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Decision

Matter of: Information Ventures, Inc.

File: B-297276.2; B-297276.3; B-297276.4

Date: March 1, 2006

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., Erin R. Karsman, Esq., David S. Stern, Esq., and Tamara F. Dunlap, Esq., Smith Pachter McWhorter & Allen PLC, for the protester.

Stuart Turner, Esq., and Joseph P. Hornyak, Esq., Holland & Knight LLP, for BRI Consulting Group, an intervenor.

Stuart C. Briles, Esq., Department of Health and Human Services, for the agency.

Jonathan L. Kang, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where agency failed to reconcile contradictory cost and technical evaluations regarding offerors' proposed staffing levels and unreasonably normalized offerors' proposed labor hours under its cost realism analysis.

DECISION

Information Ventures, Inc. (IVI) protests the award of a contract to BRI Consulting Group under request for proposals (RFP) 2005-N-01874, issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) for assistance and technical support for the agency's National Center for Chronic Disease Control and Prevention, Division of Cancer Prevention and Control (DCPC). The protester challenges the reasonableness of the agency's evaluation of offerors' cost and technical proposals.

We sustain the protest.

BACKGROUND

The agency sought proposals to assist the agency with information development and dissemination activities regarding a broad scope of priority cancer efforts. The statement of work required offerors to propose personnel, materials, supplies, equipment and technical support to achieve various assistance and technical support

tasks, including response and tracking for government and public information inquiries, website design, content development and maintenance, web site promotion, exhibit design, maintenance and update of information knowledge bases and exhibit inventory, training, events and meeting planning, development of educational materials, publication development and promotion, and development of special reports. RFP at 6-14. The RFP anticipated the award of a cost-plus-fixed fee contract with a base performance period of 1 year, and four 1-year option periods. Id. at 3.

The RFP advised offerors that proposals would be evaluated on the basis of technical strength, past performance, and cost, and stated that technical strength and cost would be of “approximately equal value” in the agency’s award determination.¹ RFP at 51-52. The technical strength evaluation factor had four subfactors: methodologies and management approach (30 points), technical approach and understanding the requirement (30 points), qualifications of individuals (30 points), and understanding the purpose and objective (10 points). Id. at 51.

The agency received and evaluated six proposals, and determined that only IVI’s and BRI’s proposals were the most highly rated, with scores of 98 and 99, respectively, and should be included in the competitive range. Contracting Officer’s Statement at 3. The agency engaged in discussions with each of those two offerors and requested final proposal revisions (FPRs). The agency then conducted a cost realism analysis of IVI’s and BRI’s FPRs. AR, Tab 8, Cost Realism Analyses. The results of the agency’s technical and past performance evaluations, and cost realism adjustments were as follows:

	BRI	IVI
Initial Base Year Proposed Costs	[deleted]	[deleted]
FPR Base Year Proposed Costs	[deleted]	[deleted]
FPR Base Year Evaluated Costs	\$749,412	[deleted]
FPR Total Evaluated Costs	\$3,978,729	[deleted]
Technical Score	99	98
Past Performance	100	100

AR, Tab 10, Summary of Negotiations, at 2, 6-7.

The agency determined that the offerors’ proposals were technically equal, and therefore awarded the contract to BRI on September 14, 2005, based on that offeror’s

¹ The RFP did not explain how past performance would be weighted in the award determination; because IVI and BRI each received perfect scores for past performance, the role or weight of past performance was apparently not relevant for the source selection decision.

lower evaluated cost. Contracting Officer's Statement at 5. Following award, IVI filed a protest with our Office alleging that the agency's evaluation of proposals and source selection decision were flawed. The agency stated that it would take corrective action by reevaluating proposals, and requested that our Office dismiss the protest; we did so on October 12, 2005. The agency subsequently issued contract modification 00001, directing BRI to suspend its performance under the contract.

The agency conducted new evaluations of IVI's and BRI's technical proposals and past performance records, but no changes were made to the offerors' scores. AR, Tab 10, Source Selection Decision (SSD), at 2-3.² In its reevaluation of technical proposals, the agency confirmed that both IVI's and BRI's technical proposals were "technically superior," in part due to the technical evaluation panel's (TEP) conclusion that both offerors proposals "contained more than adequate staff to accomplish tasks." In this regard, the technical evaluation criteria included examination of the adequacy of proposed labor hours to perform the work.³ AR, Tab 6, TEP Consensus Technical Evaluation, at 1-2.

