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Decision

Matter of: University Research Corporation

File: B-253725.4

Date: October 26, 1993

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Mike Colvin, Department of Health & Human Services, for the agency.

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DIGEST

1. The General Accounting Office will not consider a protester's challenge to the composition of a peer review group used to perform an initial evaluation of technical proposals absent a showing of an agency's possible abuse of discretion by ignoring a conflict of interest or bias on the part of the evaluators.

2. Protester's contention that technical evaluation was flawed because the source selection decision was improperly based on the results of an initial peer group review is denied where the initial peer group review did not form the basis for the agency's selection but was instead only part of an ongoing review that included assessment by a secondary review panel, extensive written and face-to-face negotiations, and a detailed evaluation of the offeror's responses during negotiations and their final submissions.

3. Protester's claim that the agency erred in failing to discard the findings of a peer review group after a secondary review panel composed of agency personnel disagreed with the initial peer group assessment is denied where there was no requirement that the secondary panel rescore the peer group's evaluation; the contracting officer reasonably used both evaluations as a starting point for negotiations; and the secondary panel expressly adopted the general conclusions of the initial peer group panel.

4. Contentions that the agency technical evaluation improperly relied on unstated evaluation criteria, was inadequately documented, and permitted the awardee to offer employees who were unavailable, are denied where a review of the record shows that the agency's judgments were reasonable and consistent with the stated evaluation criteria and where none of the errors the protester claims, in fact, occurred.

5. Protester's contention that agency conducted other than meaningful discussions because certain weaknesses enumerated in the agency's evaluation materials were not specifically raised with the protester during negotiations is denied where the record shows that the agency raised the issue in general terms in its written discussion questions and the weaknesses themselves were minor.

6. Agency review of offeror's cost proposals was reasonable where the agency did not ignore changes made by the offerors in their final submissions, as the protester claims, but instead recognized the changes, considered their impact, and reflected the outcome of that consideration in the source selection document and attachments.

DECISION

University Research Corporation (URC) protests the award of a contract to R.O.W. Sciences, Inc. (ROW) under request for proposals (RFP) No. NHLBI-HO-92-22, issued by the National Heart, Lung, and Blood Institute (NHLBI), a division of the National Institutes of Health within the Department of Health & Human Services. The RFP was issued to procure services in support of several educational programs operated by NHLBI, including programs on the health risks associated with high blood pressure, smoking, asthma, cholesterol intake, heart attack, and obesity. URC, the incumbent contractor, argues that the selection of ROW should be overturned because the agency conducted an improper evaluation of technical and cost proposals, and failed to hold meaningful discussions.

We deny the protest.

BACKGROUND

Since 1972, the Office of Prevention, Education and Control of the NHLBI has been using contractors to provide support for health education programs. These programs currently include the National High Blood Pressure Education Program, the National Cholesterol Education Program, the NHLBI Smoking Education Program, the National Blood Resource Education Program, the National Asthma Education Program, the National Heart Attack Alert Program, and the NHLBI Obesity Education Initiative. This solicitation, issued

June 26, 1992, sought a contractor with the requisite experience to provide services associated with these ongoing programs, as well as to operate a combined education and information center to handle public, patient, and medical professional inquiries directed to the NHLBI regarding cardiovascular, pulmonary and blood disorders. The solicitation anticipated award of a 5-year contract to provide these services.

After the RFP was issued, two amendments to the solicitation were distributed to the potential offerors. The second amendment, issued on August 10, deleted the requirement in the statement of work that the contractor provide all mailing services required under the contract. This amendment specified that the contractor should instead use the mailing services of the District of Columbia Association for Retarded Citizens except in certain specified instances. All of the offerors, including URC, acknowledged receipt of this amendment.

The RFP advised potential offerors that the agency would make an award "to the best advantage of the [g]overnment, cost and other factors considered." RFP § M.1. The RFP also advised that technical proposals would "receive paramount consideration in the selection" decision, but cautioned that if offerors were "approximately equal in technical ability, then [the] estimated cost of performance will become paramount." Id.

