



Comptroller General  
of the United States

61676

Washington, D.C. 20548

## Decision

Matter of: INFOCUS Communications

File: B-256244

Date: May 31, 1994

Michael D. Bristol for the protester.  
Terrence J. Tychan, Department of the Health and Human Services, for the agency.  
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably evaluated the protester's low-cost proposal as containing numerous weaknesses, such that the awardee's significantly higher-rated, higher-cost proposal was reasonably found to be worth the cost premium.

### DECISION

INFOCUS Communications protests the award of a contract to Technical Resources, Inc. (TRI) under request for proposals (RFP) No. NCI-CO-33007-61, issued by the National Cancer Institute (NCI), Department of Health and Human Services (HHS), for the operation of the International Cancer Information Center (ICIC) Membership Service.

We deny the protest.

The RFP, issued on April 23, 1993, as a total small business set-aside, contemplated the award of a cost-plus-fixed-fee contract to develop and maintain the ICIC's Membership Service. The solicitation's statement of work (SOW) required, among other things, that the successful offeror plan and provide a service desk and fulfillment system for receiving and processing requests for general information, information regarding the membership service and its benefits, and information concerning ICIC products and services. The SOW also required that the successful offeror receive and store membership materials and other materials necessary for fulfilling requests, and provide membership marketing, membership reporting, and billing and collection services, in addition to publication and delivery services for up to 25 periodicals and additional one-time

publications. These requirements were set forth as 10 tasks to be accomplished by the successful contractor.

The RFP provided that award would be made to the offeror whose offer, conforming to the solicitation, was most advantageous to the government, cost and other factors considered. The RFP stated that technical merit would receive "paramount" consideration in the award selection, and listed the following technical evaluation criteria and their weighting:

Overall Technical Approach--35 percent  
 Background Experience of Organization--25 percent  
 Facilities, Equipment, and Resources--25 percent  
 Staffing--15 percent

The RFP requested the submission of technical and cost proposals, and provided detailed instructions for the preparation of proposals. Offerors were informed that their technical proposals were to describe in detail the methodologies proposed for the accomplishment of the tasks set forth in the SOW, their experience with their proposed methodologies, and a schedule for the completion of the work required. The technical proposals were also to describe the experience and qualifications of proposed personnel, and were to include the resumes of proposed key personnel. The solicitation also stated that it was the agency's "desire[]" that the offeror's production facilities "be located within a one-hour radius of Bethesda, Maryland," where NCI is located, and cautioned that "[a]ny offeror intending to use production facilities outside this area should furnish information, with the proposal, which will on its face demonstrate ability to meet the schedule requirements."

The agency received five proposals, including INFOCUS's and TRI's, by the RFP's June 21 closing date. The offerors' technical proposals were initially evaluated by a technical evaluation group (TEG) composed of nongovernment personnel peer reviewers. The offerors' initial proposals were evaluated by the TEG as follows:

<u>Offeror</u>	<u>Total Points (maximum 1,000)</u>	<u>Total Cost</u>
A	770	\$10,310,759
INFOCUS	727	\$ 6,650,622
TRI	632	\$ 9,059,676
B	505	\$ 6,760,826
C	113	\$ 6,873,438

The TEG recommended that the proposals of INFOCUS, TRI, and Offerors A and B be included in the competitive range.

The proposals and a memorandum prepared by the TEG detailing the results of its evaluation of the five proposals were forwarded to NCI's source evaluation group (SEG) for review. The SEG was tasked with reviewing the conclusions of the TEG and developing a set of questions for each offeror included in the competitive range. According to the record, during its review of the TEG's evaluation and recommendations, the chairman of the SEG and several members of the SEG noted that the TEG's memorandum provided "little justification . . . on the strengths and weaknesses to justify the TEG scoring." The SEG determined with regard to TRI's proposal that the TEG "had failed to justify the low score they gave this offeror, as the SEG felt the proposal deserved a higher initial score," and concluded that the TEG score awarded INFOCUS was "not supportable by the documentation and that the TEG had overlooked many weaknesses." The SEG detailed its areas of agreement and disagreement with the TEG regarding the strengths and weaknesses of each of the five proposals submitted, and recommended that the proposals of Offerors B and C be excluded from the competitive range. The SEG did not rescore the proposals at this time, but developed discussion questions for the competitive range offerors.

Discussions were held with TRI, INFOCUS, and Offeror A, and the SEG conducted site visits with these three offerors. Best and final offers (BAFO) were requested and evaluated by the SEG. The minutes of the SEG meeting, at which the BAFOs were evaluated, state that:

"[t]here was considerable discussion among the SEG members and the contracting staff concerning the poor job that the TEG had done in reviewing proposals and documenting their scores in their review."