As part of the corrective action, the agency also requested that the CDC Acquisition Assistance Oversight and Evaluation Branch (OEB) conduct a cost analysis of the offerors' proposals. AR, Tab 9, OEB Reports. The OEB report concluded that "both offerors had the financial capability to perform the contemplated contract; and that both offerors' proposals were acceptable as a basis to negotiate a fair and reasonable contract price." Contracting Officer's Statement at 6. The OEB recommended that the agency address several concerns regarding the offerors' proposed costs, but no changes were ultimately made to the offerors' evaluated costs. AR, Tab 10, SSD at 3-4. The agency did not perform another cost realism analysis of offerors' cost proposals as part of the corrective action, and the results of the unchanged cost realism analysis were incorporated in the SSD. *Id.* In sum, the agency's reevaluation of IVI's and BRI's proposals did not result in any changes to their evaluated costs or technical and past performance ratings.

The agency made a new source selection determination, again concluding that the contract should be awarded to BRI based on the offerors' technically equal proposals

² The agency's source selection made after the corrective action is contained in a document titled "Memorandum for Record -- Information Ventures Protest," and is referred to herein as the SSD.

³ The description of IVI's and BRI's proposals as containing "more than adequate staff" mirrors individual evaluator determinations that both the capabilities and proposed hours for the offerors' staff were more than adequate. *See, e.g.*, AR, Tab 6, Technical Evaluation Score Sheets ("Staff have more than adequate hours to perform the tasks," "Staff hours are more than adequate to complete the tasks of this contract.")

and BRI's lower evaluated cost. Id. at 4. The agency subsequently issued contract modification 00002, directing BRI to resume performance. Following its debriefing, IVI filed this protest.

DISCUSSION

Technical Evaluation

IVI contends that the evaluation of IVI's and BRI's technical proposals was flawed because the agency failed to reconcile the offerors' high technical scores with the agency's determination that the offerors had proposed insufficient hours for staffing. Offerors were advised that the agency would evaluate proposed staffing hours as part of the technical evaluation of offerors' understanding of the work. The first two subfactors under the technical evaluation factor stated:

1. Methodologies and Management Approach

The criterion will be evaluated on the soundness of the Offeror's approach for managing the work, the proposed staff time, labor hours, and capacity for internal administrative processing support of the contract requirements.

2. Technical Approach and Understanding of the Requirements

Provide a narrative summary of your understanding of the required services, which are outlined in the Statement of Work. Provide an organizational chart of the overall management schedule. The Government will evaluate the Offeror's qualifications to effectively develop, communicat[e], and disseminate cancer prevention and control information. The plan for accomplishing work will demonstrate an understanding of the required services.

RFP §§ L.4, L.5.

The TEP consensus evaluation rated both offerors as "technically superior." AR, Tab 6, TEP Consensus Technical Evaluation, at 1-2. The agency's consensus evaluation concluded that both offerors' high ratings were warranted, in part, by their proposed staffing:

Upon re-evaluation, two contractors were determined to be technically superior, Information Ventures, Inc. and BRI Consulting Group. Both contractors were rated technically superior because they provided technical proposals that contained more than adequate staff to accomplish tasks; included detailed descriptions of how they proposed to accomplish work in accordance with specified labor hours; demonstrated having a comprehensive and complete understanding of

all project requirements and tasks assigned; provided a detailed plan that outlined the process and time that would be required to accomplish tasks . . .

Id. at 1-2.

The agency's conclusion that the offerors' proposals "contained more than adequate staff to accomplish tasks," however, is directly at odds with the agency's cost realism analysis. The agency's cost realism analysis, which was also conducted by the TEP, concluded that neither offeror proposed sufficient hours to perform the work:

Upon review of the revised cost proposals, it was determined that Program Directors hours had been lowered to unrealistic expectations by both compan[ies]. In addition, BRI had lowered hours in the areas [of] [deleted] that in the opinion of the technical reviewers, needed to be upwardly adjusted.

AR, Tab 8, Cost Realism Analysis, at 1.