The RFP also set forth the technical evaluation criteria and total available point scores. There were five technical evaluation factors: understanding of the technical requirements (80 points), staff capability and experience (50 points), understanding of scientific/public health issues (30 points), corporate experience (30 points), and facilities and equipment (10 points). In addition, several of the factors were composed of scored subfactors, as shown below:

1. Understanding of Technical Requirements	80 POINTS
A. Management and Administrative	
Plan (Task 1)	10 points
B. Approach to Task 2	20 points
C. Approach to Task 3	10 points
D. Approach to Task 4	20 points
E. Approach to Task 5	10 points
F. Approach to Task 6	10 points

II.	Staff Capability and Experience	50 POINTS
	A. Project Manager	20 points
	B. Task Managers	20 points
	C. Other Professional Staff	10 points
III.	Understanding of Scientific/Public Health Issues	30 POINTS
IV.	Corporate Experience	30 POINTS
	A. Offeror's experience	20 points
	B. Clarity/style/format of proposal	10 points
V.	Facilities and Equipment	<u>10 POINTS</u>
	TOTAL	200 POINTS

The agency received three offers in response to the RFP by the August 18 due date for receipt of initial proposals, including the offers from URC and ROW.¹ An initial technical evaluation of the proposals was conducted on September 29-30, by an Ad Hoc Peer Review Group convened by the agency, and comprised of government and non-government representatives. The peer review group scored each of the three proposals and concluded that all three proposals were acceptable. The average scores awarded were as follows:

Prospect	142.2
ROW	140.0
URC	139.7

On November 20, a secondary review panel was convened, comprised entirely of government employees. The secondary panel reviewed both the proposals and the findings of the peer group. The secondary panel concurred generally with the peer group findings regarding each proposal, and concluded that each of the proposals was acceptable. In several instances, however, the secondary panel took issue with the findings of the peer group. The findings of the secondary review panel, and the panel's specific disagreements with the findings of the peer group, were memorialized in a memorandum in the contract file.

¹The third offeror, Prospect Associates, Limited, also filed two protests with our Office, B-253725.2 and B-253725.3, but withdrew its protests after reviewing the agency report and documents provided to Prospect's counsel under the terms of a protective order issued by our Office.

Concurrently, the agency also conducted an initial review of each offeror's business proposal. This review included an analysis of each offeror's proposed direct labor, fringe benefits, overhead, general and administrative (G&A) expenses, travel, subcontracts, other direct costs, accounting system, and financial capability. After noting that the labor rate increases were inconsistent among the offerors, the Cost Analysis Section recommended accepting each offeror's proposed labor rate increases, but imposing a ceiling on the rate of any offeror whose proposed increases were below the amount of its historical increases. This decision was communicated to the offerors during discussions, and was later reiterated in the letters requesting best and final offers (BAFO).

After the contracting officer reviewed the findings of the peer group and the secondary panel, together with the estimated costs proposed by each offeror, all three proposals were included in the competitive range. From December 14 until March 10, 1993, the agency conducted discussions, with extensive technical and cost-related questions provided to all three offerors--65 questions for URC; 75 for ROW; and 58 for Prospect. These questions included concerns voiced by the both the peer group and the secondary panel and questions regarding peer group concerns with which the secondary panel expressly disagreed. According to the contracting officer, the relative merits of the technical proposals were so close that the agency decided to ask all available questions in order to give the offerors every chance to change their relative standings.

After receiving written responses, conducting face-to-face negotiations, and holding a site visit, the agency, on February 16, asked each offeror to submit a BAFO. On the next day, ROW advised the agency that it would be including in its BAFO indirect cost rates lower than those initially recommended and negotiated. ROW advised that it had just received approval for a new annual indirect cost rate from the agency's Financial Advisory Services Branch (FASB).

Since the RFP specified the number of hours to be proposed, and since the agency was aware that the selection decision might be made on the basis of cost, the contracting officer decided to postpone the request for BAFOs until the agency could negotiate further with each of the offerors regarding indirect cost rates. By letter dated February 18, the agency suspended its BAFO request and instead asked each offeror to provide an indirect rate cost proposal to the agency's auditors within the FASB.