The SEG rescored all three proposals and determined that, based on their responses to the discussion questions, TRI had strengthened its proposal considerably, while INFOCUS "furthered weakened their position . . . and did not demonstrate sufficient understanding of the project."

The offerors' BAFOs were evaluated as follows:

<u>Offeror</u>	<u>Total Points (maximum 1,000)</u>	<u>Total Cost</u>
TRI	818	\$7,401,076
Offeror A	610	\$9,099,081
INFOCUS	523	\$5,739,897

The SEG recommended that award be made to TRI, and award was made to that firm on December 28.

INFOCUS protests that the SEG's evaluation of its proposal was unreasonable, particularly in light of the differing findings of the TEG.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. In reviewing an agency's evaluation, we will not reevaluate technical proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367. A protester's mere disagreement with the agency does not render the evaluation unreasonable. Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288.

The agency, in its report on the protest, provided INFOCUS with the portions of the TEG's and SEG's memoranda and minutes which identify the numerous weaknesses identified in INFOCUS's technical approach. Included were the minutes of the SEG meeting at which INFOCUS's BAFO was evaluated, which identify and detail 33 specific weaknesses the SEG found in INFOCUS's proposal. The protester, in its comments on the agency report, substantively responded to the propriety of the agency's evaluation with regard to only 5 of these 33 weaknesses. Based on our review of the record, and as discussed more fully below, we believe that the agency's evaluation of INFOCUS's proposal was reasonable and in accordance with the RFP's stated evaluation criteria.

For example, the SEG determined that INFOCUS's proposed approach to accomplishing the SOW through "a consortium of contractors," comprised of INFOCUS as the prime contractor with Information Ventures, Inc. (IVI) and Byrd Press as subcontractors, constituted a significant weakness. This conclusion was based on the SEG's determinations that the "consortium" did not have any experience working together; that INFOCUS did not appear to have experience in managing a project similar in complexity and involving a similar number of subcontractors and consultants; that the roles and responsibilities of INFOCUS and its subcontractors were unclear; and that since INFOCUS did not have any experience in the health care/cancer field or marketing knowledge of the ICIC's target audience, its proposed approach relied heavily on IVI and consultants proposed by IVI for such expertise. The SEG also found that INFOCUS's proposal, while demonstrating minimal acceptability with regard to performing the individual tasks set forth in the SOW, failed to demonstrate an understanding

of the interrelationship of the various tasks and the overall structure of the ICIC Membership Service program.

INFOCUS argues that its proposal should not have been downgraded merely because its "contracting team" had not worked together. In this regard, the protester asserts that it wrote the technical proposal "in close cooperation with [its] proposed subcontractors," and that "[t]his immense effort required the same spirit of cooperation that would be required in the actual performance of the contract." With regard to the agency's determination that INFOCUS did not demonstrate sufficient experience in managing a project of the complexity contemplated using a similar number of subcontractors, the protester "challenge[s] the agency to prove that our past experience in related work . . . is any less demanding than their program," and points here to a contract INFOCUS has with the Department of Agriculture which it claims is similar in complexity to that contemplated here.

We first note that the protester does not dispute three of the agency's determinations underlying the agency's concerns with INFOCUS's proposed approach to performing the contract: that the roles and responsibilities of INFOCUS and its subcontractors as set forth in the proposal were unclear; that INFOCUS does not have any experience in the health care/cancer field or marketing knowledge concerning the ICIC program's target audience and intends to rely heavily on a subcontractor (who in turn relies upon consultants) with which it has never worked, for this experience; and that INFOCUS failed to demonstrate in its proposal an understanding of the interrelationship of the various tasks and the overall structure of the ICIC Membership Service program.

Further, although the protester argues that it possesses past experience demonstrating its ability to manage a project of this complexity with the subcontracting effort it has proposed here, the protester fails to point out where this particular past experience is demonstrated in its proposal. INFOCUS's proposal does list contracts it has performed or is performing, which it asserts are similar in size and scope, such as the Department of Agriculture contract, and does set forth short narratives describing each of these projects. However, these narratives simply do not demonstrate that these projects are similar in complexity to the ICIC Membership Service program, or that the accomplishment of these projects involved the coordination by INFOCUS of a similar subcontractor effort. It is an offeror's responsibility to prepare an adequately written proposal which can be evaluated in accordance with the criteria set forth in the solicitation; an offeror runs the risk of being rejected if it does not submit an

adequately written proposal.<sup>1</sup> LRL Sciences, Inc.,  
B-251903, May 3, 1993, 93-1 CPD ¶ 357.