The agency's cost realism increases for IVI and BRI proposed hours were as follows:

IVI

Position	Proposed Hours	Agency Estimate	Difference	Percentage Difference
Project Director	[deleted]	800	[deleted]	[deleted]
TOTAL	[deleted]	800	[deleted]	[deleted]

BRI

Position	Proposed Hours	Agency Estimate	Difference	Percentage Difference
Project Director	[deleted]	800	[deleted]	[deleted]
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
TOTAL	[deleted]	[deleted]	[deleted]	[deleted]

Id.

As discussed above, the agency did not perform a new cost realism analysis during corrective action. However, the agency requested that the OEB conduct a cost analysis of offerors' proposals. The OEB's report did not address the realism of the proposed hours. See AR, Tab 9, OEB Reports.

Following corrective action, the SSD reiterated the agency's contradictory conclusions, i.e. that the offerors had proposed more than adequate hours to perform the work, yet also insufficient hours to perform the work:

Both contractors provided technical proposals that contained more than adequate staff to accomplish the tasks; . . . they demonstrated their abilities relative to their comprehensive and complete understanding of all project requirements and tasks; they provided a detailed plan that outlined the process and time that would be required to accomplish the required tasks

AR, Tab 10, SSD at 2.

After review of the FPRs, it was determined that the reduced labor hours as proposed by both contractors for the Project Director (PD) position were unrealistic. . . . In addition, it was determined that the reduced hours proposed by BRI in its FPR for the positions of 1) [deleted], 2) [deleted], 3) [deleted], were unrealistically low.

Id. at 4.

We conclude that the agency's evaluation of offerors' proposals was unreasonable because of the contradiction between the cost evaluation and technical evaluation. See Honeywell Tech. Solutions, Inc.; Wyle Labs., Inc., B-292354, B-292388, Sept. 2, 2003, 2005 CPD ¶ 107 at 7-8 (evaluation was unreasonable where agency found that awardee was rated as "appropriate" under technical evaluation, yet also concluded that awardee had proposed insufficient staffing under cost realism analysis). The agency argues that the technical evaluations were reasonable because the evaluators relied upon numerous strengths in concluding that each offeror warranted high technical scores. The technical evaluation and source selection decision, however, conclude that each offeror was "technically superior," in part because of each offerors' "more than adequate" proposed staff. The SSD makes no attempt to reconcile the clearly opposing views of the technical evaluation and the cost evaluation. We conclude that the agency's evaluation that both offerors' proposals were "technically superior," with near-perfect technical scores, is unsupported in light of the patent contradiction in the record, as discussed above.

We further conclude that IVI was prejudiced by this flawed evaluation. See McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). The agency and intervenor each note that the agency determined that both IVI's and BRI's proposals were "technically superior" under the technical strength evaluation factor, and thus a finding that the evaluations were unreasonable would affect both offerors. The record does not clearly show, however, the potential effect of a reevaluation of the offerors' technical proposals that takes into account the cost realism adjustments. In this regard, the agency concluded that IVI's proposal required cost realism

adjustments for one position, whereas BRI required adjustments for four positions. Overall, IVI was found to have required a cost realism adjustment of [deleted] hours, whereas BRI was found to require an adjustment of [deleted] hours. On this record, we cannot determine what the impact of a proper technical evaluation would have been on the ratings of each offeror. We conclude, therefore, that IVI was prejudiced by the flawed evaluation and sustain the protest on this basis.

Cost Realism Analysis

IVI next argues that the agency conducted an improper cost realism analysis concerning the project director position. IVI contends that the agency improperly normalized the proposed hours for both offerors by comparing each offeror's proposed hours to an agency estimate of required hours and adjusting the offerors' costs by increasing hours to that estimate, without taking into account each offeror's technical approach. IVI also contends that the cost realism adjustments were unreasonable because the agency misled it during discussions.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed costs are not considered controlling because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1); 15.404-1(d). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. FAR § 15.404-1(d)(2); Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8-9. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. Hanford Envtl. Health Found., *supra*. The analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. *See Metro Mach. Corp.*, B-295744; B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11.

The initial RFP identified a requirement for a project director position, but did not list suggested or minimum proposed hours. RFP at I.3. The RFP also did not identify specific duties or responsibilities for the project director; rather, as the agency explained, offerors were responsible for proposing their own approaches to the contract requirements. RFP amend. 4 at 1. An amendment to the RFP, however, subsequently stated that "the suggested level of effort" for the project director position "is about 25-30 hours per month." *Id.* at 25.