After evaluation of the indirect rate proposals, each offeror was provided with a March 10 letter requesting BAFOs by March 15. This letter reiterated several instructions

that had been presented to offerors during discussions regarding their overhead and G&A rates. Specifically, the letter advised offerors that the BAFO should include a ceiling rate for overhead and G&A that the company would be willing to accept for all 5 years of the contract. The letter also advised that if the selection decision was based on cost, the ceiling rates would be used to evaluate each offeror's proposed costs. In addition, offerors were advised that if they proposed direct labor increases different from the rates negotiated to date, the labor increases would also be subject to a ceiling for the life of the contract. The letter explained that this ceiling on labor rate increases would be "calculated on an individual basis rather than an average basis due to the complexity of calculating an average increase factor."

Upon receipt of BAFOs, the agency reviewed the proposals and again found them to be essentially equal technically, with no distinguishing issues other than cost. The agency next turned to the proposed costs of each of the offerors. As indicated in the discussions, and in the letter requesting BAFOs, the agency reviewed the costs both as proposed, and with the ceiling selected by each offeror. The relative differences in proposed costs are set forth below:

	<u>Proposed Costs</u>	<u>Ceiling Costs</u>
ROW	\$ 19,630,733	\$ 20,310,796
URC	\$ 22,997,084	\$ 21,854,337 ³
Prospect	\$ 23,587,473	\$ 24,406,508

After reviewing the proposed and ceiling costs for each offeror, the agency selected ROW for award as the offeror with the lowest evaluated costs. This protest followed.

³This notice to offerors advising that the ceiling rate for direct labor increases would be calculated on an individual basis was also included in the initial February 16 request for BAFOs.

⁴URC's ceiling costs are lower than its proposed costs because the agency noted that URC had neglected to remove from its business proposal the cost of providing the mailing services which amendment No. 02 directed should be provided by the District of Columbia Association for Retarded Citizens. Since the costs were to be paid directly to the Association by the agency, the contracting officer deducted from URC's ceiling cost the amount identified in the business proposal associated with such services, \$1,327,284.

PROTESTER'S CONTENTIONS

In its protest, URC raises numerous challenges to the selection of ROW for award based on the agency's conclusion that the three technical proposals were approximately equal, and that ROW was the offeror with the lowest evaluated costs. Generally, URC argues that award to ROW was improper because the agency conducted a flawed technical evaluation; failed to hold meaningful discussions with all offerors; and failed to perform a rational evaluation of proposed costs. URC's contentions in each of these areas are discussed in greater detail below.

TECHNICAL EVALUATION

The general theme of URC's challenge to the evaluation of proposals is that after the initial assessment of technical equality by the peer review group, there was never a point when the agency properly considered evidence showing, in URC's view, that URC's proposal in fact was superior. Beginning with the initial peer review, URC argues that the peer group was not competent to judge the proposals, and that the peer group's evaluation should have been rescored when the secondary panel disagreed with several of the peer group's findings. URC claims that the peer group's initial assessment improperly formed the basis for the agency's selection decision. URC also claims that the agency improperly evaluated URC's proposal using unstated evaluation criteria; failed to document the evaluation findings of technical equality, or the changes made by ROW to its BAFO; and permitted ROW to offer key personnel who were expressly committed to other contract efforts.

Peer Review Group Issues

With respect to URC's challenges to the peer group and the role of the peer group's initial assessment in the evaluation and source selection decision, URC first argues that the peer review group assembled by the agency was flawed because it included reviewers who were not federal employees, but were instead from universities and professional associations. We will not consider URC's objection to the composition of the peer review group. The composition of technical evaluation teams--including peer review panels--is a matter within the discretion of the agency which we will not review without a showing of possible abuse of that discretion in light of a conflict of interest or actual bias on the part of evaluators. Herndon Science and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46; National Council of Teachers of English, B-230669, July 5, 1988, 88-2 CPD ¶ 6. URC alleges neither.

