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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:** LexisNexis

**File:** B-402114

**Date:** December 30, 2009

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Michael A. Hordell, Esq., Stanley R. Soya, Esq., and Heather Kilgore Weiner, Esq., Pepper Hamilton LLP, for the protester.

Christopher R. Yukins, Esq., Avi M. Baldinger, Esq., and Stuart W. Turner, Esq., Arnold & Porter LLP, for West Publishing Corp., an intervenor.

Col. Thomas J. Hasty, III, Jeffrey P. Hildebrant, Esq., Lt. Col. John D. Douglas, Maj. Theodore T. Richard and Capt. John M. Page, Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that award was based on an improper evaluation of price is denied where record shows that price evaluation was conducted in accordance with the terms of the solicitation.

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### DECISION

LexisNexis of Washington, D.C., protests the award of a contract to West Publishing Corporation of Saint Paul, Minnesota, under request for proposals (RFP) No. FA3300-09-R-0029, issued by the Department of the Air Force for computer-assisted legal research services for the Air Force Judge Advocate General Corps, the U.S. Army Judge Advocate General and the U.S. Marine Corps Staff Judge Advocate Division. The protester contends that the agency's price evaluation was improper.

We deny the protest.

### BACKGROUND

The RFP was issued on July 15, 2009, and called for the award of a fixed-price contract for a base year with four 1-year option periods. The purpose of this acquisition is to obtain online legal information sources, and related customer support services for the legal communities within the Air Force, Army, and Marine Corps. RFP at 35-36.

The RFP anticipated that proposals would first be reviewed to determine technical acceptability. As part of this initial review of acceptability, the RFP identified two subfactors: small business participation and databases. Id. at 72. Once proposals were determined acceptable (or reasonably susceptible of being made acceptable), the RFP anticipated that the proposals would be ranked by price. To determine price, the RFP stated:

An offeror's proposed prices will be determined by multiplying the quantities identified in the Price Schedule by the proposed unit price for each Contract Line Item Number [CLIN] to confirm the extended amount for each. The extended amounts will be added together to determine the total evaluated price.

Id. The RFP also explained that the agency would add together the base year and all options to arrive at a total price, and would review the prices to determine whether they were reasonable or unbalanced.

Of particular relevance here, the RFP recognized that offerors might want to offer so-called "volume discounts"—i.e., varied prices depending on the number of users—and provided explicit direction on this point. Specifically, the RFP stated:

As stated above, all CLINs are firm-fixed price. The government has provided an estimated number of users to enable offerors to provide a price proposal. As the RFP states in para. 2.1.2 and Appendices 1 and 11, the "government does not represent that the future research activity or the number of users will remain the same. Throughout the period of performance, minor variances in user numbers and/or locations may occur through customer reorganization, including opening, closure or transfer of offices and personnel." The CLINs will remain firm-fixed price.

Id. at 73 (underlining in original omitted).

As indicated by the narrative provisions above, the pricing schedule in the RFP provided an estimated number of users for these services within different divisions of the legal communities within the Air Force, Army, and Marine Corps. Each of these separate divisions and communities was assigned its own CLIN. The unit price was the price per month of providing the identified services and databases to the identified number of users.<sup>1</sup> RFP at 3-23.

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<sup>1</sup> For the record, we note that two of the CLINs—Nos. 6 and 7—were ultimately changed, via amendment 5, from 12 monthly units, to single not-to-exceed price.

LexisNexis and West submitted the only proposals received in response to the RFP, and both proposals were determined to be technically acceptable. Both proposals also received a “substantial confidence” rating under the past performance evaluation factor. After the initial review of proposals, the agency decided to have discussions and issued evaluation notices (ENs) to both offerors.

The agency issued two ENs to LexisNexis that dealt with its price proposal. EN No. 1 stated:

Your proposal, Standard Form 1449 -- CLINs [DELETED], [DELETED], and [DELETED] are significantly higher, CLIN [DELETED] is higher, and CLIN [DELETED] is lower than the Government estimate, (base year and all options). The Government is concerned that your proposed prices for CLIN [DELETED], ([DELETED]) are being discounted, and the discounts recovered by proposed increased prices on CLINs [DELETED], [DELETED], [DELETED] and [DELETED]. Please review and revise your price proposal, as appropriate.