During discussions, IVI and BRI received written questions from the agency, and the agency held telephone conferences with each offeror. In its initial written discussions, the agency asked IVI to "[e]xplain the specified hours listed for the

project manager/director.” AR, Tab 12, Aug. 17, 2005, Letter from Agency to IVI, at 1. After the telephone conference, the agency requested that IVI’s FPR “[f]urther clarify the specified hours and duties as listed for the project manager vs the project director.” Id., Aug. 19, 2005, Letter from Agency to IVI, at 1. Although neither of the written discussions questions specifically directed IVI to reduce its proposed hours for the project director position, IVI contends that the agency indicated during an August 19, 2005 telephone conversation that the agency anticipated a reduced role for the project director:

[deleted]

Decl. of IVI Technical Representative ¶ 5.

IVI believed that its discussions with the agency clearly indicated that IVI should reduce its proposed hours for the project director position. Id. ¶ 6. IVI’s FPR reduced its proposed project director hours and explained that the position would have the following duties:

He will regularly review project progress, monitor expenditures, and provide guidance for problem solving and developing solutions for DCPC information development and dissemination, and will provide back-up should the PM be away from the office. He will participate in weekly project meetings and in project meetings and in project meetings in Atlanta and conference calls with DCPC personnel, as needed.

IVI FPR at 3.

As discussed above, IVI and BRI each reduced the number of hours proposed for the project director position after discussions with the agency. The initial and revised proposed hours for the offerors, together with the agency’s subsequent cost realism increases, were as follows:

	Initial Proposed Hours	FPR Proposed Hours	Agency Estimate	Difference
IVI	[deleted]	[deleted]	800	[deleted]
BRI	[deleted]	[deleted]	800	[deleted]

AR, Tab 8, Cost Realism Summary, at 1.

The TEP determined that the additional hours should be added to each offeror’s proposal “in order to efficiently and realistically perform the duties listed in the contract scope of work.” AR, Tab 8, BRI Cost Realism Analysis, at 2; id., IVI Cost Realism Analysis, at 1. The TEP stated that the “amount of additional hours was determined based on two factors: 1) average number of hours that were required to fulfill the existing contract and 2) average number of hours that would be required to

fulfill new duties that were outlined in the proposed contract.” Id. The agency further stated that it relied on “programmatically expertise, historical knowledge, and familiarity with the proposed work” in conducting the cost realism analysis for the offerors’ proposals. AR, Tab 10, SSD, at 4. The agency explains that the cost realism level of 800 hours per year represented “the minimum level of effort that would be required to manage the tasks and effectively perform the tasks required in the contract by the Project Director.” Decl. of Agency Project Officer ¶ 8. The agency based its 800-hour estimate on its assumption that the project director position required 10 major tasks, each requiring approximately 1.6 hours per week, meaning approximately 66 hours per month or 800 hours per year. Supplemental Memorandum of Law; Decl. of Agency Project Officer ¶ 6.

IVI contends that the agency increased both offerors’ proposed hours to the same level based solely on the government estimate, and that this was improper normalization. Normalization involves the adjustment of offers to the same standard or baseline where there is no logical basis for a difference in approach or where there is insufficient information provided with the proposals, leading to the establishment of common “should have bid” estimates by the agency. See The Research Found. of State Univ. of New York, B-274269, Dec. 2, 1996, 96-2 CPD ¶ 207 at 5. Normalization is not proper, however, where varying costs between competing proposals result from different technical approaches that are permitted by the RFP. See Dynalectron Corp.; Lockheed Elecs. Co., Inc., B-181738, Jan. 15, 1975, 75-1 CPD ¶ 17, at 18-21. While a reasonably derived estimate of labor hours based on the government’s experience can provide an objective standard against which the realism of proposed costs may be measured, an agency may not mechanically apply its own estimate to determine evaluated costs. The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174 at 10-11.

The agency’s rationales and analyses cited above clearly demonstrate that the agency increased each offeror’s proposed hours to the agency’s estimate of the required hours, without any consideration of the hours that would be required under each offeror’s technical approach. An adjustment of offerors’ proposed hours to the government estimate is not reasonable where, as here, the government estimate is based on assumptions not disclosed by the agency and where offerors were free to propose different approaches. The Jonathan Corp.; Metro Mach. Corp., *supra*.

