



G A O

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Information Systems Technology Corporation

File: B-291747

Date: March 17, 2003

Eugene Chun for the protester.

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

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's exclusion of protester's proposal from competitive range is unobjectionable where the proposal was reasonably determined to have no reasonable chance of being selected for award.

DECISION

Information Systems Technology Corporation (ISTC) protests the exclusion of its proposal from the competitive range under request for proposal (RFP) No. CC-02-05, issued by the National Institutes of Health (NIH) for the operation of a call center in support of patient recruitment for the NIH Clinical Center.

We deny the protest.

The RFP, issued on July 2, 2002, contemplates the award of a fixed-price contract for a base year with up to four 1-year option periods. The awardee will be required to provide bilingual and timely responses to individuals requesting (by telephone or e-mail) health-related information, in particular, information about clinical studies being conducted at the NIH Clinical Center. The RFP lists the following three technical evaluation factors, with the maximum possible number of points for each factor shown in parentheses: understanding the requirement and technical approach (40), qualifications and availability of proposed personnel (20), and proposed facilities and equipment (15). The RFP states that points will be awarded for price based on a formula in which the maximum of 25 points will be assigned to the lowest-price proposal, with fewer points assigned to higher-priced proposals based on the ratio between their price and the low price. RFP at 63. The RFP states that technical factors combined are significantly more important than price. The RFP further provides that the evaluation of past performance is to be conducted

subsequent to the technical evaluation and is not to be conducted on any offeror whose proposal would not be selected for award based on the results of the evaluation of factors other than past performance. Award is to be made on the basis of the proposal determined to represent the best value to the government.

An NIH technical evaluation team (TET) evaluated the proposals received from 13 firms. As a result of the technical evaluation, only 3 proposals were considered technically acceptable; the other 10 were rejected as technically unacceptable. The following proposals were found technically acceptable with the following average technical scores out of a possible total of 75: Alliance–67.25; Offeror A–47.50; and ISTC–47.12.

The business proposals of the three technically acceptable offerors were then evaluated. As required in the RFP, all offerors proposed two prices, one for each of two options for call center hours of operation.¹ RFP, Business Proposal Instructions, at 55. Alliance’s proposed price for option one was \$2,111,812.82 and for option two was \$2,695,372.21. ISTC’s proposed price for option one was \$3,250,726 and for option two was \$3,627,334. Alliance, which submitted the lowest-priced offer, received the maximum possible 25 price points, and ISTC received 17.40 points. Agency Report (AR), Tab 9, Competitive Range Determination, at 31.

The contracting officer subsequently determined that, based on its technical superiority and low price, only Alliance’s proposal should be included in the competitive range, and the contracting officer therefore excluded ISTC’s and Offeror A’s proposals from further consideration. By letter dated November 18, 2002, NIH notified ISTC that while its proposal was determined to be technically acceptable, it was not among the most highly rated and therefore it was excluded from the competitive range. This protest, in which ISTC challenges the evaluation of its proposal and its proposal’s exclusion from the competitive range, followed a debriefing by the agency.

In reviewing protests challenging the evaluation of proposals and exclusion of proposals from a competitive range, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency’s judgment was reasonable and in accord with the RFP evaluation criteria. Northwest Procurement Inst. Inc., B-286345, Nov. 17, 2000, 2000 CPD ¶ 192 at 5. Where a protest concerns an agency’s evaluation and exclusion of a proposal from a competitive range, we first review the propriety of the agency’s evaluation of the proposal, and then turn to the agency’s competitive range

¹ The RFP required pricing based upon call center operations Monday through Friday, with the exception of federal holidays, from 8:30 a.m. to 4:30 p.m. As a second option, offerors were also required to submit pricing for operating the call center from 8:30 a.m. to 7:00 p.m.

determination. Federal Acquisition Regulation (FAR) § 15.306 (c)(1) states that a competitive range is generally to be comprised of all the most highly rated proposals. That provision permits an agency to exclude a proposal from a competitive range where it is determined to have no reasonable prospect of award, even where its exclusion will result in a competitive range of one. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5.

Concerning the evaluation of proposals, we conclude, based on the written record and the hearing that our Office conducted in this matter, that the record supports the agency's assessment of the relative merits of ISTC's and Alliance's proposals. Each evaluator produced a detailed narrative assessment of each proposal under each evaluation factor. The evaluators also produced a detailed narrative consensus assessment of each proposal. These narrative assessments identified the respective strengths and weaknesses of the offers. As discussed below, the record shows that the evaluation of ISTC's technical proposal was reasonable and consistent with the terms of the RFP.

ISTC primarily argues that its proposal was improperly downgraded on the basis of an unstated evaluation factor—that ISTC's proposed staff did not have clinical expertise. According to ISTC, the record shows that the agency actually wanted nurses to staff the call center, but failed to disclose that requirement in the RFP. In this regard, ISTC notes that the record refers to ISTC's proposing a "medical receptionist," when, in fact, the proposal never used that term.

