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Decision

Matter of: Lowe Campbell Ewald

File: B-411614; B-411614.2

Date: September 11, 2015

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David H. Turner, Esq., Department of the Navy, Naval Supply Systems Command, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals and source selection decision is denied where record shows that agency's evaluation and source selection were reasonable, rational, and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

Lowe Campbell Ewald (LCE), of Detroit, Michigan, protests the award of a contract to Young & Rubicam, Inc. (Y&R), of New York, New York, under request for proposals (RFP) No. N00189-14-R-Z004, issued by the Department of the Navy for advertising and marketing services. LCE, the incumbent contractor for this requirement, maintains that the agency miscalculated proposals and made an unreasonable source selection decision.¹

¹ In its initial protest LCE also alleged that Y&R had an organizational conflict of interest (OCI), and that the agency unreasonably found Y&R responsible, notwithstanding an alleged violation of the Procurement Integrity Act by Y&R. LCE withdrew its OCI allegation, and our Office dismissed its allegation regarding the agency's allegedly improper affirmative responsibility determination of Y&R as speculative. GAO E-Mail to the Parties, June 25, 2015.

We deny the protest.

The RFP contemplates the award, on a best-value basis, of a contract for a base year and four 1-year options to provide the subject services. Firms were advised that the agency would evaluate proposals and make award considering price, and several non-price factors. RFP at 92. The non-price evaluation factors were: performance approach (deemed most important); corporate experience and past performance (each deemed equal in importance, but less important than performance approach); and socio-economic plan (deemed significantly less important than the other three non-price considerations).² RFP at 92. The RFP did not specify how the agency would evaluate price, other than to state that the agency would add the total price for all options to the price for the base year, and to advise offerors that the agency could find a proposal unacceptable if the option prices were significantly unbalanced. RFP at 93.

The RFP divided the agency's requirements among seven "series" of contract line items (CLIN series), and each CLIN series represented a discrete set of requirements.³ The CLIN 001 series of line items were for providing basic advertising services, and were to be priced by the offerors on a monthly, lump-sum, fixed-price basis. Agency Report (AR), exh. 6-2, RFP Amendment No. 3, part II.

The CLIN 002, 004, and 005 series of line items were for providing, respectively, space charges, media placement and postage (CLIN 002 series); other direct expenses in support of emergent tasks (CLIN 004 series); and field events marketing services (CLIN 005 series).⁴ Agency Report (AR), exh. 6-2, RFP

² The record shows that the agency assigned adjectival ratings to the proposals under the performance approach, corporate experience and socio-economic evaluation factors of outstanding, good, acceptable, marginal or unacceptable. E.g., Agency Report (AR), exh. 31, Final Source Selection Evaluation Board (SSEB) Report, at 2-3. For the past performance evaluation factor, the agency assigned the offerors' past performance examples relevancy ratings of very relevant, relevant, somewhat relevant or not relevant; and assigned the firms' overall past performance adjectival ratings of substantial confidence, satisfactory confidence, limited confidence or no confidence. Id.

³ Each contract year included seven CLINs.

⁴ The RFP explained that these CLINs were to be used for "pass through" costs that the contractor was to provide to the government at the actual costs incurred by the firm for acquiring space charges, media placement and postage (CLIN 002 series); for other direct expenses incurred in connection with providing additional advertising services that would be provided on a fixed-price-per-task-order basis to be

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Amendment No. 3, part II. The RFP included specified, uniform, not-to-exceed dollar values, or “plug numbers” for these CLIN series that were to be used by the offerors in submitting their respective proposals.⁵ Id.

The CLIN 003 series of line items were for providing additional advertising services not included under the CLIN 001 series. Agency Report (AR), exh. 6-2, RFP Amendment No. 3, part II. Firms were required to provide blended hourly rates for five discrete categories or “segments” of services, and the RFP provided a specific number of hours by which the blended hourly rates were to be multiplied.⁶ Id.