The agency argues that it used its independent judgment to develop its estimate of the hours likely required for the position. Supplemental Memorandum of Law at 7-8. Here, however, the agency merely estimated a number of hours, determined that the offerors proposed fewer than that number, then calculated the difference between the proposed hours and the agency’s estimate. The agency made no effort to determine whether either offeror’s technical approach would allow performance with fewer than 800 hours, or require more than 800 hours. We therefore believe that this cost evaluation resulted in an improper normalization.

Importantly, the agency's determination that 800 hours was the minimum required for performance is at odds with information disclosed in the RFP. As discussed above, the RFP advised offerors that the project director position would require an estimated 25-30 hours per month of effort. RFP amend. 4 at 25. The agency's cost realism increases, however assumed a minimum of 66 hours per month.

Additionally, IVI argues that discussions with the agency were misleading because they led IVI to reduce its proposed hours for the project director position. The agency argues that it did not direct IVI or BRI to reduce their proposed hours during discussions. Contracting Officer's Statement at 19. The agency does not, however, specifically challenge or rebut the protester's assertion that the agency described the project director position during discussions as being "more limited" than in the predecessor contract. The inference that the agency led IVI to believe that its proposed project director hours should be reduced is bolstered by the fact that both offerors dramatically lowered their proposed hours for the project director position in their FPRs, suggesting that both offerors were told that the project director's role would be "more limited." Because, however, we conclude that agency's cost realism increases were flawed on the basis of its cost assumptions and evaluation methodology, we need not resolve whether the discussions were in fact misleading. Rather, because the agency evaluated offerors based on assumptions that are inconsistent with the RFP, we believe that it is appropriate for the agency to conduct further discussions.

Finally, we conclude that IVI was prejudiced by the agency's improper evaluation of offerors' proposed hours for the project director position. The agency correctly notes that even if IVI's proposed costs were accepted and BRI's project director hours were increased to 800 hours, BRI's proposed costs, overall, would still be lower than IVI's (although the cost differential would be smaller). However, because, as discussed above, we conclude that the technical evaluation was flawed and a reevaluation could result in a technical differential between the offerors, a smaller cost differential between IVI and BRI could affect the award decision.

While, as discussed above, the SSD stated that IVI's technical proposal provided "more than adequate hours for the project director position," the agency also contends that, regardless of the hours used in the agency's cost realism analysis, IVI did not propose sufficient hours to perform the tasks it outlined in its proposal. The agency argues that the [deleted] hours proposed by IVI were lower than the 300 to 360 hours identified in RFP amendment 4, and that the hours proposed could not have covered the work described in IVI's proposal. Rather than increasing IVI's costs to a realistic level to perform the work proposed by IVI, however, the agency increased IVI's proposed hours to the agency's 800-hour estimate for that position. The agency's criticism of the level of effort required thus appears to flow from its assumptions that the project director would be required to perform 10 major tasks, each of which would require a minimum of 1.6 hours per week, rather than an

analysis of IVI's proposed approach to the work.⁴ See Supplemental Memorandum of Law at 2-3. Assuming even that the government reasonably determined that IVI's proposed hours were insufficient to perform its technical approach, the agency was required to determine a realistic level of performance based on IVI's approach to the work, rather than substituting the agency's assumptions for the performance requirements. Furthermore, for BRI, there was no discussion whatsoever of that offeror's technical approach, or the basis for increasing its proposal to 800 hours. On this record, we conclude that IVI was prejudiced by the improper evaluation and sustain the protest on this basis.

Evaluation of Indirect Rates

In addition to the issues discussed above, we also have concerns regarding the agency's evaluation of offerors' proposed indirect rates for general and administrative (G&A) and overhead costs.

IVI proposed a combined provisional indirect cost rate of [deleted]%, which included both its general and administrative (G&A) and labor overhead rates, and a combined ceiling rate of [deleted]%. IVI Cost Proposal, attach. H. During discussions, the agency asked IVI to agree that the [deleted]% indirect rate would be a firm ceiling for the contract base and option years. AR, Tab 12, Aug. 17, 2005, Letter from Agency to IVI, at 1; *id.*, Aug. 19, 2005, Letter from Agency to IVI, at 1. IVI confirmed that the [deleted]% rate would be a ceiling. IVI FPR at 3. BRI [deleted].