The SEG also determined that INFOCUS failed to propose sufficient staff to perform in accordance with the SOW. The SEG memorandum states in this regard that the staffing proposed by INFOCUS was, among other things, "insufficient to cover the staffing of the service desk." The SEG memorandum explains with regard to INFOCUS's proposed staffing of the service desk that "[t]here is no information given on the number of phone lines that will be answered and how they plan to answer the number of calls with the proposed [staff]."

The protester contends that "[i]t was unreasonable for the agency to downgrade us for too few personnel when we were instructed by the agency to lower the numbers of our staff." However, the protester, in support of this contention, does not point to any agency questions that pertained to its proposed approach to staffing the service desk. Nor does the protester make any attempt to explain why its proposed approach to staffing the service desk would satisfy the agency's needs. Rather, the protester only points to discussion questions requesting that INFOCUS consider reducing its proposed program administrator/project director and warehouse fulfillment staff.

We fail to see how INFOCUS's contention here casts any doubt on the propriety of the agency's determination with regard to INFOCUS's proposed staffing in general and with regard to the service desk in particular. To the extent that the protester is contending that it was misled during discussions by the agency's request that it review its program administrator/project director and warehouse staffing, we note that there is nothing in the SEG BAFO evaluation memorandum to suggest that INFOCUS's proposed staffing was found deficient in these areas. Additionally,

---

<sup>1</sup>We note that the agency expressed its concerns with INFOCUS's proposed "consortium" approach during discussions. For example, INFOCUS was asked to "[d]ocument the experience of INFOCUS in managing a project of this complexity which involves a number of subcontractors and consultants. Provide anticipated problems and solutions." Rather than detail its relevant experience and demonstrate its ability to manage subcontractors as requested, INFOCUS merely submitted a list of tasks, such as "design marketing campaigns to our guidelines" for which, as described by the protester, it routinely uses "outside vendors and consultants to perform." This response understandably did not assuage the agency's reasonable concerns in this area.

in light of the explanations set forth in the SEG's memorandum, in addition to the contracting officer's statement in the agency report that "the service desk as proposed [by INFOCUS] was not sufficient to provide the level of customer service that would be needed to make the service successful"--an observation which the protester has failed to refute--we cannot conclude that the agency acted unreasonably in downgrading INFOCUS's proposal for what the agency perceived was an insufficient number of staff.

INFOCUS contends that its proposal was improperly downgraded by the agency because "the SEG was not convinced that the printing schedules proposed by Byrd could be met." INFOCUS asserts that the SEG's concerns were not reasonably based.

The SOW provided with regard to the publication of the Journal of the National Cancer Institute (JNCI), set forth under "Task VIII: Publication," that:

"Strict requirements for quality and timeliness necessitate the exchange of materials between the Government location and the contractor's typesetting/printing/binding facility up to twice in a single day. This means, for instance, that a morning delivery to ICIC may have to be received back at the contractor's location that afternoon for correction, returned again to ICIC the following morning, [and] rechecked and returned to the contractor that afternoon. Use of facsimile device for the exchange of materials will not be permitted."

The SEG found during its evaluation of INFOCUS's initial proposal that the proposal did not adequately describe how the "twice-daily exchanges of materials between the printer and the ICIC would be accomplished" as required under Task VIII of the SOW. This was of particular concern to the agency here because Byrd--INFOCUS's printing subcontractor--has facilities in Springfield and Richmond, Virginia.<sup>2</sup> The agency thus set forth in its discussion questions to INFOCUS a "Typical JNCI Production Scenario," and requested that INFOCUS describe how it would accomplish the task within the time frames specified.

The agency, in evaluating INFOCUS's response to the scenario as provided in its BAFO, noted that the response "did not clarify the issue of two Byrd facilities in Springfield

---

<sup>2</sup>Bethesda, Maryland is approximately 15 miles from Springfield, Virginia and approximately 115 miles from Richmond, Virginia.

and Richmond and which tasks would be carried out in which facility." Because of this, the agency determined that "[t]here is no evidence [in INFOCUS's proposal] that convinces the SEG that this schedule can be met," and thus considered this aspect of INFOCUS's proposal as a weakness.

INFOCUS protests that because it clearly proposed to meet all of the printing schedules required by the RFP, the agency acted unreasonably in evaluating this aspect of its proposal as a weakness. The protester points to a list of "references of satisfied customers who have been buying similar printing with very demanding deadlines from Byrd for years" as evidence of its ability to meet the schedules set forth in the RFP.

