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**Comptroller General
of the United States**

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

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Decision

Matter of: LIS, Inc.

File: B-400646.2; B-400646.3

Date: March 25, 2009

David Z. Bodenheimer, Esq., Crowell & Moring LLP, for the protester.
Clay C. Cook, Esq., and William Robinson, Esq., Department of Justice, for the agency.
Charles W. Morrow, Esq., Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained in a negotiated procurement, where solicitation required best-value evaluation and agency failed to document or adequately explain how awardee's proposal overcame significant weaknesses identified in the initial evaluation, and failed to document or adequately explain its assessment of the relative merits of the proposals or perform a comparative assessment of proposals when making the source selection.

DECISION

LIS, Inc., of Lafayette, Colorado, protests the award of a contract to Labat-Anderson, Inc., of McLean, Virginia, under request for proposals (RFP) No. RFPCOB-008, issued by the Department of Justice, Federal Bureau of Prisons, for library and information center services. LIS challenges the agency's evaluation of proposals and the source selection decision.

We sustain the protest.

The National Institute of Corrections (NIC), which was established by Congress in 1974, provides leadership and assistance in the field of corrections with regard to training, technical assistance, research and evaluation, policy and standards formulation and implementation, and clearinghouse services. The NIC contains an information center that "collect[s], prepar[es], and disseminat[es]" information on corrections, including information on prisons, jails, probation, parole, and community based corrections. The "mission" for these services is to "assist in improving current policies, practices, standards and procedures through support to corrections practitioners and policy makers." RFP at 36. A function of the

information center is to maintain and operate the Robert J. Kutak Memorial Library in Aurora, Colorado, which houses all of the documents. Id. at 37.

The RFP, issued on June 11, 2008, sought proposals to manage and operate the NIC information center and the Robert J. Kutak Memorial Library. Id. The statement of work (SOW) described the services to be provided by the selected contractor and included requirements for both library and information services.¹ Id. at 49-60. These requirements included, among other things, requirements to perform “all customary tasks of maintaining and operating a small specialized library”; “identify, acquire, maintain and catalog new correctional materials and relevant management materials”; respond to orders for information; provide reference and research services; and provide “customized search service[s]” for users in need of assistance. Id. at 49, 57-59. With regard to performing customized searches, the SOW “require[d] Contractor employees conducting searches to be knowledgeable in” the corrections field in general; specific NIC divisional program issues; the similarities and differences between local, state, national, and international corrections programs and issues; and the identification of new issues and programs in the corrections field. Id. at 58.

The solicitation contemplated the award of contract for a 1-year base period, with four option years.² Id. at 2-4, 37. The RFP provided for award on a best-value basis, considering the evaluation factors of technical approach, project organization and firm experience, past performance, and cost or price. The RFP stated that the “Technical Factors (A) are more important than Project Organization and Experience (B) and Past Performance (C), and when combined they are significantly more important than Price (D).”³ Id. at 17-18.

Under the technical approach factor, the RFP stated that each offeror’s technical approach “shall demonstrate an understanding of the required tasks” and “satisfactorily address each part of Section 5 of the [SOW].”⁴ Offerors were advised that proposals would be evaluated for their “[a]bility to provide a clear, complete and

¹ The SOW also included requirements for providing web hosting, design, and maintenance services; scheduled reports and publications; and other “unscheduled” requirements. RFP at 60-63.

² All contract line items were priced on a fixed-price basis, except for travel, which was priced on a time-and-materials basis. RFP at 2-4, 37.

³ The reference to “Technical Factors (A)” appears to mean the technical approach factor.

⁴ The required services identified in section 5 of the SOW were library services; information center services; website hosting, design, and maintenance service and scheduled reports and publications.

precise, technically sound description of the design and methodology for the required services,” and the “[a]bility to define all the work and related resources required to perform the services.” Offerors were also advised that, under the technical approach factor, “proposal[s] will need to demonstrate that all personnel, individually and collectively, possess the skill, ability and expertise to fulfill the intent and purpose of their identified roles as addressed in the [SOW].” Id.