For the initial award, the agency evaluated IVI's proposed costs based on a combined ceiling rate of [deleted]%. AR, Tab 8, IVI Cost Realism Analysis, attach. A. BRI's FPR proposed costs were evaluated on the basis of its G&A rate of [deleted]% and its overhead rate of [deleted]%. AR, Tab 8, BRI Cost Realism Analysis, attach. A. [Deleted] the contract awarded to BRI included a "provisional ceiling rate" for G&A of [deleted]%; [deleted].⁵ AR, Tab 5, Contract, at 19 § G.5. The agency characterizes

⁴ At least one of the agency's arguments that IVI's proposed hours were too low to perform appears flawed. The agency contends that IVI's proposal for [deleted] hours per year would be insufficient to allow the project director, who will be based in Philadelphia, to attend weekly meetings in Atlanta. Supplemental Memorandum of Law at 2. IVI's proposal, however, does not say that the project director will go to Atlanta every week. Instead, it states that IVI's project director [deleted] IVI FPR at 3, and not, as the agency states in a misquotation, [deleted]. Contracting Officer's Statement at 16. It is unclear whether the agency relied upon this erroneous interpretation of IVI's proposal in making its cost realism adjustments; however, to the extent that the agency now relies upon this interpretation to support its evaluation, we find it unreasonable.

⁵ It is unclear what a "provisional" ceiling rate means in the circumstances here. The contract states that "[t]he above rates are provision ceiling rates only and shall apply (continued...)

this G&A rate as a “protective ceiling” that insulates the government against cost increases. Supplemental Memorandum of Law at 14, n.13. It is not clear from the record what discussions, if any, led to the incorporation of the ceiling rates for G&A in BRI’s contract.

Also, during the corrective action, the agency requested that the OEB evaluate offerors’ proposed costs. For BRI, notwithstanding the unexplained incorporation of the provisional ceiling rate of [deleted]% into BRI’s contract, the OEB determined that:

BRI [deleted]. We recommend that: (a) the contemplated contract incorporate the proposed rates as provisional rates and include ceilings of [deleted]% and [deleted]%, respectively, until a rate agreement is finalized with the National Institutes of Health (NIH) . . .

AR, Tab 9, BRI Cost Evaluation at 2.

Notwithstanding the OEB’s apparent concern regarding BRI’s proposed indirect rates, the agency’s SSD neither addressed the OEB’s recommendations concerning BRI’s indirect rates nor provided any other basis to conclude that BRI’s proposed indirect rates were realistic.

Further, although the contract contained a ceiling for BRI’s G&A rate that was not proposed by BRI in its FPR, the agency states that no discussions were held with offerors after the receipt of FPRs. Supplemental Memorandum of Law at 15. Presumably, however, some exchange between the agency and BRI must have preceded the contract award because the contract includes a G&A ceiling rate, which was a material change to BRI’s proposal. Any such exchange would appear to have constituted discussions, thereby requiring discussions with all competitive range offerors. See The Futures Group Int’l, B-281274.5 et al., Mar. 10, 2000, 2000 CPD ¶ 148 at 10.⁶

(...continued)

from the date of award until such time as the contract is amended. Any modification to change the above rates will also state the effective period covered for the new rates.” Contract § G.5(b).

⁶ The protester also alleges that the OEB identified other costs in BRI’s proposal that lacked support, but were not adequately addressed by the agency, and that BRI may have been advised of other costs that needed further support after receipt of FPRs. Because we conclude that the agency’s cost and technical evaluations were flawed and that unequal discussions occurred in other areas, we need not resolve these issues. We have reviewed all of the other issues raised by the protester, and find the balance to lack merit.

RECOMMENDATION

The performance of the contract is currently suspended. We recommend that the agency hold discussions with IVI and BRI to address, at a minimum, cost issues, including information regarding labor estimates and requirements. The agency should obtain revised proposals, evaluate those proposals consistent with our decision, and make a new source selection decision. If, after the new evaluation, the agency determines that IVI's proposal represents the best value to the government, the agency should terminate BRI's contract and make an award to IVI.

We further recommend that the agency reimburse the protester the reasonable costs of pursuing its protest of the issues sustained in this decision, including reasonable attorneys' fees. The protester's certified claim for costs, detailing the time expended and the costs incurred on this issue, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1) (2005).

The protest is sustained.

Anthony H. Gamboa
General Counsel