Based on our review of the record, we cannot conclude that the agency acted unreasonably in considering this aspect of INFOCUS's proposal to be a weakness. Neither INFOCUS's initial proposal nor its BAFO makes any mention as to which printing requirements will be accomplished at Byrd's facility in Springfield and which will be accomplished at Byrd's facility in Richmond; nor do they explain how the materials will be transported to the Richmond facility to ensure that the printing requirements to be accomplished there, if any, will be met in a timely manner. Further, the list of references provided by INFOCUS as to Byrd's satisfied customers simply sets forth the client's name and the title of the publication produced; it does not state that these projects were accomplished under any particular time constraints. Thus, the list of references does not, as INFOCUS suggests, provide any basis for our Office to conclude that the agency acted unreasonably in downgrading INFOCUS's proposal because the proposal did not demonstrate that the time frames for completing certain publishing requirements could be met.

With respect to INFOCUS's argument concerning the differing views of the TEG and SEG with regard to the merits of its proposal, we note that it is the ultimate evaluation by the agency which is governed by the tests of rationality and consistency with the RFP evaluation criteria, not the assessment by lower-level evaluation boards. Contel Fed. Sys., 71 Comp. Gen. 11 (1991), 91-2 CPD ¶ 325. In this regard, neither the selection officials nor the upper-level evaluators, such as the SEG and the source selection official here, are bound by the recommendation of the lower-level evaluators such as the TEG. Id. As discussed above, we have no legal basis upon which to question the SEG's evaluation, despite the contrary views as reported by the TEG. In performing its evaluation, the SEG did not reject the findings of the TEG but, rather, carefully considered the TEG's evaluation, and while it agreed with a number of the TEG's findings, in some cases it simply came to



different conclusions regarding the strengths and weaknesses of the offerors' proposals. The fact that the TEG and SEG had different views as to the strengths and weaknesses of the offerors' proposals does not, in and of itself, render the SEG's conclusions unreasonable.

Based on our review of the record, including the weaknesses identified by the SEG in INFOCUS's proposal that were not addressed by the protester and those discussed above, we find that the agency's evaluation of INFOCUS's proposal was reasonable.

INFOCUS protests that TRI's cost is too high and that its proposal is not so technically superior as to justify the award. Where, as here, the RFP does not provide for award on the basis of the lowest-priced, technically acceptable proposal, an agency has the discretion to make the award to an offeror with a higher technical score and higher cost, where it reasonably determines that the cost premium is justified considering the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. Atlantic Scaffolding Co., B-250380, Jan. 22, 1993, 93-1 CPD ¶ 55. Here, the agency reasonably determined and documented that TRI's technical proposal was sufficiently superior (818 points) to INFOCUS's proposal (523 points) to justify the \$1.7 million cost premium. In contrast to INFOCUS's relatively weak proposal, TRI's proposal was found to demonstrate the firm's extensive experience with NCI and its clear understanding of the RFP's SOW, with a clearly stated organization plan, adequate and highly experienced staff to assure successful accomplishment of the RFP work, and printing/production activities unified in a closely proximate office. Based on our review, the award selection was reasonable and in accordance with the RFP evaluation criteria.

INFOCUS finally contends that the agency held improper post-BAFO discussions with TRI because the agency, after selecting TRI for award, held "limited negotiations" with TRI to discuss indirect cost rates. We disagree. HHS has promulgated HHS Acquisition Regulation (HHSAR), 48 C.F.R. § 315.670(a) (1993), which permits HHS to conduct final contract negotiations with only one offeror where appropriate and necessary.<sup>3</sup> HHS' alternative procedures specify that "[t]he negotiation shall not in any way prejudice the competitive interests or rights of the unsuccessful offerors" and "shall be restricted to definitizing the final agreement on terms and conditions"

---

<sup>3</sup>Federal Acquisition Regulation § 15.613(b) permits agencies to develop alternative source selection procedures.

and that these negotiations may "include such topics as . . . indirect cost rates,"<sup>4</sup> 48 C.F.R. § 315.670(a). The record of HHS' negotiations with TRI shows that they were conducted only to clarify certain indirect cost rates proposed by the awardee, and that the negotiations resulted in a relatively minor reduction in TRI's BAFO cost. INFOCUS was clearly not prejudiced by the conduct of the negotiations, on a topic that the HHSAR expressly recognizes as an appropriate post-selection negotiation topic, because the subsequent modest reduction in TRI's BAFO cost can only impact on the relative competitive standing by making TRI's otherwise successful proposal more attractive to the government.

The protest is denied.

/s/ Robert H. Hunter  
for Robert P. Murphy  
Acting General Counsel

---

<sup>4</sup>The RFP expressly advised offerors of the possibility of such negotiations with the successful offeror.