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Decision

Matter of: Lockheed Martin Information Systems

File: B-292836; B-292836.2; B-292836.3; B-292836.4

Date: December 18, 2003

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Peter F. Pontzer, Esq., and Angela T. Puri, Esq., Department of Housing and Urban Development; and Joseph C. Port, Jr., Esq., Mark P. Guerrero, Esq., Richard L. Larach, Esq., and Kevin M. Henry, Esq., Sidley, Austin, Brown & Wood, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated proposals is sustained where record does not support agency's conclusion that the awardee's proposal was superior to the protester's with respect to a number of the discriminators used by the agency in arriving at its source selection decision.

2. Agency unreasonably determined that awardee met solicitation's requirement for small business subcontracting where record shows that it miscalculated the percentage of the awardee's subcontracting dollars relative to the overall value of the contract, and failed to account for the possibility that at least one of the awardee's small business contracts may have been improperly inflated in terms of its value.

DECISION

Lockheed Martin Information Systems (LMIS) protests the award of a contract to Electronic Data Systems Corporation (EDS) under request for proposals (RFP)

No. R-OPC-21970, issued by the Department of Housing and Urban Development (HUD) to acquire information technology services. LMIS asserts that the agency misevaluated proposals and made an irrational source selection decision.

We sustain the protest.

BACKGROUND

HUD issued the RFP to acquire a wide range of information technology (IT) services to support all of the agency's requirements for information processing, telecommunications and other related needs for a base period of up to 1 year, plus nine 1-year options. The RFP contemplated a single award for what is referred to as the HUD Information Technology Solution (HITS) contract, which is a follow-on contract for the HUD Integrated Information Processing Service (HIIPS) contract. (LMIS is the incumbent for the HIIPS contract.) The solicitation contemplated the award of a hybrid contract that included both fixed-price and cost-reimbursement contract line item numbers (CLINs). Specifically, CLIN 1 (transition in) is to be performed on a cost-plus-fixed-fee basis, CLINs 2 through 10 (performance of the requirement for up to 9 years) are to be performed on a fixed price basis, CLIN 11 (transition out) is to be performed on a cost-plus-award-fee basis, and CLIN 12 is an indefinite-delivery, indefinite-quantity (ID/IQ) CLIN to be performed on a cost-reimbursement, no-fee basis. The RFP also included CLIN 13, which did not contemplate any actual work but included dollar figures representing financial incentives that could be earned by the contractor through enhanced performance.

The requirement—essentially all of HUD's information processing, telecommunications and related needs on a nationwide, agency-wide basis—was organized around 24 core functions reflecting the agency's various service needs. For example, the first core function was "hardware" and included the provision, management, storage, maintenance, upgrade, backup and operation of all computer hardware, including mainframe computers, servers, printers and peripheral devices. Another core function related to the provision of all of the agency's desktop computing requirements, another to notebook computing requirements, and so on. The RFP also included seven non-core functions that related primarily to providing advice and assistance, training and emergency supplies or services not otherwise contemplated under one or another of the core functions.

The agency developed the RFP using performance-based contracting methods. In light of this approach, the RFP did not include substantive specifications or a statement of work. Instead, the RFP included a statement of objectives (SOO), outlined in general terms the various core and non-core functions, and presented information relating to HUD's current computing environment. Offerors were required to include in their proposals three primary items—performance work statements (PWS) (one for each CLIN), which were intended to embody the contractual terms governing the rights and obligations of the parties; one or more service level agreements (SLA), which were to include both minimum and higher

standards of performance, as measured by various performance metrics (essentially, empirical standards against which a firm's performance could be measured); and a contract work breakdown structure (CWBS), a detailed description of the labor, materials, products and services that would be provided in connection with each firm's proposed solution to meeting the agency's requirements. (Other information had to be submitted--such as a quality assurance surveillance plan and past performance information--but the PWS, SLAs and CWBS were the documents that would outline the central substantive elements of the firm's so-called HITS solution.)

The RFP advised firms that the agency intended to make award to the firm submitting the proposal found to offer the "best value" to the government, considering both price/cost and several non-price/cost considerations. The first and most important evaluation factor, capability, was further divided into the following subfactors (in descending order of importance): technical/management solution, performance metrics, transition approach, and small business strategy. The second evaluation factor was past performance. The RFP provided that the agency would assign adjectival ratings for these factors and subfactors of either exceptional, good, satisfactory, marginal or poor, or neutral for past performance. These two factors combined were significantly more important than the third factor, price/cost. Finally, the RFP advised that the agency would assign each of the non-price/cost considerations a risk rating of either high, medium or low.

