



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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 Ventures, Inc.

File: B-299361.2; B-299361.3

Date: October 1, 2008

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., and Mary Pat Gregory, Esq., Smith Pachter McWhorter, for the protester.

Thomas K. David, Esq., and Kenneth D. Brody, Esq., David, Brody & Dondershine, LLP, for Gryphon Scientific, LLC, an intervenor.

Jonathan A. Baker, Esq., Department of 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

1. Agency's evaluation of the protester's proposal, submitted in response to a solicitation for the management of chemical and biological databases, was reasonable and in accordance with the solicitation's evaluation criteria, where the protester's proposal was downgraded because, among other things, one of the proposed key personnel lacked certain experience and training, and where the protester's initial proposal and final proposal revision stated that certain details regarding the protester's proposed approach were not provided because of what the protester viewed as informational deficiencies in the solicitation, and that this information would be provided during contract performance.

2. Discussions conducted by the agency were meaningful where they identified the evaluated deficiencies and significant weaknesses in the protester's proposal; there is no requirement that discussions be all encompassing, or that an agency, in identifying the deficiencies and significant weakness in a proposal, also identify possible solutions to those deficiencies and significant weaknesses.

DECISION

Information Ventures, Inc. (IVI) protests the award of a contract to Gryphon Scientific, LLC, under request for proposals (RFP) No. NIH-NIAID-DAIDS-07-27, issued by the National Institute of Allergy and Infectious Diseases (NIAID), Department of Health and Human Services, for the management of certain chemical

and biological databases. The protester contends that the agency's evaluation of its proposal was unreasonable.

We deny the protest.

The RFP provided for the award of a "cost-reimbursement, completion-type contract with a period of performance of seven (7) years." RFP amend. 4, at 2. The contractor will be required to manage "chemical and biological databases which serve as tools for the rational selection and discovery of potential therapies for AIDS [acquired immunodeficiency syndrome] and opportunistic infections (OIs)." RFP amend. 3, attach. 4, at 1. The solicitation listed 10 "major tasks" to be performed by the contractor, including, for example, "Literature Surveillance," "Abstraction of Data and Updating of Database," and "Assembly of Preclinical Information Search Requests." Id. at 2. The RFP also included specific descriptions of the work required under each major task, providing, for example, under the "Literature Surveillance" task that the contractor would, among other things, "[m]onitor current publications (including U.S. and foreign patents) in chemistry, virology, immunology, microbiology, biochemistry and biology, and identify relevant published research findings on experimental therapies for HIV [human immunodeficiency virus] and OIs." Id.

The solicitation stated that award would be made to the offeror submitting the proposal determined to represent the best value to the government based upon the following evaluation factors set forth in descending order of importance: technical, cost/price, and past performance. RFP amend. 3, at 3. The solicitation added that the technical factor was comprised of the following evaluation criteria: Scientific and Professional Personnel (40 points), Technical Approach (40 points), Project Management (10 points), and Facilities and Resources (10 points). Id. at 3-5. In addition to specifying what the agency would evaluate under each factor and criterion, the solicitation informed offerors that the agency's evaluation would "be based on the demonstrated capabilities of the prospective Contractors in relation to the needs of the project as set forth in the RFP," and admonished offerors that "[e]ach proposal must document the feasibility of successful implementation of the requirements of the RFP." Id. at 3.

The RFP included detailed instructions for the preparation of proposals, requesting, among other things, that offerors submit technical and business proposals. Business proposals were to include, among other things, support for the offerors' proposed costs and/or price, uniform cost assumptions, and past performance data. Offerors were informed that technical proposals were to include sections corresponding to the RFP's stated evaluation criteria; they were to provide details regarding the scientific and professional personnel proposed to perform the contract, the proposed technical approach, including the identified major tasks, the proposed approach to project management, and the proposed facilities and resources. The RFP advised that the agency's evaluation under the technical approach criterion

would include an assessment of the

[a]dequacy and feasibility of the technical approaches and proposed plans to survey the literature and select citations that contain chemical and biological information on experimental therapies for HIV and OIs; to identify and abstract relevant chemical and biological information; to determine the validity and authenticity of the data; and to update the chemical and biological databases, the literature citation database, and the publicly available Web database with the corresponding information.