AR, Tab 20, EN to LexisNexis at 2.<sup>2</sup>

In response, LexisNexis explained its approach for determining its CLIN pricing was based on its intent to provide discounts based on the higher volume of users within each CLIN, as follows:

[DELETED]

Id., LexisNexis Response to EN at 6. Nonetheless, LexisNexis also explained that it was revising its price proposal “to better align the pricing...while still taking into consideration economies of scale for the CLINs with the greater number of users.” Id.

After discussions, final proposal revisions were requested from both offerors. As previously stated, both offerors were considered technically acceptable and received “substantial confidence” past performance ratings. West’s proposed price was \$5,377,172 and LexisNexis’ price was \$5,515,523. The agency determined that West’s price was fair and reasonable and award was made to West on September 22. On September 24, LexisNexis was notified of the award; the company was given a debriefing on October 7. This protest followed.

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<sup>2</sup> The content of the second EN to LexisNexis regarding its price proposal is not relevant to this dispute.

## DISCUSSION

LexisNexis argues that the agency conducted an improper price evaluation because, in the protester's words, the agency "evaluated price based on a 15,240 user basis of total price for all CLINs, instead of evaluating based on the CLINs as specified in the solicitation."<sup>3</sup> Initial Protest at 19. The protester also contends it was misled about the agency's intended pricing evaluation during discussions. LexisNexis maintains that had it known the Air Force was going to evaluate price based on an all user population, it would have offered a significantly lower price to the Air Force. We see no merit to either argument.

Before turning to the specifics of the agency's price evaluation, we note, as a preliminary matter, that the protester's arguments are based on an apparent misunderstanding during the debriefing between representatives of the Air Force and LexisNexis. In essence, LexisNexis left the debriefing with the view that the Air Force evaluated prices in a manner different from the stated evaluation scheme.

Our standard of review for a price evaluation is to determine whether it was reasonable and consistent with the solicitation's evaluation criteria. The Arora Group, Inc., B-277674, Nov. 10, 1997, 98-1 CPD ¶ 64 at 4. Based on our review of the record here, we see no support for the protester's contentions.

As explained above, the RFP clearly stated that offerors were to insert proposed unit and extended prices in the pricing schedule. The RFP then stated that offerors' proposed prices would be determined by multiplying the quantities identified in the price schedule by the proposed unit price for each CLIN to confirm the extended amount for each. The extended amounts would then be added together to determine the total evaluated price. This is exactly how the agency performed its price evaluation.

While the protester argues that the RFP (and the ENs provided during discussions) led it to propose pricing that was based on economies of scale for each individual CLIN, it is clear that the pricing strategy used by the protester was not required by

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<sup>3</sup> In its initial protest, LexisNexis also argued that the Air Force failed to conduct a proper past performance evaluation of West. The agency addressed this issue in its report. In its comments on the agency report, the protester did not attempt to rebut or otherwise address the agency's response to this issue; accordingly, we consider it to have abandoned this argument. CM Mfg., Inc., B-293370, Mar. 2, 2004, 2004 CPD ¶ 69 at 3.

the RFP.<sup>4</sup> The RFP required only that offerors provide pricing for each individual CLIN and that this price be multiplied by the listed quantities for that CLIN to determine the extended price.

We also do not think the ENs issued to the protester were misleading. During discussions, the agency expressed concern that the protester's prices appeared to be unbalanced in that some CLINs were discounted, while others contained higher prices. As previously stated, the RFP specifically stated that prices were to be evaluated to determine if they are unbalanced.

Moreover, the protester has not suggested how the price evaluation should have been conducted in order to be based purely on a per-CLIN basis. In any event, the record shows that for all CLINs, except one, West's proposed per user/total price was lower than the protester's proposed price. AR, Tab 22, Price Memo at 4.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>4</sup> The intervenor, West, notes:

LexisNexis was free to compose its CLIN prices however it liked, [DELETED]. LexisNexis used the latter strategy, and now apparently wished that it had used the former.

West Comments, Nov. 23, 2009, at 2. To the extent the protester made a business decision to offer higher prices, and fewer volume discounts, for the CLINs with smaller user groups, we see no basis to blame the agency for the results of that decision.