With respect to URC's contention that the agency improperly based its selection decision on the peer group's evaluation, URC's arguments mischaracterize the agency's approach. While the record shows that the peer group did, in fact, evaluate and score the proposals under each of the evaluation factors and subfactors, the group neither made the selection decision, nor provided the exclusive basis for the selection decision. The secondary review panel conducted its own review of both the proposals and the findings of the peer group, and prepared a narrative report of its findings, including the areas where the panel disagreed with the peer group. The fact that the panel concluded that each of the three proposals was acceptable and expressly agreed with the peer group's general evaluation of proposals does not mean that the peer group's conclusions were controlling--the review panel's own conclusions also became a meaningful part of the record.

Moreover, after the secondary review panel presented its findings to the contracting officer, the agency held written, face-to-face, and telephone negotiations from December 14, 1992, to March 10, 1993, the details of which are contained in a memorandum summarizing the negotiations. Also, the source selection document includes a narrative review reassessing the post-BAFO standing of each of the offerors. Each of these elements of the final evaluation reflect conclusions independently arrived at by those involved in the process and were not directly tied to the peer group's initial findings. Thus, we do not agree with URC's contention that the source selection decision was based only on the peer group's evaluation.⁴

URC also claims that the secondary review panel should have rescored the technical proposals as part of its review. According to URC, rescoring was required because the secondary review panel disagreed with the peer group, and because in an earlier procurement--the one where URC prevailed--the secondary review panel assigned new scores in certain areas where it disagreed with the peer review group.

⁴As support for its contention that the source selection decision was based only on the peer group's review, URC points to frequent references to the closeness of the scores assigned by the peer group in the contracting officer's two statements prepared in response to URC's protests. While URC is correct about these references in the contracting officer's statements, we cannot ignore the plain language of the source selection document and the other contemporaneous evaluation materials that clearly document an ongoing analysis of the three proposals after the peer group completed its initial assessment.

Our review finds nothing improper about the decision of the secondary review panel not to rescore the proposals, but instead to state in narrative form its conclusions with respect to both the proposal and the findings of the peer group. We also disagree with URC's claim that since the secondary review panel changed certain scores in the prior procurement its decision not to do so here was improper. There was no requirement that the secondary review panel overturn the findings of the peer group as URC seems to suggest. Rather, the findings of both panels were provided to the contracting officer for determining the competitive range, and to provide a starting point for identifying topics for further negotiation. In our view, URC's claim that the disagreements of the secondary panel with the peer group mandates rescoring ignores the fact that the secondary panel expressly concluded with respect to each proposal that it agreed with the peer group's conclusion that the proposal was acceptable.

As a final matter, even though there was no requirement for rescoring proposals here, we have examined and reject URC's claim that a review of the impact of each instance where the secondary panel disagreed with the peer group shows that it was unreasonable for the agency to conclude that the proposals were technically equal. While we need not discuss in detail each of the differences between the peer group's evaluation of URC's proposal and the evaluation of the secondary reviewers, the differing assessments of URC's proposed project manager are set forth below. A close review of the two assessments provides an example of why we conclude that the differences between the two panels neither required rescoring the proposals nor jettisoning the findings of the peer group and instead relying only on the findings of the secondary panel.

As mentioned above, the project manager evaluation subfactor of the Staff Capability and Experience factor was allotted a maximum of 20 of the 200 available points. Although identified above in abbreviated form, the full text of subfactor 2.II.a specifically advised that the evaluation of this subfactor would include a review of the "[e]xperience, managerial competence, and time commitment of the project manager."

The peer review group awarded URC 12.7 of the 20 available points for its proposed project manager, and identified both strengths and weaknesses associated with the individual proposed. The proposed individual was seen as a strong choice because he had served as the Project Director on this contract since 1987; he is a long-time senior employee of URC; he is well-known to the agency; and his management team "has been efficient, cost effective and reliable." The peer group also noted that "he appears to have good managerial

skills, as evidenced by relatively little staff turnover and a flexible management style." On the other hand, the peer group identified two weaknesses with URC's proposed project manager: that this is the only large project the individual has managed--causing the peer group to opine that "[t]his lack of broader experience may be reflected in the minimal innovation in the proposal"; and that he has little experience with computers and computer-related tasks.