The agency received several proposals in response to the solicitation and, after evaluation and clarification of the offers, established a competitive range comprised of EDS and LMIS. Agency Report (AR), exh. 13. HUD then engaged in several rounds of discussions with those two offerors and solicited final proposal revisions (FPR). At the conclusion of discussions, and after evaluation of the FPRs, the agency assigned the following adjectival ratings to the proposals:

	LMIS	EDS
Overall Tech. Rating/Risk	[deleted]	[deleted]
Capability Factor/Risk	[deleted]	[deleted]
Tech./Mgmt. Subfactor/Risk	[deleted]	[deleted]
Perf. Metrics Subfactor/Risk	[deleted]	[deleted]
Transition Subfactor/Risk	[deleted]	[deleted]
Small Business Subfactor/Risk	[deleted]	[deleted]
Past Perf./ Factor/Risk	[deleted]	[deleted]
Evaluated Price	[deleted]	\$860,600,242

AR, exh. 30, Final Evaluation and Tradeoff Analysis Consensus Report, at 12. The agency evaluators identified eight specific discriminators in preparing their best-value tradeoff analysis recommendation; they concluded that these discriminators favored award to EDS over LMIS, notwithstanding the approximately [deleted] cost premium associated with EDS's offer. *Id.* at v-vi, 35-36. The source selection official (SSO) identified seven specific discriminators that supported award to EDS. AR, exh. 32. (The SSO identified two separate discriminators relating to software; these two discriminators were presented as two elements of a single discriminator identified by the agency's evaluators. In addition, two of the discriminators identified by the evaluators were not specifically referenced in the SSO's decision document.)

LMIS challenges virtually every aspect of the agency's evaluation and source selection decision. In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. *M&S Farms, Inc.*, B-290599, Sept. 5, 2002, 2002 CPD ¶ 174 at 6. Further, where an agency has made a source selection decision in favor of a higher-priced proposal that has been ranked technically superior to a lower-priced offer, the award decision must be supported by a rational explanation demonstrating that the higher-rated proposal is in fact superior, and explaining why the technical superiority of the higher-priced proposal warrants the additional cost, Federal Acquisition Regulation (FAR) §15.308; where neither the source selection decision nor the evaluation record supports the agency's conclusions, we will sustain a protest challenging the agency's award decision. *See TRW, Inc.*, B-260788.2, Aug. 2, 1995, 96-1 CPD ¶ 11 at 3-4.

We have carefully reviewed each of LMIS's assertions and agree with the protester that the evaluation contains errors that draw the source selection decision into question. Specifically, we find that, of the eight discriminators identified by the agency's evaluators as favoring EDS, four are based on unsupported conclusions regarding the relative merits of the proposals; of the seven discriminators identified by the SSO, three are unsupported. We also find that there appears to be at least one area where the EDS proposal failed to meet a material solicitation requirement. We note, moreover, that the record reflects, overall, disparate treatment of the two firms, with the agency tending in general to apply a stricter standard in its evaluation of the LMIS proposal as compared to the EDS proposal.

REMOTE ACCESS

LMIS maintains that the agency's conclusion relating to the comparative value of the two offerors' approaches to meeting the RFP's requirement for remote access was

unreasonable.¹ According to the protester, its proposal offers a remote access capability superior to that offered by EDS. Core function No. 5 related to the provision, maintenance and upgrade of a robust telecommunications infrastructure for the agency. Access for remote users (that is, users that are working from a location other than a HUD facility) was an element of the services to be provided as part of the telecommunications infrastructure. The evaluators and the SSO described the EDS proposal as more valuable to the agency because the EDS proposal provided [deleted] access for the agency's remote users for its fixed price, whereas the LMIS solution was limited to only [deleted] users.

The evaluators specifically found:

EDS proposes [deleted] e-mail remote access support, while LMC [LMIS] is limiting support to [deleted] users. EDS'[s] proposal is more valuable to HUD because it allows [deleted] HUD employees to work effectively while telecommuting without increasing HUD's costs. . . . LMC's proposal would require additional funding outside the firm fixed price contract, take more administrative time and expense to implement, and may not achieve HUD's mission. . . . Requesting support for additional teleworkers through LMC would result in additional costs to HUD.

AR, exh. 30, at v-vi; see also id. at 36, AR, exh. 32, at 3.

The premise underlying the evaluators' and SSO's conclusions--that EDS proposed to support more users than LMIS--is not borne out by the record. At the outset, we point out a distinction between what are referred to in the record as [deleted] versus [deleted] of remote access. The concept of [deleted]. This is in contrast to the concept of [deleted]. The LMIS proposal is premised on the concept of [deleted], whereas the EDS proposal is premised on the concept of [deleted].

Contrary to the agency's conclusion that EDS offered [deleted] remote access, the record shows that the EDS proposal specifically [deleted]. AR, exh. 53, vol. 1, at C-

¹ Both the agency and EDS maintain that this aspect of LMIS's protest is untimely because the firm was apprised at its debriefing that its offer of [deleted] remote users was a limitation in the LMIS proposal, and LMIS did not raise the assertion until after receiving the agency report. However, LMIS does not assert simply that the agency's conclusion regarding its proposal is incorrect. Rather, LMIS's protest relates to the agency's comparative findings with respect to its and EDS's proposal in the area of remote access. LMIS raised this allegation within 10 days of receiving agency report materials relating to the comparative evaluation of the two proposed solutions and detailed information relating to EDS's proposal. We therefore find the issue timely. 4 C.F.R. § 21.2(a)(2) (2003).

60. Within the population of [deleted]. Despite these assumptions, the EDS proposal specifically provides as follows: [deleted]. AR, exh. 53, at H-31. We conclude that, not only did EDS not offer the [deleted] remote access relied upon by the agency in making award to EDS, it offered less than [deleted] percent of the [deleted]. Neither the agency nor EDS has presented a meaningful response to the evidence leading to our conclusion. The only substantive response is presented by EDS in its final submission to our Office, where the firm alleges for the first time--without any supporting evidence--that the [deleted] user-hour figure in the EDS proposal is a typographical error. EDS Supplemental Comments, Nov. 21, 2003, at 22, n.7.

The record also shows--again, contrary to the agency's findings--that LMIS may in fact have offered a remote access solution superior to that offered by EDS. In this regard, LMIS proposed [deleted]. AR, exh. 27, vol. 1, at 28. The remote access capability was to be [deleted]. AR, exh. 8, at 44. LMIS's proposal specifically provides for the [deleted]. AR, exh. 27, vol. 2, CWBS, at 162. LMIS explains that this provides access for [deleted]² [deleted], and that its proposed solution [deleted] remote access service. The record further shows that current average usage of the remote access dial-up capability is [deleted]. AR, exh. 8, at 44. The record thus shows that the LMIS proposal, [deleted], at a minimum, meets the agency's current needs, [deleted]. In sum, we find the agency's reliance on this discriminator unreasonable.

ORACLE DATABASE SOFTWARE

Core function No. 3 required offerors to provide database management services, and one of HUD's database management tools is Oracle software. Both the agency's evaluators and the SSO relied on a perceived advantage in favor of the EDS proposal in connection with the support of Oracle database applications users. The SSD states:

EDS's proposal includes the support for [deleted] users of Oracle database applications. LMC's support is limited to [deleted] users. EDS's proposal is more valuable to HUD because it supports HUD's potential development and operational use of the Oracle software as documented in the future state Enterprise Architecture. LMC's

² The agency finds support for its position in the fact that the LMIS proposal did not [deleted] in describing access for the [deleted] users. LMIS, unlike EDS, did not state that the [deleted], thereby limiting its proposed solution to only [deleted]. Moreover, since the agency was aware of what the current hardware configuration for remote access under the HIIPS contract was, and [deleted], there was no reasonable basis for the agency to conclude that LMIS did not mean [deleted] when it referred to the [deleted] users in its proposal.

limitation in this area would either require HUD to divert funding from other projects to procure additional Oracle licenses, or would limit HUD's ability to develop or operate applications that use Oracle software. The forced alternatives within the LMC proposal could adversely affect HUD's ability to meet its mission.

AR, exh. 32, at 3; see also AR, exh. 30, at v, 36.

LMIS maintains that [deleted] of Oracle software licenses, and that this feature therefore was not a legitimate basis to distinguish between the proposals. The agency now concedes that [deleted], Supp. AR at 6, but maintains (and supports its position through the submission of an affidavit) that the discriminator remains valid because LMIS limited its support of Oracle users [deleted]. Supplemental AR, Nov. 3, 2003, at 5-7, attach 2.

We find the agency's position unpersuasive. First, the EDS proposal makes [deleted] in the relevant section; EDS's proposal is couched solely in terms of the [deleted], and there simply is no reference to [deleted] users of Oracle—or any other—software. AR, exh. 53, at C-45-46 (discussing the [deleted]). Accordingly, it is unclear what language the agency was relying on in arriving at its conclusion.

Second, the agency has not presented any explanation—either in the affidavit furnished, or elsewhere in the record—of what the supposed Oracle database user support services might actually be, or what costs might be associated with the provision of those services. In this connection we note that “user support” is embodied in other aspects of the RFP, for example, the help desk function. There is no requirement under the database management services core function to provide user support. (This suggests an explanation for why the EDS proposal contains [deleted] in this portion of its proposal.) Under these circumstances, the agency's assertion—that it was not concerned solely with the need to obtain additional licenses, but also with the provision of user support for the Oracle database users—was not a legitimate basis upon which to distinguish between the proposals.

SINGLE SIGN-ON ACCESS

Core function No. 18 required offerors to provide various services relating to system security, including an appropriate method for controlling access to the HUD computer system. Both firms offered to control access [deleted]. The agency evaluators distinguished between the two proposals on the basis of the level of support being offered by the two firms in this area. (As noted, the SSD included seven specific discriminators, two of which were summarized as a single discriminator by the agency evaluators, while the evaluators presented eight discriminators as the basis for their recommendation. The single sign-on access discriminator is one of the two discriminators relied on by the evaluators, but not specifically referenced in the SSD.) The evaluators found:

EDS proposes single sign-on access for [deleted] users, while LMC is providing single sign-on access for up to [deleted] users. EDS'[s] proposal is more valuable to HUD because it provides [deleted]. HUD is better able to meet its mission within a [deleted]. LMC's proposal would require additional funding and increased administrative time and expense to achieve the same benefits included under the EDS proposal.

AR, exh. 30, at vi; see also id. at 36. LMIS maintains that there was no basis to distinguish between the two proposals because [deleted]. The agency maintains that the LMIS proposal was specifically limited to providing the [deleted], whereas the EDS proposal contained [deleted]. The agency concludes, therefore, that this was an appropriate basis to discriminate between the two proposals.

We find the agency's position unreasonable. First, as LMIS maintains, [deleted]. AR, exh. 27, at 44; AR, exh. 53, at H-51. Second, and more to the point, we find the language in the EDS proposal relied on by the agency does not support its conclusion. In the narrative portion of its proposal, EDS makes [deleted] the single sign-on requirement. The EDS proposal states that it will [deleted]." AR, exh. 53, at C-56. On the basis of this language, HUD determined that EDS had specifically offered single sign-on access for [deleted] users, notwithstanding the specific provision elsewhere in the EDS proposal of a [deleted]. Again, this was not a reasonable basis for ultimately finding the EDS proposal superior to LMIS's.

INSTALLATIONS, MOVES, ADDS AND CHANGES

Core function Nos. 8 and 9 required offerors to provide desktop and notebook computers for HUD users. As part of that general requirement, offerors were required to provide computer installations, moves, adds and changes (IMACs). The record shows that the agency used what it perceived as a difference in the number of IMACs offered by the two firms as a source selection discriminator. The SSD states:

EDS proposed [deleted] Installs, Moves, Adds, and Changes (IMACs) throughout the life of the contract. This feature is very valuable to HUD. LMC's limitation of [deleted] IMACs per year would not satisfy the anticipated number of IMACs even in the first year of the HITS contract and would limit HUD employees from receiving upgrades or changes to their computing capability or changing locations in the future. This limitation would force HUD to either spend more money to separately procure the additional IMACs or work less efficiently.

AR, exh. 32, at 2; see also AR, exh. 30, at vi, 36.

LMIS challenges the agency's conclusion on two grounds. First, LMIS maintains that the agency improperly used the figure of [deleted] IMACs in its analysis. According to LMIS, it actually offered [deleted] IMACs, [deleted] for desktops and [deleted] for

notebooks. Second, LMIS maintains that there was no basis for the agency to conclude that EDS was offering [deleted] IMACs, given the terms of the firm's proposal.

HUD does not respond directly to LMIS's first assertion--that the agency understated the total number of IMACs LMIS offered by [deleted]--but instead maintains that, in any event, the [deleted] IMACs offered for desktops was inadequate to meet HUD's current demand. HUD further asserts that, regardless of the number evaluated, whether [deleted] or [deleted], it nonetheless does not compare to the [deleted] number offered by EDS.

We reach several conclusions. First, LMIS is correct that the agency's award decision was based on an understated IMAC number for LMIS; the record shows that LMIS offered [deleted] total IMACs for desktops, and an additional [deleted] IMACs for notebooks. AR, exh. 27, vol. 1, at 30-32. Accordingly, the record establishes that, in evaluating the LMIS offer and making its source selection decision, HUD understated LMIS's offer for IMACs by [deleted] percent.

Second, contrary to HUD's position, there was no reasonable basis for the agency to conclude that EDS was offering to provide [deleted] IMACs. The EDS PWS [deleted] IMACs. Rather the PWS states only that EDS will [deleted]." AR, exh. 53, at C-49. The agency states that this is the language it relied on in concluding that EDS was offering [deleted]- IMACs. ([deleted]. Id.) The EDS proposal for [deleted]. Id. To the extent that the agency read this language as offering [deleted] IMACs, its reading was unreasonable, since there is simply [deleted], but rather only a [deleted].

The EDS CWBS [deleted], although the agency apparently did not refer to that information in reaching its conclusion. With respect to [deleted] IMACs, the CWBS includes three apparently irreconcilable figures. It states: [deleted]." EDS CWBS, at 3.3-182. This text continues with a [deleted]." Id. It would appear that there is no way to reach a firm conclusion based on the information presented: EDS either offered [deleted] and this number constituted [deleted] combined, or it offered [deleted] IMACs for [deleted], or it offered [deleted] IMACs per month (for a total of [deleted] IMACs per year). The language in the EDS CWBS for [deleted] is similarly ambiguous. It states: [deleted]." EDS CWBS at 3.3-185. This is followed by a [deleted]." Id. Again, it would appear that there is no way to reach a firm conclusion based on the information presented; for the [deleted], EDS appears to be offering either some portion of the [deleted] IMACs per year, or [deleted] IMACs per month (for a total of [deleted] IMACs per year). In sum, when the CWBS is examined together with the language of the PWS, there is no basis for the agency to have reached the conclusion that EDS was offering [deleted] IMACs; indeed, when reading the proposal as a whole, it would appear that there is no basis for the agency to have reached any firm conclusion relating to the number of IMACs being offered by EDS. In view of the foregoing conclusions, we find the agency's reliance on this discriminator unreasonable.

SMALL BUSINESS SUBCONTRACTING REQUIREMENT

The solicitation required offerors to propose significant levels of small business subcontracting, and to have the work subcontracted be meaningful, that is, relate to the primary work to be performed. RFP, attach. J III, § M.3.1.4. The RFP imposed a mandatory requirement to subcontract at least 35 percent of the total dollars obligated during each year of contract performance to small businesses. Id. During its debriefing of LMIS, the agency advised that it had recalculated LMIS's proposed small business subcontracting goal downward from its proposed [deleted] to [deleted] percent for CLINs 2 through 10, to [deleted] to [deleted] percent for those CLINs. The basis for the agency's revision was that LMIS had not included the dollar amounts for CLIN 13 (the incentive amounts potentially available to be earned under the offerors' SLAs) in its overall calculations of its small business subcontracting percentage, as required by the RFP.

The record shows that the agency actually failed to make these recalculations for either offeror during its evaluation of proposals. The record further shows, however, that, because EDS had proposed only a [deleted] percent small business subcontracting objective, and because its calculations of that [deleted] percent were exclusive of the dollar amounts included in CLIN 13, a recalculation of its small business subcontracting percentage showed that, in fact, EDS had proposed only [deleted] percent. LMIS asserts that the record thus conclusively shows that EDS did not meet the 35-percent requirement.

The agency responds that, since it did not recalculate either offeror's subcontracting percentages during its evaluation, the offerors were treated equally and LMIS was not prejudiced by the agency's actions. We disagree. As noted, the RFP included a mandatory requirement that offerors subcontract a minimum of 35 percent of the total dollars expended during each year of the contract to small businesses, and the agency concedes that a proper calculation of this percentage requires inclusion of the CLIN 13 amounts, AR at 36; Supp. AR at 19; the EDS proposal, when properly calculated with the CLIN 13 amount, did not meet the 35-percent requirement. Despite EDS's failure to meet this mandatory requirement, the agency assigned the firm's proposal a rating of [deleted] under the small business evaluation subfactor ([deleted]). Since the RFP provided that marginal ratings would be assigned where an offeror's proposal did not clearly meet some specified capability threshold, and poor ratings would be assigned where a proposal failed to meet a specified capability threshold, RFP M.3.1.5, [deleted]. It also was improper to assign the EDS's proposal [deleted], which did meet the requirement, even after the agency's recalculation.³

³ LMIS also asserts that the EDS proposal shows that the firm inflated the dollar value of its small business subcontracting through what LMIS describes as "pass through" arrangements. LMIS maintains that, [deleted]. LMIS maintains that this further reduces the percentage of the total dollar value of the contract that EDS committed to perform through small business subcontractors, and also is

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DISPARATE TREATMENT

As discussed, the record reflects numerous instances where the agency either unreasonably reached conclusions relating to the EDS offer in light of the language included in the proposal (for example, in the areas of single sign-on access and the provision of Oracle database software), or apparently failed to thoroughly evaluate the proposals critically, and in a manner that would have revealed inconsistencies or deficiencies in what was being offered (for example, in the remote access, IMAC and small business areas). We find the agency's conclusions troubling in light of its evaluation of the LMIS proposal. For example, one of the discriminators relied on by the agency to make award to EDS was its conclusion that the LMIS proposal did not actually provide mainframe and distributed systems operating system or database software. AR, exh. 30, at v, 36; AR, exh. 32, at 2. The agency reached this finding based on the wording of the software support core function narrative of the LMIS PWS, concluding that the proposal was "carefully worded to exclude the actual provision of software." AR, exh. 30, at v. LMIS vigorously contests the agency's finding in this regard, maintaining that other sections of its PWS, as well as the list of products contained in its CWBS made clear that the firm had in fact offered the software in question. We observe that, in reading the two proposals, the record shows that the agency seems to have applied a double standard. On the one hand, when reading the EDS proposal, the agency tended to be expansive, resolving doubt in favor of EDS (which, as we have found, led it to reach conclusions not warranted by the actual language of the firm's offer).⁴ On the other hand, when reading the

(...continued)

inconsistent with the RFP requirement that EDS's small business subcontractors perform meaningful work. [deleted]. The agreements specifically provide [deleted]. " AR, exh. 49, [deleted] Teaming Agreement, Schedule A, at 2; see also AR, exh. 49, [deleted] Teaming Agreement, Schedule A, at 2. As part of its implementation of our recommendation (set out below), the agency should review these arrangements to ensure that EDS's proposal was reasonably evaluated with respect to the small business subcontracting requirement.

⁴ There were other instances where the agency appears to have unreasonably given EDS the benefit of the doubt regarding what was included within the firm's fixed price. For example, in evaluating the EDS's provision of electronic data interchange (EDI) services, the agency concluded that, while the firm's proposal contained a [deleted] was reasonable because it [deleted]. AR, exh. 55, at 18. The record shows, however, that EDS proposed EDI services [deleted]. Cf. AR, exh. 35, at C-56-C-57 (referencing a volume of EDI transactions of [deleted] per day and stating that [deleted]); AR, exh. 24, at J-22 (stating that the current level of EDI traffic averages 110,000 transactions per day). While each of these instances did not necessarily form the basis for one or another of the agency's source selection discriminators,

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LMIS proposal, the agency applied a more exacting standard, requiring an affirmative representation within the four corners of each section of the PWS before it was prepared to conclude that one or another requirement was being met. We need not resolve which standard should have been applied in the agency's evaluation but, to the extent that HUD essentially applied a more exacting standard in reviewing one proposal than it did in reviewing the other proposal, this was improper. See DynCorp, Int'l, LLC, B-289863; B-289863.2, May 13, 2002, 2002 CPD ¶ 83 at 10.

RECOMMENDATION

In view of the foregoing considerations, we sustain LMIS's protest. We find that, because of the errors in the agency's source selection decision discussed above, there is no basis to find that the award determination in favor of EDS at a cost premium of [deleted] is supported by the record. Accordingly, we recommend that the agency reopen the acquisition and engage in discussions, obtain revised proposals, evaluate those proposals consistent with our findings (being sure to apply a consistent standard in evaluating the two proposals) and make a new award determination. If EDS is not the successful offeror, the agency should terminate EDS's contract for the convenience of the government. We further recommend that LMIS be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). LMIS's certified claim for costs, detailing the time spent and the costs incurred must be submitted to the agency within 60 days of receiving of our decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel

(...continued)

nonetheless they contributed to the agency's overall favorable scoring of the EDS proposal.