



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Ricards International, Inc. T-A INFOTEQ

**File:** B-277808; B-277808.2

**Date:** November 21, 1997

Pamela J. Mazza, Esq., Andrew P. Hallowell, Esq., and Antonio R. Franco, Esq., Piliero, Mazza & Pargament, for the protester.

Richard S. Brown, Esq., and Michael Colvin, Department of Health and Human Services, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Where protester disagrees with the agency's technical evaluation of its proposal, but the record does not show that the agency's determinations lack a reasonable basis, protest allegations that the procuring agency improperly evaluated the proposal are denied.
2. Contracting agency misled the protester in discussions by informing the protester that it must use the higher indirect cost rates contained in the firm's current rate agreement, which had the effect of increasing the firm's proposed price in its best and final offer, rather than informing the protester of the agency's actual concern about the lack of support provided by the protester for the lower rates contained in the firm's initial proposal. The protest of misleading discussions is denied, however, since the record does not show that, but for the agency's misleading discussions, the protester would have had a reasonable chance of receiving the award.

## DECISION

Ricards International, Inc. T-A INFOTEQ protests the award of a contract to B.L. Seamon & Associates, Inc. under solicitation No. NIH-NIAID-DAIDS-97-03, issued by the Department of Health and Human Services (HHS) for research support services to the Division of Acquired Immune Deficiency Syndrome of the National Institute of Allergy and Infectious Diseases. INFOTEQ, the incumbent contractor for these services, challenges the propriety of the agency's evaluation of its technical proposal and discussions held with the firm.

We deny the protest.

The streamlined electronic solicitation, issued on November 12, 1996, contemplates the award of a 5-year, cost-reimbursement, level-of-effort contract. The solicitation's statement of work explains that the required services are in the following areas: scientific meeting and conference support (e.g., the provision of planning, logistical, and technical support for meetings/conferences, including site selection and accommodations); support for a variety of non-meeting associated tasks (e.g., teleconferences and preparation/production of manuals and other documents); project management and administrative support (e.g., technical and budgetary management of multiple concurrent projects, and assurance of quality control in contract performance, including writing/editing in the preparation of scientific meeting summaries); and an orderly transition to a subsequent contractor. The solicitation advises all offerors that proposal evaluation for award will be based solely on the contents of the proposals (including evaluation of proposal responsiveness, thoroughness, and feasibility) and information gathered regarding past performance. The solicitation instructs offerors that their proposals must discuss, in more detail than previously required, how the services are to be provided, including detailed documentation of the methodologies proposed to meet the statement of work requirements, and any proposed costs (to include verifiable, factual cost or pricing data to explain proposed indirect cost rates).

The solicitation provides the following technical evaluation criteria for award, listed in descending order of importance: technical competency (soundness and practicality of technical approach, adequacy of administrative framework for timely and accurate performance of services, and understanding of the project); personnel (project director and other staff); and corporate expertise, experience, facilities, and structure. In the evaluation for award, paramount consideration is to be given to technical merit (90 percent), with past performance (10 percent) and cost to be considered in the determination of which proposal is most advantageous to the government--the solicitation states that estimated cost may be the determinative factor among technically equal proposals.

Initial proposals were received and reviewed, and discussions were conducted with those offerors whose proposals were included in the competitive range, including INFOTEQ and Seamon. INFOTEQ submitted an initial proposal at the estimated cost of [DELETED]; Seamon's initial proposal's estimated cost was [DELETED]. Discussions held with INFOTEQ regarding its technical proposal focused mainly on the need for additional support and discussion regarding the protester's claimed capability and experience; the experience and employment status of proposed personnel; and site selection, hotel negotiations, budget reporting, and quality assurance. INFOTEQ was instructed during discussions that it must use the higher indirect cost rates of its current rate agreement, signed 2 months earlier, throughout

the contract period.<sup>1</sup> As discussed further below, although the agency in fact was concerned about the protester's proposal's lack of support for its lower proposed rates which, in the absence of such support, seemed unrealistically low, Hearing Transcript (Tr.) at 104, 159, this concern was not conveyed to the protester.

During discussions between the agency and the awardee, Seamon, the agency pointed out that Seamon's proposed indirect cost rates were considerably lower than the rates included in Seamon's previous rate agreement. In contrast to what was said to the protester, however, Seamon was told that it needed to present further support (concerning information on current rates/costs) to be analyzed for reasonableness.