The secondary review panel noted that in his tenure as the current project manager, URC's proposed project manager had recruited highly qualified personnel and had experienced little personnel turnover. The secondary panel also noted that his senior position within URC gave him the ability to make commitments on behalf of the company. Thus, the panel stated:

"While the primary review gave Mr. Kelly a relatively low rating as Project Manager, the secondary reviewers felt that during the last 5 years as Project Director of the current support contract, he has demonstrated beyond any doubt that he is an outstanding manager of human resources.

"Therefore, the secondary reviewers took strong exception to the concerns expressed by the primary reviewers regarding Mr. Kelley's abilities. It was noted, however, that Mr. Kelley is committed for just 80 percent of his time in this contract proposal, and that under certain circumstances that could prevent him from being available on an 'as needed' basis. Since the RFP work required that the Project Manager be committed for 100 percent [of his] time, the panel recommended that this issue be clarified through further questioning."

Minutes from Secondary Review of URC Proposal at 3.

While the secondary panel's comments take strong exception to the peer group's assessment of URC's proposed project manager, a close review of the two evaluations shows that they are not as far apart as they are described by the secondary panel. Both panels recognize the strengths of the proposed manager and the benefits the agency accrues by having a senior company manager in charge of the project. On the other hand, while the peer review panel raises two minor weaknesses--his lack of other managerial experience, and his lack of experience with computers--the secondary review panel notes that URC did not propose a 100 percent

time commitment for the project manager, as required by the RFP. Thus, the panel recommended exploring this matter during negotiations.

Nothing about these two evaluations suggests that the agency acted improperly in not requiring the secondary review panel to rescore the URC proposal in this area, or in accepting the panel's express conclusion that it concurred with the peer review group's finding that the proposal was acceptable. Even though the secondary panel states that it disagrees with the weaknesses expressed by the peer review group, the weaknesses are minor. At the same time, the secondary review panel identified a more serious weakness--a shortfall in the required time commitment specified in the RFP--which would likely offset the two minor weaknesses identified by the peer group. Given the relatively minor difference between the two findings overall, we cannot conclude that the peer review group's 12.7 score for this subfactor was unreasonable, or is appreciably different from any score the secondary review panel might have assigned given the more serious weakness identified in its evaluation.

Other Evaluation Issues

URC also claims that the technical evaluation improperly relied on unstated evaluation criteria, was inadequately documented, and was based on an assessment of key personnel who were committed to other contracts. In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. A protester's disagreement with the agency's judgment, without more, does not show the agency's judgment was unreasonable. Id.

URC complains that the agency materials prepared during the course of the evaluation criticize URC's proposal for lack of innovation, lack of detail, and lack of corporate commitment and enthusiasm. According to URC, since the evaluation criteria did not call for an assessment of innovation, detail, or corporate commitment or enthusiasm, the agency's criticisms of URC were unfair and strayed from the evaluation scheme.

In response to URC's protest, we have reviewed each instance in the record where the agency criticizes URC using one of the three comments above, along with the extensive response by the agency on this issue. In each instance, we find the evaluation assessment to be reasonable. Such assessments are an integral part of a technical evaluation that

considers, among other things, the offeror's understanding of technical requirements, corporate experience, and the clarity, style and format of the proposal. See Amtec Corp., B-240647.4, July 23, 1991, 91-2 CPD ¶ 82 (assessment of whether offeror has provided sufficient detail is an inherent part of the evaluation of technical proposals). In addition, the agency correctly points out that several of these terms were used by URC in different areas of its proposal--for example, URC's suggestions that its proposal was innovative, and that its proposed personnel were examples of URC's corporate commitment. We fail to see how these terms could be appropriate for the offeror to describe its proposal, but not the agency.

We likewise disagree with URC's contention that the record lacks adequate documentation of the conclusion that the proposals were technically equal, and lacks documentation of any evaluation of certain changes ROW made to its BAFO. With respect to the finding of technical equality, as we explained above, the peer group found each of the proposals technically acceptable and approximately equal. While URC correctly argues that the secondary review panel did not state that it found the proposals technically equal, the secondary panel expressly concluded that each of the three proposals was acceptable, and adopted the general findings of the peer group. Using the input from the two panels, the contracting officer concluded that the two proposals were technically equal and expressly repeated that conclusion in the source selection document.