The CLIN 006 series of line items were for providing recurring information technology services. RFP at 29. These services were to be priced on a monthly, lump-sum, fixed-price basis. AR, exh. 6-2, RFP Amendment No. 3, part II.

Finally, the CLIN 007 series of line items were for labor and other direct expenses for providing diversity outreach services. RFP at 30. These services were to be priced based on a proposed blended hourly rate, multiplied by a specified number of hours (5,000 hours per year). AR, exh. 6-2, RFP Amendment No. 3, part II.

The Navy received proposals from LCE and Y&R. After evaluating proposals, engaging in discussions and soliciting, obtaining and evaluating final proposal revisions (FPRs), the agency assigned the following proposal ratings:

	LCE	Y&R
Performance Approach	Good	Acceptable
Corporate Experience	Outstanding	Good
Past Performance	Substantial Confidence	Substantial Confidence
Socio-Economic Plan	Acceptable	Acceptable
Overall Proposal Rating	Outstanding	Good
Total Price	\$481,495,106	\$457,461,287
Price Exclusive of Plug Numbers	\$136,588,764	\$112,554,945

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negotiated after contract award (CLIN 004 series); or for other direct expenses in support of field events marketing services (CLIN 005 series). RFP at 28-30.

⁵ For example, in the base year of the contract, CLIN 002 was to be priced at \$46,140,000, CLIN 004 was to be priced at \$8,730,000 and CLIN 005 was to be priced at \$7,535,000. AR, exh. 6-2, RFP Amendment No. 3, part II, at 3, 5.

⁶ For example, during the base year the RFP called for providing research, strategic planning, program development and assessment services; offerors were to provide a blended hourly rate for these services that was to be multiplied by 900 hours. AR, exh. 6-2, RFP Amendment No. 3, part II, at 4.

AR, exh. 35, Source Selection Decision Document (SSDD), at 1, 5. On the basis of these evaluation results, the agency made award to Y&R, finding that Y&R's proposal represented the best value to the government. Id. at 8-10. After being advised of the agency's source selection decision and requesting and receiving a debriefing, LCE filed this protest.

PROTEST

LCE's protest raises a large number of allegations and we have carefully reviewed all of them and find them to be without merit. We discuss LCE's principal contentions below. We note at the outset that, in reviewing protests concerning an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2.

Evaluation of the Y&R Price Proposal

LCE maintains that the agency miscalculated Y&R's price proposal. LCE relies on a provision of the solicitation's instructions to offerors for preparing price proposals that it contends created a requirement for the agency to perform a price realism evaluation. The provision relied on by LCE states as follows:

Volume II [the offeror's price proposal] shall include the completed solicitation documents. The price proposal shall support the Non-price proposal. If the price proposal does not support the Non-price proposal, the offeror's proposal rating may be downgraded.

RFP at 88. LCE argues that the agency failed to conduct the price realism evaluation contemplated by the RFP and, as a consequence, failed to realize that Y&R's price--specifically, its price for the CLIN 001 and CLIN 006 series of line items (both of which were priced on a fixed-price basis)--was unrealistically low. In support of its position, LCE points out that, in its initial and interim revised proposals, Y&R attempted to take exception to various performance work statement (PWS) requirements that were to be performed under the 001 and 006 series CLINs. LCE acknowledges that Y&R's FPR did not continue to take exception to the PWS requirements, but argues that the firm did not adequately increase its price to reflect those additional requirements.⁷ LCE focuses principally (although not

⁷ LCE's pleadings on this subject are inconsistent. In its supplemental protest, LCE stated categorically: "Faced with Amendment 009 to the Solicitation, Y&R finally acceded to the Navy's position, and removed its Solicitation-defying pricing
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entirely) on the other direct expenses associated with the 001 and 006 CLIN series, maintaining that the agency's price evaluation failed to consider the extent to which Y&R allegedly had underpriced those requirements.