Revised proposals and best and final offers (BAFO) were received and evaluated. Seamon's BAFO proposed the lowest cost (at \$3,001,413) of the BAFOs received; INFOTEQ submitted a BAFO of [DELETED], based upon the use of its higher rate agreement rates. Three of the BAFOs received (including Seamon's, which received the highest technical point score) were considered to be technically equivalent and technically superior to INFOTEQ's proposal. Award was made to Seamon on August 8. Subsequent to a debriefing by the agency, INFOTEQ filed this protest.

The protester contends that the technical evaluation of its proposal was improper. Specifically, the protester contends that the evaluation team which reviewed the offerors' discussion responses and BAFOs used unstated evaluation criteria, unreasonably lowered the initial technical point score assigned to the protester's proposal in certain areas, and unreasonably failed to increase its proposal's score in other areas, despite additional information submitted by INFOTEQ in response to discussions held with the firm.

The determination of the relative merits of proposals is primarily a matter of agency discretion which we will not disturb unless it is shown to be unreasonable or inconsistent with the stated evaluation criteria. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441 at 5. We have reviewed the terms of the solicitation, the full evaluation record, all proposal submissions, and the protest record, including the transcript of a hearing held on the merits of the protest, and

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<sup>1</sup>The referenced rate agreement was negotiated between the contractor and the agency for billing purposes for work performed during a stated (15-month) time period. The protester has explained, during the course of the protest, that the agreement's rates are higher than the firm's initial proposal rates because the agreement's rates were based on post-bankruptcy actual annual cost data through September 1996 (submitted to the agency in October 1996), which does not reflect cost control measures put into effect by the company after those figures were calculated.

find that the record does not demonstrate that the agency's determinations lack a reasonable basis or resulted from the use of unstated evaluation criteria.

Our review of the record supports the reasonableness of the slight downgrades assigned under the most important technical factor, technical competency. First, the agency had a reasonable basis to conclude that the protester failed to fully discuss, as instructed during discussions, its site selection and hotel accommodations proposals. The solicitation requires the contractor to provide appropriate space to meet contract requirements, which, depending upon the nature of the meeting to be held, may include a variety of agency needs and conveniences to be provided by the contractor at its chosen site. The protester's initial proposal provided a detailed discussion of facilities available in only one National Institutes of Health building. During discussions, INFOTEQ was specifically told to discuss in its revised proposal additional available facilities to meet the site selection requirements. In its response to discussions, the protester simply listed some of the available agency facilities and certain hotels, but did not adequately discuss the sites' features or elaborate as to why a particular site (beyond occupancy considerations) might be appropriate. See Tr. at 17-18. In our view, the protester's cursory response in its revised proposal to the site selection concern expressed by the agency during discussions reasonably supports the slight downgrade assigned to the revised proposal. Our review also confirms that the agency had reasonable grounds to find that the protester failed to adequately discuss in its proposal revisions, in the detail required by the solicitation, potential hotel negotiation problems and solutions, and provided only a minimal description of its budget reporting methodologies; these too were concerns raised with the protester during discussions.<sup>2</sup>

Second, our review of the record also confirms the reasonableness of the slight downgrade assigned to the protester's proposal after discussions regarding the substantive quality of a writing sample (regarding scientific meeting minutes) submitted by the protester. The evaluators here, in reviewing substantive content, [DELETED]. See Tr. at 19-23. The protester does not refute the specific writing sample weaknesses cited by the evaluators, but rather states that this writing sample was submitted and found to be acceptable under its current contract for the same services. Neither the fact that the writing sample had been accepted under

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<sup>2</sup>The protester contends that it should have been given additional credit in the overall evaluation of its proposal for its experience as the incumbent. As stated above, however, all offerors were on notice that the technical evaluation would be conducted solely on the information submitted in the proposals. Given the terms of the solicitation, it was unreasonable for INFOTEQ to assume additional evaluation credit would result for knowledge or experience not adequately detailed in its proposal--in fact, some of the evaluators were not familiar with the firm's experience as the incumbent. Tr. at 57.