Based on our review, we conclude that the agency did not act based on an unstated evaluation factor, requiring clinical expertise or the use of nurses. Instead, the agency had concern, particularly with respect to staffing in the peak call hours, with the low number of staff that ISTC proposed, as well as with the qualifications of those staff. Thus, while the term "medical receptionist" may have been erroneous, the protester does not meaningfully dispute that it proposed staff with lower qualifications (indeed, it insists that the agency's preference for more highly-qualified staff was improper). In the agency's view, the staff proposed by ISTC lacked the experience and skills needed for screening and referral. The agency also had concern that ISTC's proposal failed to describe in detail the call center operations. AR, Tab 9, Competitive Range Determination, at 10. Together, these concerns led the agency to conclude that ISTC did not understand the complexity of the work required.² The evaluators were also concerned about ISTC's proposal's failure to provide background information on its proposed staff, and to identify the specific qualifications of proposed staff in the healthcare field. Id.

² Three of the eight evaluation team members had rated ISTC's proposal as technically unacceptable.

Our review of ISTC's proposal provides further support for the agency's evaluation. For example, while ISTC proposed five information specialists, it specifically identified four in its organization chart but provided resumes for only two. ISTC's Proposal at 72. Neither of the resumes provided indicated that the information specialist had either a degree in a medical field or significant experience in the healthcare field.

At a hearing held in our Office, the contracting officer explained the significance that he attached to ISTC's weaknesses. Video Transcript at 9:48. The contracting officer testified that, in his opinion, ISTC would have great difficulty in performing the requirement with the number of staff proposed, particularly in light of the lack of experience of the proposed staff. Id. While ISTC disagrees with particular details of the evaluation, our review of the entire record leads us to conclude that we have no basis to question the evaluation of ISTC's proposal.

In contrast, the evaluators concluded that Alliance proposed sufficient qualified staff and demonstrated a complete understanding of the requirement. AR, Tab 9, Competitive Range Determination, at 4. Alliance proposed [DELETED] dedicated information specialists, all registered nurses, and a manager with extensive experience managing medical information programs and clinical research trials. Additionally, Alliance's reserve pool consisted of [DELETED] registered nurses. Alliance provided resumes for all of its proposed staff including managers, dedicated information specialists, and reserve pool. The record also shows that Alliance was more detailed than ISTC in describing its call center operation. For example, Alliance described in specific detail its actual procedure for the routing of calls to the first available communicator. ISTC primarily stated that calls would be routed to the first available information specialist. Weaknesses cited by the evaluators with respect to the Alliance proposal were relatively minor in nature, particularly when compared to those identified in ISTC's proposal. For example, the evaluators considered as a weakness in Alliance's proposal the failure of the staff acknowledgment form to include a statement that calls might be monitored. Id. at 6. Our review of the record confirms the reasonableness of the agency's evaluation of Alliance's proposal.

Given that the evaluation of the two proposals appears reasonable, we now turn to the question of the competitive range determination. While it is true that a competitive range of one means that the competition is at an end, as noted above, we will not question a determination to establish a competitive range of one where the contracting officer had a reasonable basis to find that the excluded proposals lacked a reasonable chance of being selected for award. SDS Petroleum Prods., Inc., supra.

From our review of the record, we find that the contracting officer met that standard here. As explained above, the record supports the agency's determination that the Alliance proposal was significantly technically superior compared to ISTC's proposal and offered a substantially lower price. The weaknesses identified in Alliance's

proposal included minor matters, whereas the agency had significant concerns about ISTC's staffing and understanding of the work. We therefore see no basis to question the contracting officer's conclusion that ISTC's proposal had no reasonable chance of being selected for award.

In its comments on the agency report, ISTC argues that there were a number of scoring improprieties in the evaluation worksheets. Specifically, ISTC points out that one evaluator's point score for ISTC was recorded as 50 when its components actually added up to 55; and ISTC alleges that its price score was incorrectly calculated as 17.40, when it should have been 18.58 points. With respect to the price score, it appears that the fairly minor discrepancy at issue is based on the fact that the agency's figure reflects the average price score derived from the offerors' pricing of the two different options for call center hours of operations, so that there was not actually an error. See AR, Tab 9, Competitive Range Determination, at 31. Regarding the evaluator's score of 50 (rather than 55), this does appear to have been an error. However, since this five-point error arose with respect to only one of eight evaluators, its impact, once averaged with the other seven evaluators, was plainly negligible. We therefore conclude that any errors identified in the evaluation had no material impact on the evaluation of proposals or the decision to exclude the ISTC proposal from the competitive range.

ISTC also objects to specific point scoring by individual evaluators and argues that items identified as strengths by one evaluator were evaluated as weaknesses by other evaluators.³ It is not unusual, however, for individual evaluators to have disparate judgments regarding the relative strengths and weaknesses of a technical proposal. Syscon Servs., Inc., B-235647, Sept. 21, 1989, 89-2 CPD ¶ 258 at 5. Disparities in evaluator ratings do not establish that the evaluation process was flawed or otherwise not reasonable. U.S. Defense Sys., Inc., B-245006.2, Dec. 13, 1991, 91-2 CPD ¶ 541 at 4. As discussed above, the consensus narrative record supports the agency's conclusion that ISTC's proposal was materially inferior to Alliance's proposal, as well as being substantially higher in price.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ ISTC also contends that one evaluator erroneously listed as a weakness that "although references are provided, they are over 10 years old." ISTC maintains that the contracts referenced in its proposal were completed within the last 2 years. The record shows, however, that ISTC did not provide dates in its proposal with its referenced contracts and that the accompanying letters of references were, in fact, almost 10 years old. ISTC's Proposal, Volume II, at 28-40.