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**Comptroller General
of the United States**

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

Decision

Matter of: LexisNexis, Inc.

File: B-299381

Date: April 17, 2007

Gad Epstein for the protester.

Christopher R. Yukins, Esq., and Kristen E. Ittig, Esq., Arnold & Porter, LLP, for West Publishing Corporation, an intervenor.

William C. Love, Esq., National Transportation Safety Board, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably found the protester's proposal unacceptable is denied where the record shows that the agency's decision was reasonable.
 2. Protest that agency showed favoritism toward awardee by relaxing technical requirements is denied where the record shows that the agency deleted the requirements only after ascertaining that they were already being supplied, through other means, to the end user, and the agency allowed the protester to substitute products to meet certain other technical requirements.
 3. Protest that agency failed to make available a material amendment to the solicitation is denied where the record shows that agency posted the amendment to the FedBizOpps website via a hyperlink to another agency website.
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DECISION

LexisNexis, Inc. protests the award of a contract to West Publishing Corporation under solicitation No. NTSBQ070001, issued by the National Transportation Safety Board (NTSB) for online legal research services.¹ The protester alleges that the

¹ Although the solicitation is identified on its cover page as a request for quotations (RFQ), the term "proposals" and acronym "RFP," for request for proposals, repeatedly appear in, among other things, the solicitation's descriptions of the evaluation factors and award scheme. Given this, and the fact that whether the solicitation is properly considered an RFQ or RFP does not affect the outcome of
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agency unreasonably found the protester's proposal unacceptable, showed favoritism to the awardee by improperly relaxing the technical requirements, and failed to make available a material amendment to the solicitation containing agency answers to questions posed by prospective offerors, including the protester, as well as two changes to the technical requirements.

We deny the protest.

BACKGROUND

The RFP, issued November 20, 2006, was published on the Federal Business Opportunities (FedBizOpps) website. The contract specialist (CS) states that the agency utilizes the Department of Interior, National Business Center (DOI/NBC) Electronic Commerce (EC) website to post to FedBizOpps. Prospective offerors may access documents and attachments electronically through FedBizOpps, via a hyperlink to the DOI/NBC EC website. Agency Report (AR), Tab 4, Decl. of CS at 1-2.

The RFP sought proposals for 1 year of online legal research services with four 1-year options. The RFP required that up to two users have access to treatises and practice guides, including American Law Reports (ALR), "attorney-authored articles that provide an analysis of specific legal issue containing detailed discussion of guiding legal principles, distinctions, exceptions, applications and contrary approaches," AR, Tab 2, RFP at 7, and Corpus Juris Secundum (CJS), an encyclopedia of American case law. The RFP also required access to sales and use tax licenses.

The RFP required prospective offerors to submit all questions concerning the procurement by December 1. Amendment 1 to the RFP, issued on December 4, contained questions submitted by prospective offerors (including the protester and the eventual awardee, West Publishing) and the agency's responses. The contracting officer (CO) states that the individual tasked with responding to the questions, the CO's technical representative (COTR), had no knowledge of which firm submitted particular questions. AR, CO's Statement of Facts, at 2. It is undisputed that questions 6 and 7 were submitted by West Publishing. Question 6 noted that one of the databases listed in the solicitation, the Congressional Quarterly, was not among the databases in the incumbent contract and asked whether it was required, or merely desirable. AR, Tab 3, amend. 1, at 3. Question 7 posed a similar inquiry regarding the Legal Research Index (LRI). Id. at 4. The agency responded by deleting both requirements. Id. at 3-4. According to the CO, the COTR decided to delete these two requirements only after end users reported that they had other

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this protest, we refer to the solicitation in this decision as an RFP and the firms' submissions as proposals for the sake of clarity.

means of accessing the required information. AR, CO's Statement of Facts, at 3. The CS states that on December 4 he posted this amendment to the DOI/NBC EC website; the amendment, like the RFP, could be accessed directly on the DOI/NBC EC website or through the hyperlink in FedBizOpps to the DOI/NBC EC website. AR, Tab 4, Decl. of CS, at 2-3.

Award was to be made to the offeror providing the best overall value to the government, with a proposal's technical approach one of three factors to be considered. The closing date for receipt of proposals was December 8. The protester and the awardee submitted the only proposals. AR, CO's Statement of Facts, at 3.