RFP amend. 3, at 4. The solicitation stated that the evaluation under the technical approach criterion would also include, among other things, an assessment of the

[a]dequacy and appropriateness of the proposed data management procedures for updating and maintenance of the databases, quality control, disaster recovery, software maintenance, and security and confidentiality of the data; adequacy of approaches for overcoming potential problems in the administration of a reliable, efficient, fully operational and responsive data management system.

RFP amend. 6, at 5.

On January 8, 2007, 1 day prior to the due date for receipt of proposals, IVI filed a protest with our Office challenging the terms of the solicitation. This protest argued that “the agency failed to disclose in its solicitation sufficient information to enable offerors to compete intelligently and on a relatively equal basis.” AR, Tab 15, Protest B-299361, at 1. IVI alleged that the agency’s “actions in conducting the acquisition indicate bad faith, or bias in favor of the incumbent [contractor],” as evidenced by the agency’s alleged failure “to fully disclose each of its requirements.”¹ *Id.* at 2. The protest continued by challenging the propriety of the RFP’s evaluation factors and criteria, and describing at considerable length certain information that the protester felt was required to be provided by the agency in order for IVI to effectively compete for the award.

Our Office conducted an alternative dispute resolution conference with the parties, which resulted in the agency’s determination to “take corrective action” that would include “amending the solicitation and reopening the time period for submission of proposals.” In light of the agency’s actions, and based upon the protester’s agreement, on March 20, 2007, our Office dismissed IVI’s protest as academic. The agency subsequently amended the solicitation an additional four times, responding in these amendments to more than 20 questions posed by offerors.

¹ The incumbent contractor was not the awardee here.

The agency received proposals from four offerors, including IVI and Gryphon, and included each of the proposals in the competitive range. AR, Tab 12, Source Selection Determination, at 1. The agency provided each of the four offerors with written discussion questions, followed by oral discussions.

Gryphon's final proposal revisions (FPR) received the highest technical and past performance ratings of the four proposals submitted, with a technical score of 88 out of 100 points, and a past performance rating of "excellent," at an evaluated cost of \$6,699,156. Id. at 4. The cognizant contracting officer, acting as the source selection official, found that Gryphon's FPR was "significantly improved" from its initial proposal, and included various major strengths, including a "very strong scientific team with appropriate expertise for database and web development," a "streamlined" staff coordination plan, and "outstanding" hardware, software, and technical plans. Id. at 2.

IVI's FPR received the third-highest technical score of 79 points, and a past performance rating of "good," at an evaluated cost of \$6,253,599. Id. at 4. The contracting officer found that IVI's FPR "did not improve the proposal significantly" from its initial proposal, and noted that the IVI's proposed "Principal Investigator" had a "lack of documented familiarity with microbiological research in the areas of HIV and [OIs]," which was a proposal weakness, and that IVI's "[r]esponses to questions regarding technical approach were detailed, but did not demonstrate proactive solutions to the issues raised." Id. at 3.

Based on Gryphon's technically superior proposal and excellent past performance, its proposal was determined to be the best value, notwithstanding its higher price. Award was therefore made to Gryphon and this protest followed.

IVI challenges the evaluation of its proposal. The evaluation of proposals is a matter within the discretion of the contracting agency, and in reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation factors set forth in the RFP. PDI Ground Support Sys., Inc., B-299007; B-299007.2, Jan. 18, 2007, 2007 CPD ¶ 64 at 4. The judgments in the evaluation of proposals are subjective by nature; nonetheless, the judgments must be reasonable and bear a rational relationship to the announced criteria upon which the competing offers are selected. Population Health Servs., Inc., B-202858, Dec. 1, 2003, 2003 CPD ¶ 217 at 3. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. PDI Ground Support Sys., Inc., *supra*.