With respect to the adequacy of the evaluation documentation after the initial assessments, the record again does not support URC's position. In the site visit memoranda, the negotiations memorandum, and the source selection document, the agency considers in significant detail changes made during, and as a result of, negotiations. For example, despite URC's complaint that the agency failed to evaluate two changes ROW made in its BAFO, the record shows that both of the changes were considered in detail in the cost evaluation section of the source selection document.⁵ Although URC argues that the changes should have been reflected in the technical evaluation, there is no requirement that every BAFO change be expressly discussed in the evaluation materials.

⁵The two changes in ROW's BAFO involved a decrease in its labor escalation rate in the last 3 years of contract performance, and the addition of a travel agency as a subcontractor to provide the travel services required by the RFP.

Similarly, URC suggests that since the agency never rescored the proposals, it had no basis after the initial peer group review to conclude that the proposals remained technically equal. We disagree. In response to the suggestion that the agency should have rescored the proposals to assure that they remained technically equal, the contracting officer explained why he did not consider rescoring necessary. Specifically, he stated that:

"[Rescoring] was considered unnecessary because the consensus among the Project Officer and the program staff reviewers in evaluating all additional material was that no offeror had improved its proposal to the point that it distinguished itself from the others. Had there been agreement among reviewers that new information obtained during discussions offered sufficient justification to make a decision based on technical considerations, then there might have been a need to rescore to obtain a sense of the magnitude of the differences. Absent that, however, and based on the careful evaluation of the documentation, the Contracting Officer did not find it necessary to require a rescoring."

Based on our review, we think there was an adequate basis in the record for the contracting officer to conclude that the proposals were technically equal.

URC also claims that the technical evaluation was flawed because ROW was allowed to propose key personnel who were committed to other projects and would not be available to perform the services here. Specifically, URC claimed that ROW's proposed project director was already slated to serve as the project director on a contract awarded by the National Cancer Institute, also part of the National Institutes of Health. As explained by ROW in a supplemental filing, and as verified by our Office in reviewing the materials submitted by ROW to the National Cancer Institute, the individual proposed as the project director for this effort is not the same individual proposed for the other contract. Thus, there is no basis for URC's contention in this regard, and no basis for questioning the technical evaluation.

DISCUSSIONS

URC argues that the agency failed to hold meaningful discussions because it did not ask questions regarding certain problems the agency identified in its review of URC's proposal, and did not advise URC of the patent error in its proposal regarding the inclusion of mailing costs. Also, URC claims the discussion questions asked were

misleading because the agency included questions raised by the peer group in areas where the secondary panel disagreed with the peer group.

Federal Acquisition Regulation (FAR) § 15.610(c)(2) requires that a contracting agency "[a]dvice the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the [g]overnment's requirements." Although discussions with offerors need not be all-encompassing, they must be meaningful, which means that an agency is required to point out weaknesses, excesses, and deficiencies in proposals unless doing so would result in technical transgression or technical leveling. FAR § 15.510(c), (d); Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527.

As discussed above, URC was provided 65 technical and business questions related to its proposal during discussions. URC correctly notes that these discussion questions included inquiries on concerns identified by both the peer group and secondary panel, as well as questions related to concerns raised by the peer group but discounted by the secondary panel.

Inclusion of Peer Group Questions

As a preliminary matter, URC's complaint that it was misled by the inclusion of questions raised by the peer group in areas where the secondary panel disagreed with the peer group's conclusions is again based on URC's contention that the secondary panel's views must necessarily override those of the peer group--a contention we do not accept. The contracting officer explained that the offerors were provided with all questions--not just those prepared by the secondary panel--because the proposals were considered technically equal and the agency concluded that it was important to give the offerors any opportunity to improve their proposals.