We find no merit to this aspect of LCE's protest.⁸ The language relied on by LCE does not impose a requirement on the agency to perform any particular price evaluation, and does not require the agency to conduct a price realism evaluation, as suggested by LCE. First, there is no express language in the RFP that requires the agency to conduct a price realism evaluation. Second, while we have recognized in certain limited circumstances that an RFP may impose a requirement to conduct a price realism evaluation even where there is no express requirement to conduct such an evaluation, those circumstances are not present here. As we have previously noted, we will conclude that a solicitation requires performance of a price

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assumptions and exclusion from the Price Proposal submitted with its FPR." LCE Supplemental Protest, July 16, 2015, at 38. On the other hand, in its comments responding to the original agency report, LCE suggested that Y&R continued to take exception to various requirements of the PWS. LCE Comments, July 20, 2015, at 5-7.

To the extent that LCE is alleging in its comments that the Y&R proposal continued to take exception to the requirements of the PWS, that allegation is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), require that a protest be filed within 10 days of when a protester knows or should know of its basis for protest. LCE was provided with the Y&R proposal as part of the agency report filed on July 7. LCE's comments, which suggest that Y&R continued to take exception to various PWS requirements, were filed on July 20, more than 10 days after its receipt of the agency report. Thus, to the extent LCE alleges in its comments that the Y&R proposal took exception to certain PWS requirements, we dismiss that allegation as untimely. In any case, as noted below, the record shows that Y&R's FPR did not take exception to the requirements of the RFP.

⁸ As an initial matter, we point out that the language relied on by LCE does not appear in the RFP's evaluation criteria, but, rather, in the instructions to offerors. Agencies are required to evaluate proposals based on the evaluation factors stated in the solicitation; while a solicitation may establish additional informational, technical, administrative, or other requirements, those requirements properly may not be considered in connection with the evaluation of proposals, unless those additional requirements also are specified as a basis for proposal evaluation. Metis Solutions, LLC, et al., B-411173.2 et al., July 20, 2015, 2015 CPD ¶ 221 at 5 n.6. As noted previously, the RFP did not specify how the agency intended to evaluate price, other than to state that the agency would add the option prices to the base price, and to note that the agency could find a proposal unacceptable if the option year prices were significantly unbalanced. RFP at 93.

realism evaluation only where: (1) the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) the RFP states that a proposal can be rejected for offering low prices. DynCorp Int'l, LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9.

Here, the RFP merely provided that the agency would consider whether or not the offerors' price proposals supported--that is, were consistent with--the offerors' non-price proposals. The record shows that the agency did precisely what the RFP called for during its evaluation. As correctly noted by the protester, the agency found that Y&R's initial price proposal was not consistent with its non-price proposal, and more specifically, that Y&R's price proposal had taken exception to certain requirements of the RFP for the 001 and 006 CLIN series. AR, exh. 21, Pre-Negotiation Business Clearance Memorandum, at 23. Accordingly, the agency raised the issue with Y&R during discussions. AR, exh. 23, Discussion Letter to Y&R, at 2; AR, exh. 28, Letter to Y&R Requesting FPR, at 2-3. Ultimately, Y&R elected to revise its price proposal to conform to its non-price proposal, as well as the requirements of the RFP. In response, the agency concluded that the Y&R FPR price proposal was unobjectionable. AR, exh. 32, Post Negotiation Business Clearance Memorandum, at 18; exh. 33, Source Selection Advisory Council Report, at 4-5. Simply stated, the agency met the requirements of the RFP by evaluating--and affirmatively determining--that the Y&R price proposal supported its non-price proposal; the agency was not required by the terms of the RFP to do anything more than this in evaluating the Y&R proposal.⁹

In the final analysis, there is no basis for our Office to object to the nature and extent of the agency's evaluation of the Y&R price proposal for the reasons advanced by the protester. The agency was not required to conduct a price realism evaluation, as suggested by LCE, and, in light of the fixed-price nature of the contract being awarded, the agency properly could make award to an offeror proposing low, or even below-cost prices. JCMCS, B-409407, Apr. 8, 2014, 2014 CPD ¶ 125 at 2. In view of the foregoing discussion, we deny this aspect of LCE's protest.