Under the project organization and firm experience factor, the RFP stated that proposals would be evaluated for whether the “offeror’s background and personnel expertise is relative to performing the proposed project,” and whether the “offeror, including any subcontractor relationships, is capable of developing, managing, and controlling this type of project.” Id. at 18. The past performance evaluation, the RFP stated, would include consideration of the offerors’ performance on “at least” three relevant projects; the price or cost evaluation required that “cost proposals” be evaluated for realism. Id.

Labat and LIS (the incumbent contractor) submitted proposals by the RFP’s July 25 closing date, and both proposals were found to be in the competitive range.⁵ Initial proposals were evaluated using a point score system, where, out of a possible score of 100, the maximum points that could be assigned to proposals were 40 points for technical approach, 15 points for project organization and firm experience, 25 points for past performance, and 20 points for price. AR, Tab 12, Memorandum Re: Evaluation Criteria. Between July 29 and August 5, a five-member source selection evaluation board (SSEB)⁶ evaluated proposals under the technical approach and project organization and firm experience factors and rated proposals as follows:

⁵ A third offeror submitted a proposal, which was excluded from the competitive range. The evaluation of that proposal is not relevant here.

⁶ The five-member panel consisted of four individuals from NIC and one Bureau of Prisons librarian. Hearing Transcript (Tr.) at 17.

	Labat			LIS		
	Technical 40 pts.	Project Org/Exp. 15 pts.	Rating ⁷	Technical 40 pts.	Project Org./Exp. 15 pts	Rating
SSEB Reviewer 1	30	13	UB	36	15	A
SSEB Reviewer 2	35	13	A	40	15	A
SSEB Reviewer 3	40	14	A	39	15	A
SSEB Reviewer 4	33	11	A	40	15	A
SSEB Reviewer 5	28	15	UB	40	15	A
TOTALS	166	66		195	75	

Agency Report (AR), Tab 13, SSEB Evaluation Review Summary, at 2.⁸

As noted by the SSEB in its initial proposal evaluation summary, Labat’s proposal was found to be acceptable by three SSEB reviewers, and unacceptable but capable of being made acceptable through discussions by two reviewers. The SSEB recognized that the firm had “solid experience developing and operating specialized library collections and providing information services” and that their proposal “demonstrates an understanding of most of the requirements” of the SOW. However, the SSEB found that Labat failed to address “some items” of the SOW and provided “limited” or “weak” methodologies for others, such as website services, advanced applications, and web forms. The SSEB also noted as proposal weaknesses the “absence of any corrections expertise in [Labat’s] proposed staff,” the failure of the proposal to address “the unique corrections focus of the library collection and its customers,” and the failure of the proposal to “provide descriptive information on how [Labat] would provide services specific to corrections.” *Id.* at 4-5. The SSEB concluded that, “[w]ithout an understanding of corrections issues,” which Labat’s proposal did not seem to demonstrate, the firm “may not be able to effectively and efficiently respond to requests for information or conduct the required research.” *Id.* at 5.

In contrast, all five SSEB reviewers found LIS’s proposal to be acceptable and awarded it an almost perfect score. The SSEB recognized that LIS, as the incumbent contractor, had “nearly 30 years of successfully providing library management and

⁷ Possible ratings were “A” (acceptable), “U” (unacceptable), or “UB” (unacceptable but capable of being made acceptable through discussions). AR, Tab 13, SSEB Evaluation Review Summary, at 2.

⁸ The contracting officer evaluated past performance and price or cost. Tr. at 17. The analysis of past performance summarily states that both offerors “performed in an exceptional manner in past or current contracts.” AR, Tab 17, Past Performance Evaluation, at 2.

information services with a corrections context,” and the “vast experience” of its staff demonstrated “great knowledge of NIC’s programs and an acute awareness of NIC’s client needs.” In addition, LIS was found to have addressed “each specific requirement with a clear, concise methodology while demonstrating the use of innovative techniques for the services.” The proposal, the SSEB noted, responded to the SOW “with an unmatched level of detail.” The only weakness, the SSEB noted, was that NIC was LIS’s “primary source of experience,” and the SSEB thought that this “may limit their ability to have a broad perspective.” *Id.* at 6.