In our view, there was nothing about the contracting officer's decision to provide all the questions to the offerors that was improper, or misleading. First, despite URC's simplistic description of the differences between the peer group and the secondary panel, many of the issues identified by the peer group remained valid areas for further clarification and negotiation, even though the two panels disagreed about the overall assessment of an issue. For example, in its review of task No. 3 under the evaluation factor "Understanding of Technical Requirements," the secondary panel disagreed with the ultimate conclusion of the peer group but reiterated several of the concerns voiced by the peer group and recommended that questions be formulated to further clarify those issues. The secondary

panel adopted a similar approach in its review of task No. 5. In addition, the agency's action in this regard treated all offerors equally, leading us to conclude that even if URC can identify certain instances where it might have been preferable not to ask a question on a matter where the peer group was raising a concern of questionable merit, this issue does not provide a basis for sustaining URC's protest.

Educational Programs

URC also complains that the agency failed to advise URC of certain agency concerns regarding the proposal's treatment of the scientific issues included in the educational programs. With respect to this issue, our review shows that in its evaluation of the "Understanding of Scientific/Public Health Issues" factor (worth 30 points), the secondary panel expressed concern that some of URC's presentations on health issues were not thorough. The secondary panel criticized URC for a limited presentation on asthma, an outdated and somewhat misleading presentation on smoking, and a less than clear presentation on the issues of obesity. The panel stated that in some of the other program areas, such as blood resources, URC presented "an excellent discussion of the major public health issues which was right on target, well researched, and clearly presented."

As stated above, this criticism of URC's proposal was included under the evaluation factor entitled "Understanding of Scientific/Public Health Issues." Discussion question No. 43 provided to URC by the agency stated:

"Your organization has a good grasp of scientific and public health issues. There is a lack of specifics in how to deal with the issues and difficulties identified. There is also less emphasis on behavior change strategies in the development of educational intervention. Please address."

While URC correctly argues that the question does not address smoking or obesity specifically, the question does address a lack of specifics in the educational programs. In addition, the issue is amplified by discussion question No. 44, which states in relevant part:

"Some of the references are old and outdated. Their description of the issues and problems in asthma seems somewhat superficial and reflects less understanding than in other areas. . . . Please address."

Despite URC's many arguments to the contrary, we conclude that the agency met any requirement to advise URC of these two weaknesses in its proposal during discussions. While we agree with URC that the agency could have done a better job communicating its concerns regarding URC's presentation on smoking in particular, these criticisms do not reflect a significant weakness in the proposal. The questions asked indicate that URC's discussion of the different education programs was, in some areas, not specific, and relied upon old and outdated references. In our view, these questions provided sufficient information to alert URC to reconsider whether its health presentations were specific and up-to-date. URC's failure to do so, under these circumstances, does not lead us to conclude that the agency failed to hold meaningful discussions.

URC's Proposed Subcontract for Data Analysis

With respect to URC's contention that the agency erred in not discussing its concerns regarding URC's choice of a subcontractor, we disagree. In our view, the protester's contentions miscast the record, and selectively quote the agency's mild criticism.

The record reflects that the agency asked extensive written questions regarding URC's approach to the task No. 3 subfactor, "Data Analysis and Evaluation." The agency's concerns in this area were driven both by URC's proposal, and by URC's problems during performance with data analysis. In its written responses, URC proposed to address the agency's concerns by adding an experienced subcontractor. As a result, additional oral questions regarding the arrangement were asked during the site visit with URC. While the source selection document states that the area of data analysis support remains a continuing concern, and opines that the subcontractor arrangement may add to the complexity of coordination between the contractor, its subcontractor, and the agency, the document concludes that "[t]he approach does, however, assume a more technically competent resource for data analysis activities than originally proposed, and they should be credited for their creativity in this regard."

Despite URC's claims that the agency should have discussed any concerns regarding its ability to coordinate the work of its subcontractor, the protester overlooks the fact that the effect of this assessment was to improve URC's relative standing vis-a-vis the other offerors. In addition, URC received extensive guidance from the agency in this area with both written questions, and face-to-face discussions. Finally, after several opportunities to improve this area of its proposal, the mild criticism offered--if, in fact, it is that--arose after submission of BAFOs. In our view, there

is nothing about this issue that suggests that URC has been prejudiced by the agency's failure to hold further discussions regarding URC's response to the data analysis subfactor.