Socio-Economic Plan

⁹ The record shows that, in addition to these activities, the agency also reviewed Y&R's proposal to ensure that its level of staffing was consistent with its price and non-price proposals, and also was adequate to perform the requirements. AR, exh. 37, Table Analyzing Y&R's Proposed Staffing, exh. 39, Declaration of the Contract Negotiator, at 2-3. The agency also evaluated the adequacy of Y&R's proposed compensation for its professional employees. AR, exh. 29-7, RFP Amendment No. 0008, at 30, exh. 32, Post Negotiation Business Clearance Memorandum at 23-24.

LCE alleges that the agency should have rejected Y&R's proposal for failing to comply with the RFP's socio-economic plan requirements. According to the protester, the RFP required offerors to propose a socio-economic plan that contemplated subcontracting at least 15 percent of the value of all subcontracts to be awarded under the solicitation. The protester maintains that the value of the contemplated subcontracts should have included all of the "pass through" costs and other direct expenses included under the 002 and 005 CLIN series. LCE argues that the inclusion of these costs in the subcontracting basis historically has been required under the predecessor contract (under which LCE is the incumbent) and, accordingly, that LCE reasonably concluded that this would constitute the basis for calculating the offerors' socio-economic plan level of participation here.¹⁰ The protester therefore maintains that the socio-economic plan included in the Y&R proposal, which does not include these costs in the basis for calculating its socio-economic plan level of participation, should have provided a basis for rejecting the Y&R proposal as unacceptable.

We find no merit to this aspect of LCE's protest. Nothing in the RFP required offerors to include the "pass through" and other direct expenses as part of the basis for determining subcontracting costs, and by extension, for determining the level of participation of small business subcontractors. In fact, the RFP was clear that no particular level of socio-economic participation was required. In this connection, the RFP instructions to offerors specifically provided as follows:

Socio-Economic Plan

The offeror shall address the extent of participation of small businesses, small disadvantaged businesses, women-owned small businesses, historically black colleges or universities and minority institutions, veteran-owned small businesses, service-disabled veteran-owned small businesses, and HUBZone small businesses in performance of any resultant contract. The solicitation, however, does not require participation by such entities.

RFP at 88 (emphasis supplied). While the RFP did caution offerors that a failure to include any socio-economic plan at all in their proposal could form a basis for finding an offeror ineligible for award, id., the record shows that Y&R's proposal included a socio-economic plan that contemplated subcontracting with each of the

¹⁰ LCE directs our attention to various provisions of the predecessor solicitation, including an amendment that provided answers to offeror questions where the agency stated that that solicitation's small business subcontracting target included the "media spend" and postage and other delivery "pass through" costs. Supplemental Protest, Declaration of LCE financial analysis manager, exh. A, at 24.

seven enumerated categories of small businesses. AR, exh. 30-1b, Y&R Technical Proposal, at I-40.¹¹

LCE suggests that Y&R's proposal also misrepresents the percentage values that it intends to subcontract to small businesses because the basis it used for its calculations also did not include several large business subcontractors that LCE maintains Y&R intends to use during performance. However, as noted above, since the RFP did not require offerors to commit to any particular level of small business participation as part of their socio-economic plan, it follows that essentially any amount of subcontracting would be acceptable. Thus, even if this aspect of LCE's protest were correct, this would not provide a basis for our Office to object to the agency's evaluation under the socio-economic plan evaluation factor.

LCE also alleges that, because it assumed that it was required to include the "pass through" and other direct expenses in the basis that it used to calculate its socio-economic plan percentages, it was competing on a fundamentally different basis, because Y&R was not similarly required to include those costs in the basis it used to calculate its socio-economic plan percentages. However, as noted, the RFP was clear on its face that offerors were not required to include any particular level of participation on the part of small businesses in responding to the solicitation's socio-economic plan evaluation factor. Given the clear terms of the RFP, there was no basis for LCE to have assumed that it was required to include any particular costs in

¹¹ LCE also alleges that the Y&R proposal is materially deficient because it only included a socio-economic plan describing the dollar value and percentage of total contract value targets for the base year of the contract, but did not include the same information for the option years of the contract. The protester relies on the following RFP language:

The offeror shall provide targets, expressed as dollars and percentages of total contract value, for small businesses, small disadvantaged businesses, women-owned small businesses, historically black colleges or universities and minority institutions, veteran-owned small businesses, service-disabled veteran-owned small businesses, and HUBZone small businesses in any of the North American Industry Classification System (NAICS) Major Groups as determined by the Department of Commerce.

