



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Leader Mortgage Company

File: B-274110.2

Date: May 19, 1997

Howard M. Metzenbaum, Esq., for the protester.

Merilee D. Rosenberg, Esq., Department of Veterans Affairs, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester was not entitled to award merely because it submitted lowest-priced, technically acceptable offer where solicitation did not provide for award on that basis.
2. Selection of higher-rated, higher-priced offer was consistent with solicitation scoring scheme allocating only 10 percent of evaluation points to price.
3. Protest of solicitation scoring scheme is untimely where scoring scheme was announced in solicitation, but protester did not object to it prior to closing time for receipt of proposals.

DECISION

The Leader Mortgage Company protests the award of a contract to Computer Data Systems, Inc. (CDSI) under request for proposals (RFP) No. 101-36-96, issued by the Department of Veterans Affairs for mortgage services. Leader argues that it should have received the award because its price was considerably lower than CDSI's.

We deny the protest.

The RFP provided for the evaluation of proposals on the basis of technical factors, past performance, and price, with award of a fixed-price, time-and-materials contract to be made to the offeror whose proposal was determined to be in the best interest of the government. Technical evaluation factors included corporate experience and management approach; approach to performing the services; organizational qualifications; personnel; and facilities and equipment. Price was to be scored by dividing the lowest offered price by the offeror's price and multiplying the resulting fraction by the maximum points available (*i.e.*, 10). Offerors were advised that the technical factors would be worth 65 percent of the evaluation

points available; past performance, 25 percent; and price, 10 percent. The solicitation emphasized that since technical factors and past performance were of greater importance than price, award might be made to other than the lowest-priced offeror.

Sixteen firms submitted proposals by the November 5, 1996, closing date. Eleven proposals were included in the competitive range. The agency conducted discussions with each of the 11 firms and requested best and final offers (BAFO). Overall scores on the BAFOs ranged from 61.7 to 82.4; technical scores ranged from 33.4 to 51.7; and prices ranged from \$11,660,000 to \$71,451,600. CDSI's proposal received both the highest overall and the highest technical scores, and its price (\$20,876,200) was third lowest.

Leader's overall score of 71.6 was fourth highest. It received the maximum possible score of 25 for past performance (as did 8 of the other 10 competitive range offerors, including CDSI) and the maximum possible score of 10 for its price, which was lowest. Leader's technical score of 36.6 was fourth lowest, however. Among the weaknesses in the protester's proposal noted by the evaluators were Leader's failure to demonstrate a track record of handling portfolios comparable in size and complexity to the requirement here; its failure to demonstrate an understanding of program objectives and approach; its failure to address the implementation of nonloans; and its failure to demonstrate a good understanding of the VA accounting report requirements.

The contracting officer determined that CDSI's proposal represented the best value to the government and awarded a contract to CDSI on January 30, 1997. Leader received a written debriefing identifying the weaknesses in its proposal on February 6 and protested to our Office the same day.

Leader argues that it should have received the award since it is qualified to perform the services and its price is significantly lower than CDSI's.

Leader's allegation that it is entitled to award because it submitted the lowest-priced technically acceptable proposal is unfounded. In a negotiated procurement, there is no requirement that award be made on the basis of the lowest price unless the RFP so specifies. Tracor Flight Sys., Inc., B-245132, Dec. 17, 1991, 91-2 CPD ¶ 549 at 4. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Price/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. The Pragma Corp., B-255236 et al., Feb. 18, 1994, 94-1 CPD ¶ 124 at 5. Award may be made to an offeror with a higher-rated, higher-priced proposal where the decision is consistent with the evaluation factors and the agency reasonably determines that the technical superiority of the higher-priced offeror

outweighs the cost difference. Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326 at 11.

Here, the evaluators determined that the superiority of CDSI's proposal under the technical factors--CDSI having received a technical score 7 points (*i.e.*, 11 percent) higher than that of any other offeror and 15 points (*i.e.*, 23 percent) higher than Leader's score--outweighed its higher price. This determination was consistent with the evaluation scheme set forth in the RFP, which provided that technical factors would be worth 65 percent of an offeror's overall score and price only 10 percent.¹

The protester also objects to the allocation of only 10 percent of the evaluation points to price. Its protest on this ground is untimely, however, and will not be considered. The RFP clearly advised offerors of the relative weights of the evaluation factors; thus, to be timely, any objection to the weights would have had to be raised prior to the closing time for receipt of proposals, *i.e.*, November 5, 1996. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); PeopleWorks, Inc., B-257296, Sept. 2, 1994, 94-2 CPD ¶ 89 at 5-6. The protester argues that it should not have been expected to object to the terms of the solicitation prior to the closing date for receipt of proposals "because no bidder would want to jeopardize its assumed good working relationship with the government by raising questions about the government's specifications at the outset." The reason for requiring protesters to file protests based upon apparent solicitation improprieties before closing is to permit our Office to consider the allegations while corrective action, if indicated, is most practicable and, thus, least burdensome on the conduct of the procurement. Julie Research Corp., Inc.--Recon., B-219853.2, Sept. 27, 1985, 85-2 CPD ¶ 350 at 2. The fact that a protester may decide that it is not in its best interest to file a protest at the relevant time does not provide a basis for waiving our timeliness regulations. Custom Data Servs., B-271288.2, Oct. 9, 1996, 96-2 CPD ¶ 140 at 4, n.3.

Leader also complains that CDSI's price is excessively high. Leader is not an interested party to raise this argument because it would not be next in line for award--two other offerors having received higher overall scores--if its protest on this

¹The protester has not taken issue with the technical evaluation of CDSI's proposal and did not raise a timely objection to the technical evaluation of its own proposal. In the latter regard, our Bid Protest Regulations require that to be timely, a protest based on other than for alleged solicitation impropriety must be filed within 10 calendar days after the basis of protest is, or should have been, known. 4 C.F.R. § 21.2(a)(2)(1997). The protester was informed of the significant weaknesses in its proposal and of its overall and technical scores on February 6, but waited until March 26, the date on which it filed its comments on the agency report, to object to the agency's technical findings. Its protest of the technical evaluation of its proposal accordingly is untimely and will not be considered.

ground were sustained. ASI Personnel Serv., Inc., B-258537.7, June 14, 1995, 95-2 CPD ¶ 44 at 7. In any event, the record does not support the protester's assertion that CDSI's price was unreasonably high--it shows, instead, that CDSI's price was third lowest of the 11 received, and that it was lower than the agency estimate.

Finally, Leader objects to CDSI's representation that its subcontractor, Seasons Mortgage Group, Inc. (SMG), is minority and woman-owned. The protester argues that SMG cannot possibly be woman-owned since, according to Dun and Bradstreet, at least 50 percent of its stock is owned by men. Whether or not SMG is woman and/or minority-owned is irrelevant since this procurement was not set aside for woman and minority-owned businesses and the solicitation did not provide for evaluation preference for such businesses.

The protest is denied.

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