After the SSEB completed initial evaluations, the agency held two rounds of discussions with Labat and LIS. The record does not include any documentation of the agency’s analysis of those discussions. At the conclusion of these discussions, LIS submitted a final proposal revision at a price of \$8,037,361, and Labat submitted a final proposal revision at a price of \$5,966,741.⁹ AR, Tab 33, Price Analysis, at 1.

The SSEB evaluated final proposals by video conference on September 9, with the source selection authority (SSA)¹⁰ and contract specialist in attendance. The consensus of the SSEB is reflected in a 2-page document titled “Evaluation Review Addendum” that contains no substantive analysis of proposals. The document concluded only that “both Labat and [LIS] had sufficiently demonstrated that they could provide the services as required in the solicitation and that noted weaknesses [had] been addressed.” AR, Tab 13, SSEB Evaluation Review Addendum, at 1. The SSEB recognized that LIS’s technical proposal was “slightly better” than Labat’s, but found, without explanation, that this superiority did “not justify paying the premium for an almost technically equal proposal.” The SSEB noted only that Labat had “addressed all of [the SSEB’s] concerns” during discussions, that “there were no significant weaknesses in Labat’s proposal,” and that “Labat could do the work required in the solicitation.” *Id.* at 1-2.

On September 22, the SSA selected Labat’s proposal for award and LIS protested, arguing that the agency failed to follow the stated evaluation criteria, miscalculated proposals under the price and non-price factors, and performed a flawed best-value

⁹ In evaluating price, the contracting officer compared offerors’ prices to each other, to previously proposed prices, and to the independent government estimate (IGE), which was \$7,270,880. The contracting officer also evaluated “cost proposals” to determine whether proposed prices were realistic for the offerors’ technical approaches. Based on this analysis, the contracting officer determined that both offerors’ prices were fair, reasonable, and realistic. AR, Tab 33, Price Analysis, at 2; *id.*, Cost Realism Analysis, at 3, 5-6. We find that this satisfied the RFP’s requirement for a realism analysis. See Team BOS/Naples–Gemmo S.p.A/DeJen, B-298865.3, Dec. 28, 2007, 2007 CPD ¶ 11 at 12.

¹⁰ The contracting officer served as the SSA.

analysis. In response to the protest, the agency took corrective action, which consisted of agreeing to reevaluate proposals, and our Office dismissed the protest.

The SSA, solely with the assistance of the SSEB chairperson, reevaluated proposals and documented the analysis in a five-page source selection decision. The decision lists, in bullet format, summary conclusions about each offeror's proposals under the evaluation factors; there is no analysis of proposal strengths, weaknesses, or discussion responses. For example, the source selection decision states that LIS and Labat "were both able to show that they understood the required services," "[b]oth offerors showed that they could handle the capacity of the work required in the solicitation," and "both proposals were able to offer key personnel." AR, Tab 33, Source Selection Decision, at 2-3. With regard to Labat's lack of corrections experience, which was noted as a weakness in the initial evaluation, the source selection decision states only that

[Labat] addressed their lack of corrections experience during the negotiations. [Labat] proposes to hire experienced staff and provide in depth training to acquire the corrections experience as needed.

Id. at 3.

The SSA's cost/technical tradeoff was documented in two short paragraphs and states as follows:

The contracting officer believes that Labat has addressed every service in the solicitation, and to a maximum extent possible. The contracting officer found that the proposal offered by [LIS] addressed all the issues of the solicitation and they did so in an "exceptional manner," but so did Labat. There was nothing in their proposal[s] that would suggest that one proposal was superior to the other proposal or that it would be in the government's best interest to pay a price premium. The Contracting Officer, therefore, cannot ignore the difference in price when evaluating these two proposals. Over the life of the contract, [LIS's] price to the government would be 35 [percent] greater than the price of [Labat]. When all factors were weighted, the overall best value ranked [Labat] as [number 1] and [LIS] as [number 2].