RFP at 88. As an initial matter, nothing in the quoted language requires offerors to include separately enumerated dollar values and percentage values for each contract year. In any event, the record shows that the Y&R proposal described the firm's targets for the option years by making reference to the base year figures specifically outlined in the proposal, stating: "[deleted]." AR, exh. 30-1b, Y&R Technical Proposal, at I-40. We therefore find no merit to this aspect of LCE's protest.

the basis it used to calculate its socio-economic plan levels of participation. Thus, while LCE may have prepared its proposal based on an understanding of the RFP's requirements that was different than Y&R's understanding, LCE made an unwarranted--and ultimately incorrect--assumption about how it was required to prepare its proposal.¹²

Finally LCE alleges that the agency improperly assigned both its proposal and Y&R's proposal acceptable ratings under the socio-economic evaluation factor. LCE maintains that its proposal should have been rated superior under this factor because it offered to subcontract more of the requirement with small business entities. While the protester is correct that the agency assigned both proposals the same adjectival rating, the agency's SSEB report specifically recognized LCE's superiority under the socio-economic plan evaluation factor. Ultimately, however, the agency concluded that the firm's superiority under that factor did not provide a significant advantage to LCE because the socio-economic evaluation factor was the least important evaluation factor. The SSEB found as follows:

While each offeror has planned to subcontract 15% of total planned subcontracting dollars with small businesses, LCE has proposed to subcontract over [deleted] % of total contract value with Small Businesses while Y&R has proposed to subcontract [deleted] % of total contract value with small business. As such LCE is rated higher for this factor. However, as this factor is significantly less important than all other non-price factors in accordance with the evaluation criteria set forth in the solicitation, this minor superiority of the LCE proposal has minimal impact on the rankings of the offers.

AR, exh. 31, SSEB Report, at 8. In view of the foregoing discussion, we deny this aspect of LCE's protest.¹³

¹² LCE also suggests that the agency should have brought this matter to its attention during discussions. However, the agency did not view LCE's calculation of the basis for its socio-economic plan level of participation as a weakness or deficiency in the firm's proposal. Consequently, there was no requirement for the agency to bring the matter to LCE's attention during discussions. See FAR § 15.306(d)(3).

¹³ LCE also alleges that the agency should have rejected the Y&R proposal because it offered to provide a field security officer that was [deleted]. According to the protester, the RFP required offerors to propose an employee of "the contractor," and Y&R's offering [deleted] was unacceptable. We dismiss this aspect of LCE's protest. LCE relies on two provisions of the RFP, one included in the PWS, RFP at 44, and a Department of Defense FAR Supplement clause incorporated into the solicitation, § 5252.204-9400, relating to unclassified contractor access to federally controlled facilities. RFP at 64-67. Because both of these provisions are

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Source Selection

LCE has two principal objections to the agency's source selection decision. First, LCE maintains that the agency exaggerated the actual price difference between its proposal and Y&R's proposal. While LCE concedes that its proposed price was approximately \$24 million higher than Y&R's price, it maintains that the agency exaggerated the difference between the two firms' prices by finding that LCE's price was 21.35 percent higher than Y&R's price. According to the protester, if the agency had included the value of the "plug numbers" in its calculations, it would have concluded that LCE's price was only 5.25 percent higher than Y&R's price. LCE maintains that the RFP required the agency to evaluate the offerors' prices including the "plug numbers."