Mailing Costs

URC's final challenge to the adequacy of discussions concerns the fact that URC failed to remove from its cost proposal those costs associated with the change to the statement of work set forth in amendment No. 02. As explained above, amendment No. 02 deleted the RFP requirement that the contractor provide all mailing services, and instead directed the use of the mailing services of the District of Columbia Association for Retarded Citizens. According to the agency, when it evaluated URC's BAFO cost proposal it noticed that URC had not deleted the costs associated with providing all mailing services, even though URC acknowledged receipt of the amendment in writing. As a result, the agency subtracted the entire cost of such mailing services, \$1,327,284, from URC's BAFO.

According to URC, the agency was required to bring URC's error to its attention during discussions so that URC could remedy the problem with its proposal. In addition, URC claims that the agency erred by failing to make a corresponding downward adjustment in the proposal's G&A expense and its proposed fee. As a result, URC claims that its ceiling price is more than \$300,000 higher than it would have been if URC had made the adjustment.

We deny this basis of protest for several reasons. First, even if we accept URC's view of this issue--and we do not--the \$300,000 difference in URC's price does not offset the more than \$1.5 million difference between the price of URC and ROW. Second, URC acknowledged receipt of the amendment, and its failure to make the requisite change arose from a lack of diligence, not from any misunderstanding of the solicitation's requirements. As a result, we view URC's suggestion that the agency should have reopened discussions after receipt of BAFOs to point out this error as clearly without merit. Finally, we note that the amount deducted by the agency may have been overly generous. The contracting officer explains that the agency deleted the entire amount proposed for mailing services even though amendment No. 02 continued to specify certain instances where the contractor would be responsible for mailing services. Thus, it is unlikely that URC would have deleted the entire amount from its cost proposal, as the agency did.

COST REALISM ADJUSTMENT

URC claims that the agency unreasonably accepted ROW's BAFO changes on labor escalation and a travel subcontract without performing an adequate cost realism review. In addition, URC claims that if it had been advised that award would be based on cost, it would have lowered its costs for labor, overhead, G&A expense, and fee, as well as its hotel, travel and conference expenses.

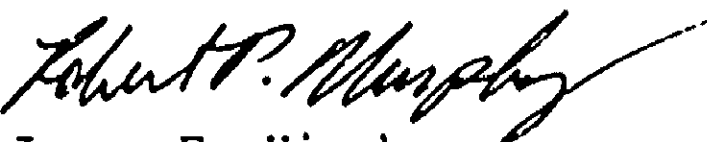
When agencies evaluate proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Mgmt. Sys., Inc.; Department of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Our review of the record in this case reveals that, contrary to URC's assertions, the agency performed a reasonable and extensive cost realism analysis. Neither of the BAFO changes proposed by ROW was a surprise to the agency as ROW indicated its intent to make the proposed changes during discussions. With respect to ROW's proposed change to its labor escalation rates in the last 3 years of the contract, the agency questioned the realism of the change, and insisted that ROW accept ceilings on the proposed costs if it made the change. ROW did so. With respect to the addition of the travel subcontractor, the agency concluded that the change was a sensible one, and would save the government substantial money because ROW proposed lower G&A expense and fee on subcontract expenditures. As a result, there is no doubt that these expenses will not be incurred as a result of the change.

URC's contentions regarding cost realism overlook the well-reasoned and documented steps taken by the agency to assure that if it needed to select a contractor on the basis of cost, it would be able to make a sound selection decision--just as URC apparently overlooked the importance of these actions as they were taken. URC's assertion that the cost

realism review should be overturned because URC now realizes that it could propose lower costs fails to acknowledge that a request for BAFOs is just that--a request that the contractor put forth its best offer before the agency makes its final selection decision. In short, URC has failed to make a showing that the agency's cost realism decision, or any of its other evaluation decisions, were improper or unreasonable.

The protest is denied.


for James F. Hinchman
General Counsel