, at 657-58.

On February 6, 2009, the agency conducted detailed discussions with the offerors whose proposals were found to be in the competitive range. During these discussions, various concerns were raised regarding IVI's proposal. For example, the agency was concerned that most of the proposed staff would be new hires; that IVI's proposed team had not worked together previously, which was a concern on a project of this size; that IVI's offices and staff were located in different areas; and that its cost proposal was high compared to the government estimate. See Agency Discussions Letter to IVI (Feb. 6, 2009). Final proposal revisions, including responses to the discussions, were received by February 19.

Final proposal revisions were evaluated by a different evaluation panel than the panel that evaluated the initial proposals; in contrast to the first panel, this three-

¹ The proposals were rated either acceptable or unacceptable.

member source selection panel (SSP) was staffed by government employees. The SSP did not assign scores or ratings to the final proposal revisions, but evaluated each proposal against the stated evaluation factors and provided detailed narratives relating to each of the proposals.

Based on its review of IVI's proposal and revisions, the SSP found that IVI was not "considered capable of performing the work." AR, Tab 8, Source Selection Document, March 9, 2009, at 769. For example, the SSP noted that, even though IVI's final proposal replaced portions of the proposed staff and offered to perform most of the work in its Philadelphia office, fundamental questions remained about the overall coordination of IVI's operations. These questions centered on the acquisition, coordination, and continuity of the proposed staff, and the overall management and coordination of a group that had not worked together. Further, the SSP found that IVI's proposal did not demonstrate that IVI understood the process of creating technical reports; that is, IVI's proposal did not show that it understood that the process required starting with a large number of discrete, independent components and assembling them into a consistent, coherent report.

The SSP also found that IVI's proposal relied on subcontractors to provide qualified staff "as needed." This raised a concern about who would be managing the selection and evaluation of the subcontractor staff members, and about communications between the staff members and NTP program members. In the agency's view, clear lines of communication would increase report consistency, increase the sharing and exchange of materials, and improve the internal review process for these reports.² AR, Tab 8, SSP Source Selection Review Summary, at 774-76.

On the other hand, the SSP found that BSI's proposal, as originally submitted, was clear, well organized, and demonstrated BSI's full understanding of the details of the project, based on its 19 years as the incumbent. BSI's only proposed reliance on a subcontractor was for the printing of a small number of hard copies of the final version of each report. With regard to staffing contingencies, BSI's proposal described internal cross-training of staff members and also mentioned current BSI employees available who had prior successful experience on the NTP contract. Id. at 774.

Based on the SSP's technical evaluation as well as the agency's cost realism analysis and past performance evaluation, the source selection official concluded that "only BSI . . . possessed the knowledge, staff, understanding of the project, and capability to adequately perform the requirements of this contract." Further, the SSP found that, "although . . . the rank order of the technical merit of the offers did not change as a result of [the SSP's] review of the [final proposal revisions], . . . neither IVI nor

² The SSP documented similar concerns regarding the third competitive range proposal.

[the third offeror] were considered capable of performing the work.” See AR, Tab 8, Source Selection Document, Mar. 9, 2009, at 769. On April 2, the source selection official selected BSI for award. Id. at 5.

After receiving a debriefing on May 19, IVI protested to our Office. On June 15, the agency decided to take corrective action, including convening a “new technical evaluation panel,” and reevaluating the “competitive range proposals, as revised.” Agency Letter to GAO (June 15, 2009). We therefore dismissed the protest.

On October 21, the agency convened a new four-member technical evaluation panel (TEP), staffed by government employees. The record indicates that one member of the prior SSP, and a non-voting government employee member of the SEP, were members of the new TEP. AR at 11-12. The TEP evaluated the competitive range proposals as follows:

	Score	Adjectival Rating	Cost
BSI	95.6	Acceptable	\$15,729,559
IVI	62.0	Unacceptable	\$14,178,243
Third Offeror	52.8	Unacceptable	\$17,416,272

AR, Tab 12, Corrective Action Source Selection Decision, Jan. 15, 2010, at 2, 5.

The TEP found that BSI’s proposal showed that it possessed the knowledge, staff, understanding of the project, and capability to perform the requirements of the contract. However, the other two proposals were downgraded, received lower point scores, and determined to be unacceptable by the TEP. With regard to IVI’s proposal, the TEP concluded:

The reviewers unanimously rated this proposal as unacceptable. In summary, both the company and the individual proposed staff lacked sufficient relevant experience in high-volume technical document creation. Some of the key technical staff had little experience in technical writing, and the qualifications and identities of other supplemental staff were unknown and were to be determined at a future date not by IVI but by a subcontractor. Such an arrangement raised serious concerns about the overall coordination of the project, the interactions between NTP authors and the disparate groups involved in the report writing, and overall consistency of the products—both the internal consistency of the contents of individual reports and overall consistency of the report series. In general this proposal exhibited a lack of appreciation of the magnitude and complexity of the project and of the need for consistent, sustained effort by a coordinated team. These concerns raised serious doubts about the ability of this offeror to establish and sustain the level of productivity required for this project.

AR, Tab 10, TEP Consensus Evaluation Report, Jan. 13, 2010, at 22.

The TEP found that neither IVI's, nor the third offeror's, proposal conveyed a sufficient understanding of the requirement or the ability to assemble and coordinate an appropriate staff to sustain the level of document generation required by the government. The TEP also found that the weaknesses in these two proposals were material and went to the heart of the technical and management approaches. The TEP therefore found that neither offeror would be able to make its proposal competitive without major revisions. AR, Tab 12, Corrective Action Source Selection Decision, Jan. 15, 2010, at 4-5. Consequently, on January 15, 2010, the proposals of IVI and the third offeror were excluded from the competitive range and the source selection official affirmed the award to BSI. After a debriefing, this protest followed.

DISCUSSION

IVI first argues that the agency's use of members from the prior evaluation panels on the TEP was inconsistent with its promised corrective action, and was evidence that the reevaluation was not neutral and independent, but was "flawed" and "tainted." Protest Comments at 3. In this regard, IVI points to the TEP's assignment of 62 points and an unacceptable rating to IVI's proposal, as compared to the prior panel's assignment of 90.44 points and an acceptable rating. IVI maintains that the initial SEP score and rating is evidence that its proposal was not unacceptable, and contends that the stark difference in its own scores, and the fact that BSI's score remained virtually unchanged, can only be explained by a lack of impartiality on the part of, and improper influence by, the evaluators who were involved in the prior evaluation and were aware of IVI's earlier protest. IVI also argues that these evaluators were otherwise biased in favor of the incumbent, BSI.

The record here, however, does not support IVI's conjectures and there is no suggestion of bias or bad faith in the reevaluation. To the extent that IVI complains about members from the prior SSP sitting on the new evaluation panel, the selection of individuals to serve as proposal evaluators is a matter within the discretion of the agency; accordingly, we will not review allegations concerning the composition of evaluation panels absent a showing of possible fraud, conflict of interest, or actual bias on the part of evaluation officials.³ Glatz Aeronautical Corp., B-293968.2, Aug. 10, 2004, 2004 CPD ¶ 160 at 3 n.1.

³ The agency states that bias on the part of the members of the prior panel was not a consideration in deciding to impanel a new evaluation panel, since this was not an allegation in the prior protest. Instead, use of a new panel was voluntarily undertaken by the agency to afford the contracting officer the benefit of a fresh review. The agency reports that staffing constraints did not allow the TEP to be composed solely of members who had not been previously involved in evaluating the proposals. AR at 12.

We also do not believe that the wide difference in the point scores received by IVI's proposal in the initial and final evaluations, as compared to the virtually identical points received by BSI's proposal, demonstrate that the evaluation of these proposals was unreasonable. In fact, from our review of the record, the high score initially awarded IVI's proposal by the SEP seems inexplicable, given the concerns raised during discussions.⁴ In sum, IVI's protest about the composition of the TEP and the difference in point scores provides no basis to find its evaluation unreasonable.

IVI also asserts that its proposal was improperly evaluated under each one of the technical evaluation factors and subfactors, and that its proposal could not be reasonably evaluated as unacceptable. In reviewing protests of alleged improper evaluations and source selections, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. While we address in this decision only some of IVI's challenges to its evaluation, we have considered all of them and conclude that none provide a basis for finding unreasonable the agency's determination that IVI's proposal was unacceptable.⁵

For example, IVI complained about various aspects of the TEP's evaluation and scoring of its proposal under the soundness of technical approach factor, where IVI's proposal received a total of 18.7 of a possible 30 points. While the TEP recognized a strength in IVI's proposal that it had researched the NTP technical report process and was conversant with the goals, the TEP found that the proposal lacked a discussion of the potential problems that could be encountered. The more

⁴ Some of these concerns with IVI's proposal continued through its final proposal revision and were recognized as serious weaknesses by both the SSP and TEP.

⁵ IVI also contends that the agency failed to conduct meaningful discussions since the weaknesses/defects that led to its starkly reduced score were not brought to its attention during discussions. However, because IVI did not raise this allegation until filing its comments on the agency's report on the protest, we find this protest allegation to be untimely filed. Under our Bid Protest Regulations, protests not involving solicitation improprieties are required to be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2 (a)(2) (2010). While IVI argues that it was not aware of its individual factor and subfactor scores until March 10, when it received the agency report on the protest, IVI was told in its January 29 debriefing that its point score had been dramatically lowered to 62 points, and was told the reasons why its proposal was considered deficient. IVI was also aware at that time that it had not received discussions on these matters. Therefore, IVI's attempt to raise a challenge to the adequacy of discussions at this late juncture is untimely and will not be considered.

significant concerns were that IVI may not have fully grasped the magnitude of the project; that the number of technical writers proposed appeared inadequate to handle the eight book length drafts of technical reports; that none of the technical writers had worked together with each other as a team; and that the organization plan lacked an understanding of the need for continuity and consistency in the production of several reports, as reflected in the proposal's reliance on temporary staff from subcontractors to fill in at different sites as needed. AR, Tab 10, TEP Consensus Summary Report, at 16-17.

IVI contends, among other things, that its proposed staffing level and its staff's lack of previous experience in working together should not have been considered under the soundness of technical approach factor, because the solicitation's explanation of this factor did not mention that the agency would consider staffing levels or previous experience in working together as a team. We disagree. Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. See Digital Solutions Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 10. We think the level of staffing, and the fact that IVI's technical writers had not previously worked together as a team, were reasonably related to, and properly could be considered under, the soundness of technical approach evaluation factor, particularly given that there are no other evaluation factors that specifically state that they encompass these matters.

IVI's other complaints about the evaluation of its proposal under the soundness of technical approach factor provide no basis for our Office to find that the agency's concerns were not reasonably based. For example, IVI contends that its proposal was improperly downgraded because of the agency's concerns about the use of subcontractors "as needed" to provide additional technical writers because its proposal explained the limited circumstances where it planned to rely on subcontractors. One of the circumstances, however, was where "the project workload exceeds the capacity of IVI's technical writing staff." AR, Tab 15, IVI Final Proposal Revision, at 898. IVI's proposal does not adequately explain why it anticipates such a problem, or the likelihood that it would occur, and we believe that the agency could reasonably be concerned about this issue, given the relatively junior status of some of the technical writers proposed by IVI.⁶

⁶ IVI also claims that the agency inconsistently evaluated the proposals. For example, IVI states that it has analyzed the technical reports prepared by BSI under its contract and found that a variety of BSI employees, rather than a unified team, served as technical writers on these reports. This complaint, however, does not show that the evaluation of the proposals themselves was inconsistent. IVI's other arguments based on alleged instances of inconsistent evaluation of the proposals are similarly meritless.

On this front, IVI also complains about the agency's conclusion that certain of its staff had limited experience. This criticism was raised under the agency's evaluation of the experience and ability of proposed staff factor, worth 30 points. IVI's proposal received a score of 18 points under this factor. The most heavily-weighted subfactor under this factor (worth 15 points) was to consider "training, experience, availability and technical accomplishments of [the] proposed Senior Science Writer, and the Technical Writers, the offeror shall provide resumes that document in detail their previous experience." RFP § M at 62. IVI's proposal received 8.7 points under this subfactor. While the TEP noted that IVI's proposed writing staff had strengths in certain areas, some of the proposed technical writers were post-doctoral fellows in the previous year and had limited professional or publication experience. Further, the TEP found a major weakness in IVI's reliance on other technical writers to be identified and selected later by its subcontractors. The TEP found that this approach presented a major organizational difficulty and that it was impossible to know the identity of the staffers to be provided on a temporary basis. The TEP also found that the overall uncertainty of the identity of the staff, coupled with IVI's intent to allow its subcontractor, rather than IVI's management, to select the staff, was a major defect. AR, Tab 10, TEP Consensus Summary Report, at 18.

IVI responds to its evaluation by arguing, among other things, that the successful completion of a doctoral program is demonstrable evidence of the ability to prepare and write a book-length technical report, and that quantification of the professional experience should not have been evaluated under this subfactor. However, we think that the agency's assessments were reasonable, and consistent with the evaluation criteria. In particular, we see nothing improper about the agency's decision to consider the relative quality and quantity of the experience of IVI's proposed technical writers under this subfactor.

IVI also argues that it was unreasonable for the agency to find a major defect under this subfactor based on a belief that writers would be identified and selected by its subcontractors because IVI's proposal specifically stated

[DELETED]

AR, Tab 3, IVI Initial Proposal, at 228. This statement appears in IVI's initial proposal. IVI's final proposal revision states,

[DELETED]

AR, Tab 16, IVI Final Proposal Revision, at 931. Thus, we find that the TEP had a reasonable basis for its concern about how subcontractor technical writers would be selected for this contract.

As illustrated by the foregoing examples, and based on our review of the record, IVI has not shown the agency's conclusion that IVI's proposal was unacceptable was

unreasonable, or inconsistent with the solicitation's evaluation scheme. Instead, we find that the agency had a reasonable basis for its evaluation of IVI's proposal, its elimination of IVI's proposal from further consideration, and its affirmation of the award to BSI.

The protest is denied.

Lynn H. Gibson
Acting General Counsel