We find no merit to this aspect of LCE's protest. First, the language relied on by LCE appears in a solicitation provision describing how the agency would evaluate the offerors' option prices, not how the agency would calculate the offerors' total prices. That provision, in its entirety, states as follows:

Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that [an] offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the Option(s).

RFP at 93. While the language relied on by LCE uses the phrase "total price," it does not define the term, or include any description of how the agency was required to calculate "total price."

Here, the RFP included "plug numbers" totaling approximately \$345 million dollars, and all offerors were instructed to use these identical amounts in preparing their respective price proposals. The agency explains that it used these "plug numbers" because it is unable to anticipate in advance the likely costs of these contract elements (for example, the agency points out that the costs of advertising time and postage cannot be anticipated in advance), and, accordingly, the agency simply used large, not-to-exceed costs that were unlikely to be entirely expended during contract performance. Agency Report, at 55. The agency states that, because all

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performance requirements, Y&R's compliance with these requirements is a matter of contract administration, not subject to our review. HS Support, B-409937, Sept. 18, 2014, 2014 CPD ¶ 276 at 3.

offerors were using the same amounts for these CLIN series, there was no basis to distinguish between the proposals on this basis.

The protester has offered no logical explanation for why the agency should have used the offerors' prices calculated with, rather than without, the plug numbers.¹⁴ The protester also has not explained how the agency's characterization of the offerors' proposed prices is anything more than a different way of describing the same--approximately \$24 million--price difference. In the final analysis, the actual difference between the two proposals' prices--approximately \$24 million--was identified in the agency's SSDD, along with the difference between the proposals, calculated both with--and without--inclusion of the "plug number" amounts. AR, exh. 35, SSDD, at 5. The record therefore demonstrates that the agency understood the actual difference between the offerors' proposed prices--approximately \$24 million--and LCE's objection essentially is one of form over substance.

LCE also objects to the agency's source selection because, according to the protester, the agency minimized the technical superiority of its non-price proposal. LCE maintains that the agency should have assigned a higher adjectival rating to its proposal under the performance approach evaluation factor. LCE also argues that the SSDD unreasonably uses the phrase "slight" to describe its technical advantage.

Selection officials have considerable discretion in making price/technical tradeoff decisions. DGC, Int'l, B-410364.3, Apr. 22, 2015, 2015 CPD ¶136 at 5. The propriety of a price/technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the difference was rational and consistent with the RFP's evaluation scheme. Id. Indeed, point scores and adjectival ratings are merely guides for intelligent decision making. Information Ventures, Inc., B-407478.4, July 17, 2013, 2013 CPD ¶ 176 at 6.

LCE has not identified or shown any substantive deficiencies in the agency's evaluation of proposals, or in the ultimate source selection decision. For example, LCE has not identified any strengths in its proposal, or weaknesses in the Y&R

¹⁴ LCE suggests that an offeror's performance approach could determine the "effectiveness" of how each offeror spent the amounts to be provided under the 002, 004 and 005 CLIN series. Protest, June 5, 2015, at 25, n. 4. However, beyond its unsupported assertion, LCE has offered no meaningful response to the agency's logical explanation that it used "plug numbers" because it does not know in advance what these expenses might be. For example, as noted, one of the expenses represented by the "plug numbers" is for postage. LCE has offered no logical explanation for how its performance approach might affect--one way or the other--the cost of postage.

proposal, that the agency allegedly failed to recognize. Rather, LCE takes issue with the assignment of adjectival ratings to its proposal, along with the terminology used by the source selection official in making award to Y&R. The record shows, however, that, rather than simply rely on the adjectival ratings assigned to the proposals--or even for that matter, the descriptive terminology used in making award to Y&R--the agency's SSDD describes in detail the relative strengths identified in each proposal, compares those strengths, and makes a determination that the technical superiority of the LCE proposal simply is not worth the approximately \$24 million price premium associated with the firm's offer. On this record, we have no basis to object to the agency's source selection decision for the reasons advanced by LCE in its protest.

The protest is denied.

Susan A. Poling
General Counsel