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Decision

Matter of: LEADS Corporation

File: B-311002; B-311002.2

Date: March 26, 2008

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Alexander J. Brittin, Esq., Brittin Law Group, P.L.L.C., for Enterprise Information Services, Inc., the intervenor.

William R. Covey, Esq., and Lisa J. Obayashi, Esq., Department of Commerce, for the agency.

John L. Formica, Esq., Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,

Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's selection of a lower-rated, lower-priced quotation for the issuance of a task order is unobjectionable where the agency reasonably determined that the protester's quotation's higher rating under the solicitation's experience and transition plan evaluation factors did not outweigh the awardee's quotation's lower price.

DECISION

LEADS Corporation protests the issuance of a task order to Enterprise Information Services, Inc. (EIS) under a request for quotations (RFQ) issued by the United States Patent & Trademark Office (USPTO), Department of Commerce, for program management support services. LEADS, the incumbent contractor, argues that the selection of EIS's lower-rated, lower-priced quotation for award was unreasonable and inconsistent with the terms of the solicitation.

We deny the protest.

The RFQ provided for the issuance of a fixed-price, level of effort task order to a vendor holding a General Services Administration Federal Supply Schedule contract on the Management, Organizational and Business Improvement Services schedule. RFQ at 1. The solicitation provided for the issuance of an order with a 1-year base period with 4 option years to the vendor submitting the quotation found to represent the best value to the government under the following evaluation factors listed in

descending order of importance: experience; past performance; transition plan; key personnel; and price. Id. at 14, 17. The RFQ also informed vendors that “[t]he non-price factors when combined are more important than price.” Id. at 17.

The agency received quotations from three vendors, including LEADS and EIS. LEADS’s quotation was evaluated as “excellent” under each of the factors at an evaluated price of \$16,998,200. Agency Report (AR), Tab 26, Technical Evaluation Report, at 1-5; Tab 29, Source Selection Decision, at 3. EIS’s quotation was evaluated as “good” under the experience and transition plan factors and “excellent” under the past performance and key personnel factors at an evaluated price of \$15,243,018. AR, Tab 29, Source Selection Decision, at 2-3. In making this source selection, the agency noted that, although “LEADS Corp. was higher rated than EIS in the categories of Experience and Transition Plan,” the “higher rating is due to the fact that, as the incumbent, LEADS Corp. has performed the identical requirement in the past and transition to a new contract would be completely seamless.” Id. at 4. The agency concluded that “the higher technical rating of the LEADS’ [quotation] does not outweigh the significant price advantage of the EIS [quotation],” and thus determined that EIS’s quotation represented the best value to the government. Id. at 5.

LEADS challenges the agency’s determination that EIS’s quotation represents the best value to the government, arguing that in selecting EIS’s lower-rated, lower-priced proposal for award, the agency placed undue emphasis on price and essentially converted the basis for award from a determination of “best value” to one of “lowest-cost, technically acceptable.” Protest at 9, 12. The protester also asserts that the agency’s source selection decision is not adequately documented, and that it misrepresents the relative merits of LEADS’s and EIS’s quotations.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost/price evaluation results; tradeoffs may be made, and the extent that technical superiority may be sacrificed for a cost/price advantage is governed by the test of rationality and consistency with the established evaluation factors. Joppa Maint. Co., Inc., B-281579; B-281579.2, Mar. 2, 1999, 2000 CPD ¶ 2 at 7. A protester’s mere disagreement with the source selection decision does not show that the source selection was not reasonably based or was otherwise inconsistent with the solicitation’s award language. Financial & Realty Servs., LLC, B-299605.2, Aug. 9, 2007, 2007 CPD ¶ 161 at 5-6. In addition, our Office has also long recognized that an agency, in making a source selection, may properly conclude that a technical scoring advantage based primarily on incumbency does not indicate an actual technical superiority that would warrant paying a cost premium. EDAW, Inc., B-272884, Nov. 1, 1996, 96-2 CPD ¶ 213 at 7; Sparta, Inc., B-228216, Jan. 15, 1988, 88-1 CPD ¶ 37 at 4.

We disagree with the protester that the agency failed to adequately document its source selection, placed undue emphasis on price in selecting EIS’s quotation for

award, and essentially changed the basis for award from “best value” to “lowest-cost, technically acceptable.” In this regard, the agency’s source selection statement (which totals six pages) provides a summary of each quotation’s strengths and weaknesses, as well as the reasoning for the evaluation ratings received under each of the evaluation factors. The source selection statement continues by comparing the ratings of each of the quotations, providing an overall ranking of the quotations as evaluated under the non-price factors, and provides a table of the evaluated prices and summary of the agency’s review of the prices quoted. The source selection statement accurately acknowledges LEADS’s evaluated technical advantages, but concludes that the protester’s higher technical rating does not outweigh EIS’s price advantage. We find that the agency’s source selection decision is adequately documented, and given the specific price/technical merit tradeoff made in selecting EIS’s quotation for award, see no indication in the record that the agency, in making its source selection, placed undue emphasis on price or made award on a “lowest-cost, technically acceptable” basis.