The protester contends that the agency's evaluation of IVI's proposal under the technical approach criterion was inconsistent with the terms of the solicitation because the solicitation did not specifically provide for the evaluation of "proactive solutions."

In order to understand this issue, some background discussion is necessary. In evaluating IVI's initial proposal under the technical approach criterion, the agency evaluators, while noting certain "strengths" in IVI's proposed approach, also found that IVI's proposal presented numerous "weaknesses." AR, Tab 3, Initial Technical Evaluation, at 23-27. For example, the agency noted as a weakness that it was "difficult to evaluate the technical section of this proposal, since major technical details have been postponed until the award of the contract." Id. at 25. The agency's evaluation enumerated specific areas where IVI's proposal failed to provide support for its proposed approach or technical details, noting, for example, that the "[t]he Software Engineering section of [IVI's] proposal is not discussed in detail," the "security section is vague," the "Policies and procedures are described vaguely," and the "[t]he search algorithms have not been justified and the technical details have not been provided." Id. at 26. IVI's initial proposal received 28.57 out of 40 available points under the technical approach criterion. Id. at 42.

The agency specifically raised each of these weaknesses with IVI in written discussions, and the record reflects that IVI asked the agency questions, and received answers, regarding the evaluated weaknesses in IVI's proposal. AR, Tab 5, Notification to IVI of Competitive Range Inclusion and Discussions Questions (Feb. 1, 2008); Tab 6, Agency Responses to IVI's Questions (Feb. 14, 2008).

The agency subsequently requested and received IVI's FPR. AR, Tab 7, Request for FPRs. In addition to providing more specific responses to the agency's discussion questions, IVI's FPR stated (apparently by way of an introduction) that

[a] reiterated theme in [the agency's] technical questions and/or comments, appears to be that IVI's technical approach lacked adequate detail and that technical decisions were postponed until after contract award. With respect to this perception/characterization of our technical approach, we wish to point out that there was little information available prior to proposal submission to address the review committee's concerns.

AR, Tab 16, IVI FPR, Responses to Technical Questions and/or Comments, at 1. The protester's FPR continued by listing information that was not included in the solicitation, but in the protester's view, apparently should have been. Id. The protester's FPR responded in a similar manner to one of the evaluated weaknesses pointed out by the agency during discussions, in stating that

[i]n the course of preparing our technical approach, we made a substantial effort to learn more about the NIAID Databases through our questions. However, we received only partial responses to our questions or were told that substantive information was not available to the Government. Under these circumstances, we had no alternative other than to postpone critical decisions on technical details until

substantive information about existing database structures and practices became available. To address concern for greater detail, we have provided additional information on possible alternative approaches and more detailed plans for conducting the proposed project in our responses below.

Id. at 12.

The evaluators, while noting that IVI had again asserted in its FPR that it had not been provided with “sufficient information from the Government in order to develop [IVI’s] technical approach,” found that IVI had in fact provided “some possible alternative approaches” that were “straightforward and standard.” AR, Tab 8, FPR Evaluation, at 23. The evaluators noted, however, that “while some issues were addressed, the offeror was still vague in proposed approaches in other areas,” and that because of this “the offeror’s approach was fragmented and doesn’t demonstrate how [IVI] will perform all aspects of the proposed contract.” Id. In summarizing the evaluators’ views regarding IVI’s FPR with regard to the technical approach criterion, the cognizant contracting specialist noted that while IVI’s responses were “detailed,” they “did not demonstrate proactive solutions to the issues raised.” AR, Tab 10, Evaluation Summary, at 1. The agency increased the rating of IVI’s proposal under the technical approach criterion from 28.57 to 31 points, given the added detail provided in IVI’s FPR. AR, Tab 8, Summary Evaluation, at 9.

In its protest, IVI seizes upon the statement that IVI’s proposal “did not demonstrate proactive solutions to the issues raised,” see AR, Tab 10, Evaluation Summary, at 1, and argues that the agency’s evaluation was unreasonable and not in accordance with the solicitation’s evaluation criteria because the solicitation did not state that “proactive solutions” were required. The protester also complains at length that its proposal should not have been criticized by the evaluators under the technical approach criterion, given that IVI “lacked information about aspects of the agency’s work” and thus “had no alternative other than to postpone critical decisions on the technical details” until such information became available. Protester’s Comments at 13. IVI asserts here, as it did in its proposal, that when it asked for this information, it was given “only partial responses by the agency” or was informed by the agency “that substantive information was not available to the government.” Id. The protester continues by arguing that IVI’s lack of access to certain information that IVI felt was necessary to prepare its proposal “is the same issue IVI raised in its pre-award protest and that IVI thought was resolved by the agency pre-award corrective action.” Id. at 2.

The agency explains that the comment that IVI’s proposal “did not demonstrate proactive solutions to the issues raised” was meant to convey the agency’s primary concern that the protester, in a number of instances in both in its initial proposal and FPR, “chose to attack the RFP rather than to respond to it constructively.” AR at 5-6. Although the protester spends considerable time in its pleadings arguing that the

agency's criticism here is inconsistent with the terms of the solicitation, we disagree. In our view, the agency's statement regarding IVI's FPR's failure to provide "proactive solutions" is consistent with the technical approach criterion in that it adequately captures the agency's primary concern that, as reflected by the record, IVI chose in both its initial proposal, and FPR response to discussions, to criticize the solicitation, and then to provide a technical approach that, in IVI's own terms, lacked certain details that would only be provided to the agency after award based upon IVI's view that the solicitation was inadequate.

We also agree with the agency that IVI's repeated assertions in its initial proposal, FPR, and submissions filed with our Office during the pendency of this protest, regarding what it believes are in the inadequacies of the solicitation and their resultant impact on IVI's ability to effectively respond to the needs of the agency as reflected in the solicitation and the merits of the solicitation as evaluated by the agency, constitute challenges to the terms of the solicitation that should have been protested before the initial closing time for submission of proposals and are thus untimely filed. 4 C.F.R. § 21.2(a)(1) (2008); Paraclete Contracts, B-299883, Sept. 11, 2007, 2007 CPD ¶ 153 at 3 n.4; KCI, Inc., B-244690, Oct. 29, 1991, 91-2 CPD ¶ 395 at 3. Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1).

The protester also argues that its FPR effectively responded to the evaluated weaknesses in its initial proposal, such that its proposal's score under the technical approach criterion should have been higher than 31 out of 40 points.²

Our review of the record evidences that the agency did reasonably account for the FPR responses in the final evaluation. Although IVI's FPR includes responses to the discussion questions posed by the agency, it is unclear, and the protester does not explain, how the responses addressed the agency's concerns that the proposed technical approach was "fragmented" and remained "vague" in some areas. See Agency Supplemental Report at 5-6; AR, Tab 8, Summary Evaluation, at 23. As pointed out by the agency, the concerns stem in part from IVI's repeated complaints, which originated in its pre-award protest and continued through its initial proposal and its FPR, that the solicitation did not include the information necessary for IVI to submit a complete proposal. Agency Supplemental Report at 5-6; see AR, Tab 16, IVI FPR, Responses to Technical Questions and/or Comments, at 1, 12, 28-29, 37. Under the circumstances and given the discretion accorded agencies in the evaluation of proposals, the statements in IVI's FPR that the lack of information set forth in the

² In support of this contention, for many of the weaknesses, the protester quotes the weakness and its FPR response, and concludes that this demonstrates that the agency did not account for the FPR response.

RFP required that IVI, for example, postpone critical decisions on technical details until after award, and the protester's failure to demonstrate why the agency's evaluation of IVI's proposal under the technical approach criterion was unreasonable, we believe that IVI's complaints here represent no more than its mere disagreement with the agency's evaluation.

The protester also argues that the agency's evaluation of its proposal under the RFP's scientific and professional personnel criterion was unreasonable. IVI contends that the agency's determination that the evaluated lack of experience and documented expertise of IVI's proposed Principal Investigator with HIV research constituted a weakness was inconsistent with the terms of the solicitation and unreasonable.

As relevant here, the RFP requested that technical proposals include a section concerning the scientific and professional personnel proposed to perform the contract, with this section including "all information relevant to document education, training, accomplishments, and relevant experience of all proposed personnel." RFP amend. 5, attach. 6, at 1. With regard to the Principal Investigator position, the solicitation requested a description of "the experience, training, expertise, qualifications, and percentage of effort of the Principal Investigator proposed to lead and direct the activities to be carried out under this contract." Id. at 2. The solicitation informed offerors that "the Principal Investigator should have education and experience commensurate with his/her expected role," and among other things, requested a description of the proposed Principal Investigator's "experience in leading and directing projects of comparable content and complexity and familiarity with past and current microbiological research in the areas of HIV and opportunistic infections (OI), antivirals, and other antimicrobials." Id. The solicitation advised offerors that the evaluation of proposals under the Scientific and Professional Personnel criterion would include an assessment of the

[a]dequacy and suitability of the documented training expertise, education, training and availability of the Principal Investigator for planning, managing and directing the proposed activities in the Statement of Work including experience in administering a project of comparable content and complexity; experience and training in one or more of the following: medicinal chemistry/biology, microbiology or virology; and familiarity with past and current research in the areas of HIV and opportunistic infections (OI), antivirals, antimicrobials, and microbiology. Documented knowledge and expertise in the computer science aspects of the database software/hardware similar to that used under this contract.

RFP amend. 3, at 3.

In evaluating IVI's initial proposal, the agency noted as a strength that the proposed Principal Investigator "has research and teaching experience in biophysics, endocrinology, cellular developmental biology, electromagnetic fields and cancer," and "more than 21 years of experience in directing contracts relating to scientific database creation, and maintenance." AR, Tab 3, Initial Technical Evaluation, at 21. However, the agency also specifically noted as a weakness that IVI's proposed Principal Investigator "lacks formal training in the HIV field," and that the proposed Principal Investigator "will rely heavily on his consultants for guidance on how to perform the required duties, because he has little or no knowledge relating to microbiology, immunology, or chemistry." Id. at 23. The agency, while recognizing that the IVI's Principal Investigator would "be under the tutelage" of an expert in the requisite fields, concluded that such "self-study, although helpful, is not a direct replacement for formal training." Id. The evaluators also noted that IVI's proposed Principal Investigator "lacks sufficient experience in the field of IT support and troubleshooting software and database development." Id. The evaluators found a number of other weaknesses in IVI's proposal under the scientific and professional personnel criterion, and gave IVI's initial proposal a rating of 26.36 out of 40 points under this criterion.

The agency informed the protester of its concerns with IVI's proposed Principal Investigator during discussions. IVI responded in its FPR by assuring the agency that the proposed Principal Investigator was, among other things, attending seminars to "augment his HIV/OI knowledge and background." AR, Tab 16, IVI FPR, Responses to Technical Questions and/or Comments, at 4. IVI's FPR also responded that the agency's expressed concerns regarding the proposed Principal Investigator "hinges on what is considered 'sufficient experience' for performing the [Principal Investigator's] duties." Id. IVI's FPR continued by expressing its view that "[f]ormal training in the HIV field was not a requirement of the RFP and therefore is not a valid criterion for evaluation," and that "[f]ormal training is not equivalent to the RFP evaluation factor of 'familiarity with past and current research' in the HIV field." Id. IVI's FPR added that in its view, its proposed Principal Investigator "is more than well qualified to perform" the duties for which he was proposed. Id. IVI's FPR responded to the agency's concern that the Principal Investigator lacked certain "computer science" knowledge and expertise by quoting the sentence in the RFP providing that such expertise and knowledge would be evaluated, and stating that "[w]e do not view this as a reasonable minimum need to be carried out by the [Principal Investigator]." Id. at 5.