The LexisNexis proposal offered access to all of ALR for the life of the contract for up to two users, as called for by the RFP. In response to the sales and use tax licenses requirement, the protester's proposal stated, in full:

LexisNexis does not provide Sales and Use Tax Licenses but we do provide various other licenses including those listed below as well as various Professional Licenses, Driver's Licenses, Liquor Licenses, Marriage Licenses, Divorce Records and AMI Physician Directory, FAA Pilots Directory and IRS Tax Practitioners & Enrolled Agents.

AR, Tab12, at 34.

As part of the evaluation process, the offerors made oral presentations to the COTR, who served as the technical evaluator. The COTR noted that in lieu of the required CJS database, the protester's proposal offered Lexis Search Advisor; the COTR accepted the offered substitution as comparable to CJS. LexisNexis also offered another substitution of comparable sources that was accepted. As noted, the LexisNexis proposal had offered to supply the ALR database to up to two users. Between the time of proposal submission and the oral presentation, however, LexisNexis learned that it would be unable to offer ALR beyond December 31, 2007,² and alerted the agency to this fact. The agency claims that at the oral presentation the protester did not offer anything comparable to take the place of ALR, and there is nothing in the record to indicate that after the oral presentation LexisNexis offered any substitution in writing. With regard to the requirement for access to sales and use tax licenses, the COTR states as follows:

[w]hile the [six and a half] pages of licenses listed in Protester's March 12, 2007 comments concerning Sales and Use Tax Licenses may have

² ALR is proprietary to West Publishing, and West is not renewing LexisNexis' license to offer this source of information beyond December 31. Protester's Response, Mar. 29, 2007 at 1.

been included in the proposal at Appendix 1, LexisNexis did not provide such a listing in its response concerning Sales and Use Tax License information and, likewise, did not identify which, if any, of the databases it provided the NTSB could use to provide the Sales and Use Tax information required in the RFP.³

Agency's Response, Mar. 23, 2007, Supp. Decl. of COTR, at 6.

The agency concluded that LexisNexis had failed to offer ALR for the term of the contract, as well as sales and use tax licenses, as specified in the RFP. As a result, the agency rated the protester's proposal unacceptable, and award was made to West Publishing on January 4, 2007.

ANALYSIS

The protester argues that the agency unreasonably found its proposal unacceptable. We disagree.

Where a protester challenges an agency's evaluation of a proposal's technical acceptability, our review is limited to considering whether the evaluation is reasonable and consistent with the terms of the RFP and applicable procurement statutes and regulations. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. As with any evaluation review, our chief concern is whether the record supports the agency's conclusions. Innovative Logistics Techniques, Inc., B-275786.2, Apr. 2, 1997, 97-1 CPD ¶ 144 at 9. Clearly stated RFP technical requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is technically unacceptable and may not form the basis for award. National Shower Express, Inc.; Rickaby Fire Support, *supra*.

The agency rated the protester's proposal unacceptable for failure to offer ALR for the term of the contract and sales and use tax licenses. The protester disputes the agency's claim that it failed to offer those required materials, asserting that it "explained to the audience at the demonstration . . . that the proposal included hundreds of comparable sources and services to ALR including SearchAdvisor, law reviews and more." Protester's Response, Mar. 29, 2007, at 1. The agency was unaware that the sources of information offered by the protester were comparable to the RFP requirements, the protester argues, because the COTR lacked "the expertise

³ As noted above, the protester's proposal offered "various other licenses" as comparable sources of information.

to compare and contrast the LexisNexis offering to ALR and the sales tax source listed in the RFP.”⁴ Protester’s Comments on AR, Feb. 26, 2007, at 2.

It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5.

Here, in the two instances where the protester’s proposal clearly articulated alternative sources of information offered to meet the requirements of the RFP, the agency considered the offer and accepted the sources as comparable. In contrast, with respect to the ALR and the sales and use tax licenses, the protester asserts that the agency should have found various lists of information sources in the appendix to be comparable to the requirement in the RFP; the agency is under no such obligation to parse the protester’s proposal to try to determine whether the proposal offers comparable sources of information. Even assuming that the information offered in the proposal’s appendix is comparable to the required databases, by placing the information in the appendix and requiring the agency to piece together the proposal’s content, the protester failed in its responsibility to clearly demonstrate compliance with the RFP requirements. The record supports the reasonableness of the agency’s evaluation—its decision to find the proposal unacceptable for failure to meet two technical requirements of the RFP—and the protester’s mere disagreement with the agency’s judgment does not establish that the agency acted unreasonably. CACI Techs., Inc., *supra*, at 5-6.

The protester also alleges that the agency showed favoritism to the awardee by improperly relaxing the RFP’s technical requirements. As discussed above, in response to questions posed to the agency, the COTR, without knowledge of which offeror posed particular questions, deleted two requirements of the RFP after ascertaining that the end users had other access to the information. The protester does not assert that the deletions were unreasonable, merely that in making the deletions the agency showed favoritism to the awardee.

On the record, we see no reason to question the agency’s action. Although the protester, unlike other potential offerors, did not take the opportunity to question

⁴ The selection of individuals to serve as evaluators is a matter within the discretion of the agency. Accordingly, we will not review allegations concerning the qualifications of evaluators or the composition of evaluation panels absent a showing of fraud, conflict of interest, or actual bias on the part of evaluation officials. CAE USA, Inc., B-293002.2, Jan. 12, 2004, 2004 CPD ¶ 25 at 10-11, n.8. No such showing has been made here.

any of the RFP requirements through the question and answer process, the other firms' use of the process was proper. Moreover, as noted above, when the protester offered clearly identified comparable sources of information in lieu of the CJS and one other requirement, the agency accepted the alternate sources—behavior on the agency's part that undermines any allegation of favoritism toward the awardee.

The protester argues, essentially, that the agency acted in bad faith. The protester has neither rebutted the agency's detailed explanation for why it deleted these two requirements, nor provided any evidence to support its speculation of improper action in these areas, especially in light of the agency's willingness to accept as comparable other sources of information from the protester. Accordingly, since a protester's mere inference and speculation is insufficient to establish a valid basis of protest, we will not give further consideration to these unsupported allegations of impropriety. Computers Universal, Inc., B-296501, Aug. 18, 2005, 2005 CPD ¶ 161 at 2, n.3.

Finally, the protester asserts that the agency failed to post online amendment 1 to the RFP, and because that amendment deleted two requirements of the RFP and contained the agency's responses to questions posed by the protester, the agency effectively evaluated proposals using undisclosed evaluation factors and failed to respond to the protester's questions. The record does not support the allegation that the agency failed to post the amendment.

The agency's posting on the FedBizOpps website had a clearly identified hyperlink to additional information, including amendments. The agency has explained at length when and how it posted the amendment to both the DOI/NBC EC website and, through the hyperlink, to FedBizOpps.⁵ Further, to the extent the protester points to the fact that the amendment was not accessible online through either website during the course of the protest, the agency has explained that under the standard procedures governing such postings, amendments are no longer available online after the time set for receipt of proposals. Specifically, the agency states that the RFP and related information, such as amendments, are archived after the proposal due date and thereafter are not accessible on the FedBizOpps or DOI/NBC EC websites. Thus, the fact that the amendment was not accessible during the course of the protest provides no basis to question the agency's assertion that the amendment was posted and available on the websites before the time set for receipt of proposals. In sum, we find no support in the record for the protester's allegation that the agency failed to post the amendment as required.⁶ See Federal Acquisition Regulation

⁵ In this regard, we note that the awardee states that it found the amendment the day it was posted by "carefully monitor[ing] both FedBizOpps and the [DOI/NBC EC] website for any postings." Intervenor's Response to GAO Questions, Mar. 5, 2007, at 2.

⁶ Even assuming that the agency failed to post the amendment and thereby answer the protester's questions, that protest ground is untimely. The protester knew as of
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§§ 5.101(a)(1), 5.102(a)(2), 5.210 (regarding the requirements for publicizing solicitations on FedBizOpps).

The protest is denied.

Gary L. Kepplinger
General Counsel

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the closing date for submission of proposals, December 8, that the questions, if not already posted, would not be timely answered. The protester waited over a month to file this protest ground with this office. To be timely, this protest should have been filed prior to the submission deadline. 4 C.F.R. § 21.2(a)(1); Federal Contracting Corp., B-240947.2, Jan. 3, 1991, 91-1 CPD ¶ 5 at 2-3; REL, B-228155, Jan. 13, 1988, 88-1 CPD ¶ 25 at 5. Nor did the protester claim that it was prejudiced in any way, meaning that but for the protester's lack of knowledge of the content of the answers the protester would have had a substantial chance of receiving the award. A showing of competitive prejudice is necessary for any protest. NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 18. Here, the two sources of information that were deleted from the requirements were proprietary to the protester. There is nothing in the record to suggest that, if the protester had seen the amendment before submitting its proposal, the protester would have altered its proposal in any way.