We also do not agree with the protester that the agency’s source selection decision misrepresents the relative merits of LEADS’s and EIS’s quotations. In this regard, LEADS primarily complains that the statement in the source selection decision that LEADS’s quotation’s higher technical rating under the evaluation factors of experience and transition plan was due to LEADS’s status as the incumbent, which assertedly indicated that the source selection decision failed to reflect the actual advantages of LEADS’s quotation under these factors. Specifically, the protester contends with regard to the experience evaluation factor that its rating of “excellent” was not “merely by virtue of its status as the incumbent,” but was also, for example and as recognized by the evaluators, due to the “relevance, depth and scope of LEADS’ experience.” Protester’s Comments at 5. The protester also argues that its quotation should have been viewed as significantly superior to EIS’s under the experience factor (despite EIS’s “good” rating), given that the evaluators noted that a “chart” provided in EIS’s quotation “referenced vaguely relevant and similar experience in the RFQ.” Supplemental Protest at 9.

We agree with the protester that the agency, in assigning LEADS’s quotation an “excellent” rating under the experience factor, identified numerous strengths with regard to LEADS’s “experience,” and that these strengths are related to the relevance, depth and scope of LEADS’s experience. However, the agency also found that the vast majority of these strengths were in the context of LEADS’s 12-year record of performance as the incumbent contractor. We find no basis in this record to conclude that the agency did not reasonably assess the merits of LEADS’s quotation under this factor.

With regard to EIS’s quotation, the agency evaluators, in addition to commenting on the chart provided, also found that EIS’s quotation “provided a large amount of data explaining the company’s experience” on three particular contracts, and found that “though it is a slight weakness that EIS has not directly supported USPTO work in

the past, EIS does possess experience that is quite similar to USPTO work.” AR, Tab 26, Technical Evaluation Report, at 4. In reaching this conclusion, however, the agency also noted numerous strengths with regard to EIS’s “experience” related to relevance, depth and scope. Id.

In sum, we find that the source selection statement accurately represents the merits of LEADS’s and EIS’s quotations under the experience factor.

We similarly find the source selection statement’s description of the merits of LEADS’s and EIS’s quotations under the transition plan factor to be accurate and not misleading. That is, the agency recognized LEADS’s advantage under this factor, because LEADS, as the incumbent, would be able “to make a complete transition to the new contract in one day” with no break in support is due to its status as the incumbent. See AR, Tab 26, Technical Evaluation, at 3. With respect to EIS’s quotation, as found by the agency and pointed out by LEADS, the success of EIS’s transition plan depends on, in part, the firm’s ability to retain incumbent staff, and that this poses some risk. See id. at 5.

The protester also argues that, although both its and EIS’s quotations were rated “excellent” under the past performance and key personnel factors, these adjectival ratings, as set forth in the source selection decision, failed to illustrate what the protester asserts are “differences” between LEADS’s and EIS’s quotations. Supplemental Protest at 22-25. The protester argues, for example, that although past performance references of LEADS and EIS were similar in that they resulted in both of the quotations being evaluated as “excellent” under the past performance factor, LEADS’s quotation was actually superior in that LEADS had performed the evaluated contracts as the prime contractor, whereas EIS’s evaluated past performance was as a prime contractor and as a subcontractor. Supplemental Protest at 23. This argument is without merit. As pointed out by the agency, nothing in the RFQ prohibited the agency from considering EIS’s past performance as a subcontractor, nor did the RFQ state that such past performance would be rated as inferior to prime contract performance. Rodgers Travel, Inc., B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 5.

The protester also argues that “there were differences between the offerors that reasonably should have differentiated the quotes under the Key Personnel factor.” Supplemental Protest at 23. Specifically, the protester points out that its proposed program manager (the only individual identified as “key personnel”) has served as the program manager on the incumbent contract for 6 years, was rated as “excellent” with no evaluated “weaknesses” or “risks,” whereas the agency, while evaluating EIS’s quotation as “excellent” under the key personnel factor, also noted as a “weakness” that the program manager proposed by EIS lacked experience in the “direct support for the development and support of major patent applications.” Supplemental Protest at 24; AR, Tab 26, Technical Evaluation Report, at 5.

In making this argument, the protester ignores the fact that the agency, in evaluating EIS's quotation as "excellent" under the key personnel factor, also noted, among other things, that EIS's proposed program manager has served as a program manager for USPTO on a systems engineering and technical assistance program contract with a total value of \$70 million, and was found by the agency to have "23 years of solid management, PM [program management] and business consulting experience." AR, Tab 26, Technical Evaluation, at 5. Given this, we do not agree that the source selection statement, which did not note the specific differences between the program managers proposed by LEADS and EIS, but rather stated only that the quotations had both been rated as "excellent" under the key personnel factor, was somehow misleading or unreasonable.

In sum, we do not agree with the protester that the source selection decision was misleading as to the merits of the vendors' quotations, and find reasonable the source selection statement's ultimate finding that "the higher technical rating of the LEADS' quote does not outweigh the significant price advantage of the EIS [quotation]."¹

The protest is denied.

Gary L. Kepplinger
General Counsel

¹ LEADS has made a number of other related contentions during the course of this protest regarding the propriety of the agency's best value determination. Although these contentions may not be specifically addressed in this decision, each was carefully considered by our Office and found either to be insignificant in view of our other findings, or invalid based upon the record as a whole.