Based on the information presented above, it is my determination that awarding to [Labat] fully satisfies the award criteria set forth in the solicitation in that they meet or exceed the requirements of the SOW and offer a price that is fair and reasonable for the five-year period.

Id. at 5. The SSA awarded the contract to Labat on December 12, and this protest followed.

LIS protests the agency's evaluation of LIS's and Labat's proposals and source selection decision. LIS argues that the evaluation and source selection are flawed because the agency failed to adhere to the stated evaluation criteria, did not properly consider or compare the relative merits of the proposals, and did not adequately document the evaluation.

In reviewing challenges to an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria listed in the solicitation and applicable procurement laws and regulations. Cherry Rd. Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6. In order for us to review the reasonableness of an agency's evaluation judgment, the agency must have adequate documentation to support its judgment. Southwest Marine, Inc.; Am. Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. In this regard, the Federal Acquisition Regulation (FAR) requires that agencies sufficiently document their judgments, including documenting the relative strengths, deficiencies, significant weaknesses, and risks supporting their proposal evaluations. See FAR §§ 4.801(b), 15.305(a), 15.308; Century Env'tl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4. An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. Where the agency undertakes a cost/technical tradeoff, as in this case, adequate documentation requires more than just generalized statements of proposal equivalency where the record evidences the existence of relative differences in proposals. Id. at 12. Source selection decisions that are devoid of substantive analysis or consideration of whether one proposal is superior to another are insufficient to demonstrate the reasonableness of the agency's decision. Id. at 7.

As noted above, the record here reflects that the agency did not document any of its non-price evaluation findings and conclusions with regard to LIS's and Labat's proposals after the initial evaluation, except for (1) the SSEB's evaluation summary addendum that was prepared after discussions and in advance of the previously filed protest, and (2) the SSA's source selection decision prepared as corrective action in response to the previous protest. As discussed below, neither these documents, nor the additional explanations of the SSA at a hearing held by our Office, are sufficient for us to determine that the agency made a reasonable source selection decision.

For example, the SSEB evaluation summary addendum and SSA's source selection decision provide only general conclusions and do not contain any qualitative analysis of proposals. In this regard, the SSEB evaluation summary addendum states only that Labat addressed all of the agency's concerns during discussions, without any analysis of the proposal; and the source selection decision contains only summary conclusions, listed in bullet point format, without any discussion whatsoever of the qualitative merits of proposals to illustrate the reasonableness of the conclusions. For example, the source selection decision concludes without explanation that both

proposals showed that the firms understood the required services, could handle the capacity of the work, understood the design and methods of the required services, addressed library sciences techniques, offered key personnel and sufficient staffing plans, and had “no issues” concerning project organization and firm experience. There is no discussion of the relative merits of either of the proposals to support these conclusions; that is, there is no discussion of the relative proposal strengths, deficiencies, significant weaknesses, and risks supporting the agency’s conclusions, as required by the FAR. See FAR §§ 4.801(b), 15.305(a), 15.308.

Also, the evaluation record does not contain any meaningful analysis of offerors’ discussion responses. During the GAO hearing, the SSA was able to provide only cursory explanations of discussion responses, and he indicated that he simply confirmed that offerors had responded to the issues and that the SSEB did not “express any further concerns” about the responses.¹¹ See Tr. at 38, 40, 41-43, 44-45, 48-49, 51, 55, 59, 62, 67, 71. The only discussion response mentioned in the evaluation record is Labat’s response to a discussion question concerning its lack of corrections experience, which was identified as a proposal weakness in the initial evaluation. The source selection decision states that Labat addressed the agency’s concern about experience during discussions by proposing to hire and train staff to satisfy their lack of experience. AR, Tab 33, Source Selection Decision, at 3. However, the agency does not explain how Labat’s hiring and training plan satisfies the agency’s concerns, which included not only that Labat lacked corrections experience, but also that Labat’s proposal did not address the unique corrections focus of the library collection or describe how Labat would provide corrections-specific services. See AR, Tab 13, SSEB Evaluation Review Summary, at 4-5. Also, the agency does not explain how Labat’s experience compares to LIS’s under any of the relevant evaluation factors; for example, there is no discussion of how Labat, which has no experience performing library information services in a corrections context, compares to LIS, the incumbent with over 30 years of relevant experience.¹²