the protester's incumbent contract nor the protester's continued unsupported allegations that the agency may have been responsible for certain typographical errors in that sample undermines the reasonableness of the agency's evaluation. On the contrary, our review of the record supports the evaluators' concerns about the meaning and accuracy of certain statements in the writing sample--for instance, the writing sample failed to quote statements attributed to a speaker at a scientific meeting (leaving the reader unsure if the actual words of the speaker were being reported). See Tr. at 21-22. Another example of reasonable concern about the adequacy of the writing sample is its inclusion of several general statements lacking meaningful identification of the subject of the statements--for instance, one phrase states that "[t]he committee . . . should be open to old ideas that have had a hard time recently as well as new ideas," without giving any substantive information as to what scientific ideas are being referenced; another statement credits a particular report as a "successful attempt to look at AIDS research," but no indication of the precise meaning of, or actual method of measuring, the "success" is provided. See Tr. at 22. Further, we have also reviewed the writing samples submitted by both the protester and the awardee, and we believe there are qualitative differences in terms of the professionalism and precision of the reporting of scientific information, as noted by the evaluators, which further support the slight downgrade in evaluation score assigned to the protester's proposal in this area. Given the importance of professional, precise scientific reporting under this contract, we believe the evaluators' concerns about the technical quality of the writing sample were reasonably based.

Third, although the protester was asked during discussions to discuss its proposed quality control measures, the firm's response reasonably was found to lack explanatory detail--the protester's response generally explained that the firm proposed training and performance of periodic reviews, but no detailed methodology was provided. The agency's concerns about the lack of a quality assurance system in place were confirmed by the numerous typographical errors in a writing sample voluntarily submitted by the firm as an example of its work under its current contract for the same services. See Tr. at 23-24. Similarly, although concerns about the firm's budget iterations and reporting systems were expressed by the agency during discussions, neither the protester's proposal nor its proposal revisions provide a detailed presentation of the steps of the actual methodologies/procedures proposed or those to be performed by the firm's proposed software system. Accordingly, we believe the slight downgrades and resulting evaluation point scores in the technical competency area were reasonable.

The protester also questions why its technical point score did not increase under the "other staff" subfactor of the personnel factor, despite its responses to discussion questions, including the submission of scientific writing samples of its proposed medical writer, and its BAFO substitution of personnel. Our review of the record shows that the agency had a reasonable basis for not raising the proposal's score in this area. The record shows that the evaluators' primary concern in the

"other staff" area involved a proposed graduate student's limited field/employment experience as a medical writer, the position for which she was proposed. Tr. at 84. We believe this individual's limited experience performing services required under the contract was a reasonable consideration in the evaluation. See Tr. at 92. We also believe it was reasonable for the evaluators to give less credit on the basis of the student project writing samples provided than may have been assigned for an individual with additional, more relevant, professional work experience producing scientific-reporting/medical documents more directly related to performance of the contract.<sup>3</sup> In sum, although the protester contends that the evaluation of its technical proposal was improper, and that its overall proposal should have at least been found technically equivalent to that of the awardee, the record does not support the protester's contentions.

The protester next challenges the propriety of the discussions held with the firm regarding its cost proposal, specifically regarding the agency's instruction that the firm must use its current rate agreement's indirect cost rates throughout the contract period. The protester contends that it was misled by that direction since the record shows that the agency's actual concern was about the lack of support for the lower rates in the protester's initial proposal.

In negotiated procurements, procuring agencies are generally required to conduct meaningful discussions so that sufficient information is furnished to offerors in the competitive range as to the areas in which their proposals are believed to be deficient so that offerors may have an opportunity to revise their proposals to fully satisfy agency requirements. The government does not satisfy its obligation by misleading an offeror or by conducting prejudicially unequal discussions. Lucas Place, Ltd., B-238008, B-238008.2, Apr. 18, 1990, 90-1 CPD ¶ 398 at 4. However, competitive prejudice is an essential element of every viable protest. See Diverco, Inc., B-259734, Apr. 21, 1995, 95-1 CPD ¶ 209 at 3-4. Where the record does not demonstrate that, but for the agency's actions, the protester would have had a reasonable chance of receiving the award, our Office will not sustain a protest, even if a deficiency in the procurement, such as an impropriety in the conduct of

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<sup>3</sup>Although the record does not contain contemporaneous evaluation documentation regarding the evaluation of the protester's BAFO substitution of an individual previously evaluated under the "other staff" criterion (which the protester contends is evidence of an improper evaluation and lack of meaningful discussions), the agency explains in its contracting officer's report that the substitution was in fact evaluated, and that it did not provide a basis to adjust the firm's personnel score. In any case, the record shows that the agency had favorably evaluated the initially proposed individual, so that any proposal point score change as a result of the substitution would be de minimis and would not materially affect either the relative ranking of the overall proposals or the documented overall technical superiority of the awardee's proposal.

discussions, is found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

We find that the agency misled INFOTEQ during discussions by directing it to use its higher rate agreement rates, given that the record shows that the agency's primary concern was the lack of documentation to support those rates and that the lower rates may have been acceptable, had the requisite additional support been provided. We believe discussions were also unequal to the extent that INFOTEQ was directed to use its higher rate agreement rates, while the awardee was merely advised that, since its proposed rates were substantially lower than its most recent rate agreement, additional support for the lower rates should be provided. Despite this conclusion, however, the record here does not show a reasonable possibility that INFOTEQ was prejudiced by the agency's improper discussions regarding indirect cost rates.

The agency has provided documentation of a post-protest cost evaluation it conducted of the protester's BAFO using the firm's initially proposed lower rates (fluctuating over the 5-year contract period, as initially proposed by INFOTEQ). That evaluation shows that the awardee's technically superior proposal would remain lower in cost by [DELETED]. At the hearing on the protest, INFOTEQ's chief operating officer criticized this agency analysis because it included the firm's BAFO's proposed fixed fee of [DELETED]. This witness testified that the analysis failed to recognize that it is the offeror's option to reduce its proposed fixed fee, and that the witness was authorized by INFOTEQ management to reduce the firm's BAFO fixed fee to as low as [DELETED] to remain competitive. Tr. at 249. In response to questioning by the agency at the hearing about INFOTEQ's failure to more substantially lower its BAFO fee despite the opportunity to do so, this witness testified that in light of the agency's direction to use the firm's higher rate agreement indirect cost rates, which substantially increased the firm's BAFO costs, the firm saw no reason to further decrease its proposed fixed fee. Tr. at 268-269. The agency asserts that INFOTEQ's current protest position that it would have lowered its fixed fee to be competitive should be dismissed as speculative, self-serving, and offered by the protester with the benefit of knowing the awardee's lower cost estimate.

The record shows that INFOTEQ at all times had the opportunity to lower its fixed fee to the extent it now alleges it was prepared to do to win the contract.<sup>4</sup> The protester, however, chose not to do so, even though it knew that the use of its

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<sup>4</sup>The record shows that INFOTEQ was not instructed to use [DELETED] fee in its BAFO, but rather that, at the time of discussions, the agency considered a [DELETED] fixed fee more reasonable for the effort proposed rather than the [DELETED] fixed fee initially proposed by the firm; the firm, however, was free to further lower its fixed fee. Tr. at 269.

higher rate agreement rates increased its BAFO costs; the firm thus had a particularly strong incentive to lower its fee as much as possible, precisely because it felt that the higher rates would hamper its competitive standing. In our view, there is no logical support for the firm's post-protest contention that, had INFOTEQ been allowed to use its initially proposed lower rates, it might have also lowered its fixed fee to an amount that would have rendered its cost proposal lower than Seamon's.

In addressing the issue of prejudice, INFOTEQ does not contend that it would have lowered its initial proposal rates in its BAFO; its position is limited to the assertion that it might have lowered its fee. We recognize that one of INFOTEQ's employees stated at the hearing that the firm's initial rates might have been lowered in the firm's BAFO. This testimony is not persuasive. The employee, INFOTEQ's contracts manager, was testifying only as to whether he would have expected INFOTEQ's chief operating officer to lower the rates in the firm's BAFO.<sup>5</sup> Further, the most recent available actual cost figures provided by the protester, although [DELETED], simply do not support any such decrease. Finally, in discussing this issue in its post-hearing comments, INFOTEQ contends that it was prejudiced by being denied the opportunity to offer its initial rates in its BAFO, rather than contending that the BAFO rates may have been lower than the initial rates.

We must therefore discount as speculative and unsupported the firm's position in this regard--the record does not show any reasonable basis to assume that INFOTEQ would have further lowered its fee or lowered its initial rates in its BAFO. Given the higher technical evaluation score of Seamon's proposal and the terms of the solicitation giving greater importance to technical factors, and since the protester's BAFO costs, even using the firm's initially proposed rates, would have been higher than the awardee's proposed costs, we see no reasonable possibility that the protester was competitively prejudiced by the agency's misleading discussions regarding the use of the firm's rate agreement terms--that is, the record provides no showing that, but for the agency's actions, INFOTEQ would have had a reasonable chance of receiving the award.

The protest is denied.

Comptroller General  
of the United States

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<sup>5</sup>The witness stated, "I think [the chief operating officer] would have gone with [the initial] rates, maybe even lower rates." Tr. at 204.