The agency found that while IVI's FPR addressed a number of the weaknesses in IVI's initial proposal as evaluated under the scientific and professional personnel

criterion, concerns remained regarding IVI's proposed Principal Investigator.³ AR, Tab 8, Second Technical Evaluation, at 13. The agency did increase the rating of IVI's proposal under the scientific and professional personnel criterion from 26.36 to 29.20 points, given IVI's responses to other issues raised during discussions regarding this aspect of IVI's proposal. AR, Tab 8, Summary Evaluation, at 9.

IVI again argues, as it did in its FPR, that the agency's evaluation of its proposed Principal Investigator was inconsistent with the terms of the RFP. We disagree. Simply put, the consideration whether offeror's proposed Principal Investigator had, or lacked, formal training in the HIV field is rationally related to the evaluation of the "education [and] training . . . of the Principal Investigator for planning, managing and directing the proposed activities in the Statement of Work." See RFP amend. 3, at 3. Accordingly, given that IVI's proposed Principal Investigator lacked certain formal training in the HIV field, and lacked certain "computer science" knowledge, we have no basis to object to the agency's determination that IVI's proposed Principal Investigator's relative lack of training constituted a weakness in its proposal.

IVI next argues that the agency failed to engage in meaningful discussions regarding certain weaknesses in IVI's proposal as evaluated under the technical factor.

Discussions, when conducted, must be meaningful; that is, discussions may not mislead offerors and must identify deficiencies and significant weaknesses in each offeror's proposal that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. There is no requirement, however, that discussions be all encompassing or extremely specific in describing the extent of the agency's concerns. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8.

The record demonstrates that the agency, in conducting discussions with the protester, forwarded a detailed list of discussion questions to IVI, and answered a number of questions from IVI regarding the discussion questions. Contrary to the protester's assertion, we find based upon our review of the record that the agency's discussions were meaningful.

For example, IVI argues that the agency "failed to conduct meaningful discussions regarding software engineering." Protester's Comments at 21. In this regard, the protester first points that the agency's initial technical evaluation noted as a

³ Our review of the record indicates no support for IVI's contention that the agency did not account for its FPR responses to the weaknesses pointed out to IVI with regard to this criterion.

weakness under the technical approach criterion to the technical factor that

[t]he Software Engineering section of this proposal is not discussed in detail. This could lead to major deficiencies in the design, implementation, and testing of the suggested software development tasks.

AR, Tab 3, Initial Technical Evaluation, at 26. The protester next points out that the relevant discussion question it received was as follows:

The software section of the proposal is not discussed in detail. This could lead to major deficiencies in the design, implementation, and testing of the offeror's proposed changes in software.

AR, Tab 5, IVI Discussion Questions, at 5. The protester argues that “[s]oftware engineering is a different concern than software in general,” and that because of the discussion question IVI received from the agency, “IVI was not informed of the potential significant weakness in its software *engineering*.” Protester's Comments at 21.

The agency explains that the reference in the initial evaluation to “software engineering” was a simple error, given that the neither the RFP nor IVI's proposal contained “software engineering” sections, but rather, both included sections addressing software maintenance and security. Agency Supp. Report at 10; RFP amend. 6, at 5-6. The agency explains that the contracting officer, in preparing IVI's discussion questions, deleted the discussion question's reference to “software engineering” in order to correct this error, and that IVI was in fact properly informed during discussions of the agency's perceived weaknesses in the software section of IVI's proposal. Agency Supp. Report at 10.

Although IVI continues to complain “that the agency misled IVI from addressing the evaluators' actual concern: software engineering,” and that because of this, the “evaluators may have downgraded IVI for failing to answer a question that was not asked,” see Protester's Supp. Comments at 12, the protester does not explain, and we cannot see, how this could possibly be the case, given that neither the RFP nor IVI's proposal included a “software engineering” section, and given that there is no evidence in the agency's evaluation of FPRs that IVI's FPR was downgraded for failing to address “software engineering.”

As another example, the protester argues that the agency “failed to conduct meaningful discussions regarding the biweekly literature surveillance memoranda.” Protester's Comments at 4; Protester's Supp. Comments at 13. The record reflects that the agency noted as a “strength” in IVI's proposal that it provided “a clear discussion of how the biweekly literature reports will be organized,” and that the “[o]rganization of [the biweekly literature reports appears to be relevant to the aims

of the . . . staff.” AR, Tab 3, Initial Evaluation, at 25. The agency also commented while noting the various weaknesses in IVI’s initial proposal that “[b]iweekly literature surveillance memos would be helpful in judging the potential quality of the data output.” Id. at 26.

In response to the protester’s complaint that it “was not informed during discussions that the agency found IVI’s proposed biweekly literature surveillance memoranda problematic,” Protester’s Supp. Comments at 13, the agency explains that it did not raise this evaluated weakness with IVI during discussions given its overall view that “IVI’s proposal with respect to biweekly literature surveillance reports was at least as much a strength as it was a weakness.” Agency Supp. Report at 13. The agency concludes that the concern expressed in its initial evaluation regarding IVI’s biweekly literature surveillance memoranda was not significant, and that under the circumstances, did not have to be raised with IVI during discussions. Id. We agree.

As stated previously, the record reflects that the agency had extensive discussions with IVI regarding its proposal, and that the agency’s concerns regarding this aspect of IVI’s proposal were insignificant given the other evaluated weaknesses in IVI’s proposal, as well as the fact that overall this aspect of IVI’s proposal was found to constitute a strength. Additionally, IVI has not pointed to, and we cannot find, any indication in the evaluation of IVI’s FPR, or source selection documents, that this aspect of IVI’s proposal was considered a weakness or had any effect on either IVI’s overall rating or the source selection. In light of this, and the fact that agency’s are not required to identify other than deficiencies and significant weaknesses in each offeror’s proposal, or to conduct discussions that are all encompassing, we cannot find the agency’s conduct here to be objectionable. See PAI Corp., supra.

The protester also complains that the agency failed to provide it with meaningful discussions regarding a weakness in IVI’s proposal as evaluated under the scientific and professional personnel criterion to the technical factor regarding IVI’s proposed Principal Investigator. In this regard, the protester notes that in addition to finding that the Principal Investigator lacked “formal training in the HIV field,” the evaluators commented that because of this “[t]he offeror should strongly consider hiring a high-level staff member with infectious disease experience to work on the HIV and OI aspects of this contract.” AR, Tab 3, Initial Evaluation, at 23. IVI argues that the agency failed to provide meaningful discussions here because the agency, while informing IVI of its concerns regarding IVI’s proposed Principal Investigator’s lack of training, did not specifically advise IVI that it could hire another staff member to address the evaluated weaknesses regarding IVI’s proposed Principal Investigator.

This argument is without merit. Although as a general matter offerors must be advised during discussions of deficiencies and significant weaknesses in their proposals, there is no requirement that an agency advise an offeror during discussions of strategies or solutions that may address an evaluated weakness, such as the hiring of a staff member to compensate for another staff member’s evaluated

lack of requisite experience. See ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7 (agency is not obligated to spoon-feed offerors during discussions).

In sum, the record reflects that the agency conducted extensive and meaningful discussions with IVI during which that firm was informed of the evaluated deficiencies and weaknesses in its proposal that could have been addressed by IVI to enhance its chance for award.

The protester has raised numerous other arguments during the course of this protest, each of which was reviewed by our Office and found to be procedurally deficient or insignificant given the record as a whole. For example, IVI argues that the agency failed to properly implement the proposed corrective action that led to the dismissal of IVI's initial protest to our Office that challenged the terms of the solicitation. IVI's contention here is based upon IVI's view that the solicitation remained inadequate in that it did not include certain information IVI felt was necessary to prepare its proposal. This argument, which is at best a variation of IVI's other arguments regarding its view that certain aspects of the solicitation were inadequate, constitutes a challenge to the terms of the solicitation that should have been protested prior to the closing date for receipt of proposals in order to be timely. 4 C.F.R. § 21.2(a)(1).

The protest is denied.

Gary L. Kepplinger
General Counsel