¹¹ Although the agency argues that the SSA’s confirmation that firms satisfactorily responded to discussions constitutes a comparative assessment, see Agency Post-Hearing Comments at 23-32, we find that this falls short of the requirement to adequately document the agency’s evaluation. See Johnson Controls World Servs., Inc., supra, at 12.

¹² LIS argues that Labat’s lack of corrections experience renders it ineligible for award because corrections experience is a mandatory requirement of the RFP. LIS Post-Hearing Comments at 14; LIS Supplemental Comments at 6-8. Although the RFP emphasized the importance of corrections experience, and such experience should therefore be considered in the evaluation, the solicitation did not identify corrections experience as a minimum requirement that would mandate a firm without such experience being excluded from the competition.

The record is devoid of any meaningful proposal comparison under any of the evaluation factors, and the SSA confirmed that no comparative qualitative assessment of the proposals was documented. See Tr. at 189-90, 203. The source selection decision summarily concludes that both firms adequately addressed the requirements of the solicitation and that “nothing” in the proposals suggested that one proposal was superior to the other.¹³ AR, Tab 33, Source Selection Decision, at 5. In our view, this suggests that the agency may have improperly awarded the contract based on a low-cost-technically-acceptable award scheme and not a best-value award scheme, as is required by this RFP. Because the agency has not performed, or documented, a reasoned consideration of the relative merits of the proposals, we sustain the protest.

In addition, we sustain the protest because the record evidences that the SSEB and SSA weighted the evaluation factors in a manner that was inconsistent with the RFP. As noted above, the RFP announced that the technical approach factor was the most important evaluation factor, and that the combination of the non-price factors was significantly more important than price. Since the RFP was silent on the relative importance of the project organization and firm experience factor and past performance factor, the agency was required to assign equal weight to these two factors. Intermagnetics Gen. Corp., B-286596, Jan. 19, 2001, 2001 CPD ¶ 10 at 8, n.7. However, rather than assigning these factors equal weight, the record shows that the agency assigned 15 points for the project organization and firm experience factor, and 25 points for the past performance factor. An agency cannot evaluate proposals inconsistent with the evaluation methodology stated in the RFP. Liberty Power Corp., B-295502, Mar. 14, 2005, 2005 CPD ¶ 61 at 5.

We recommend that the agency decide what weight to accord the evaluation factors and amend the solicitation, if necessary. We further recommend that the agency perform a new evaluation consistent with this decision, reopen discussions, if necessary, and make a new source selection decision. If Labat is not selected for award, the agency should terminate Labat’s contract. We also recommend that the protester be reimbursed its costs of filing and pursuing its protest, including reasonable attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2008). The protester’s certified claim for costs, detailing time expended and costs incurred,

¹³ The SSA testified during the hearing that he considered Labat’s lack of corrections experience to be a proposal weakness, and determined that this weakness did not justify paying the price premium for LIS’s proposal. Tr. at 116, 132, 169. However, the source selection decision evidences that the SSA found no weaknesses in Labat’s proposal and instead concluded that the firm had “addressed their lack of corrections experience” and “every service in the solicitation . . . to the maximum extent possible.” AR, Tab 33, Source Selection Decision, at 5.

must be submitted directly with the agency within 60 days of receiving this decision.
4 C.F.R § 21.8(f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel