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May 1, 2007

VIA FACSIMILE

Office of the General Counsel
U.S. Government Accountability Office
441 G Street N.W.
Washington, D.C. 20036

REDACTED VERSION

Attn: Procurement Law Control Group

Re: Protest of Computer Literacy World, Inc. of Award to EDS, Inc. subsequent to Competition under Solicitation No. TO-PLB-07-0002, RFO #186901

Dear Sir or Madam:

Computer Literacy World, Inc., 1400 Mercantile Lane Ste 15, Upper Marlboro, Maryland, 20774-5341, telephone (301) 925-9363, facsimile (301) 925-9635, ("CLW"), a small business, hereby protests award to Electronic Data Systems, Inc. ("EDS") as a result of a competition by the General Services Administration, Federal Acquisition Service, Office of Acquisition, 10300 Eaton Place, Suite #572, Fairfax, VA 22030, (703) 306-6441, facsimile (703) 429-9104 ("GSA") under the above solicitation for Homeland Security Presidential Directive 12, (HSPD-12) Shared Services Provider II for a common identification credential card and associated services.

This award was improper because, upon information and belief, neither EDS nor XTec, the only remaining "highly rated" offerors selected to submit pricing proposals submitted a compliant proposal capable of meeting the minimum contract requirement that the proposed solutions for the identification credential card employ products and services from the Approved Products List ("APL"). Neither offeror proposed a Graphical Personalization ("GP") or Electronic Personalization ("EP") services from the only firm on the APL—Gemalto. Thus, both EDS and Xtec's offers were unsatisfactory and were required to be disqualified. The third highly rated offeror, BearingPoint, Inc., elected not to submit a pricing proposal and disqualified itself.

Of the remaining offerors that were not highly rated initially, upon information and belief, only CLW, and its team, submitted a compliant solution employing Gemalto's GP and EP services and thus, the only offeror that could submit pricing. CLW is entitled to the award. Alternatively, CLW is a highly rated offeror and its price should be solicited. CLW's [REDACTED] if not for GSA evaluation errors and failure to disclose the ground rules contained in an amendment CLW should have but did not receive. CLW will be entitled to this award.

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**CONTAINS PROPRIETARY DATA THAT WILL BE SUBJECT TO
GOVERNMENT ACCOUNTABILITY OFFICE PROTECTIVE ORDER**

HOLMES & GORDONFACTUAL BACKGROUNDA. Requirement for use of Approved Products and Services

This procurement involves requirement for the "turn-key" production of a common identification credential for both logical and physical access to Federally-controlled facilities and information systems. It is called a Personal Identity Verification ("PIV") Card. The computer chip for the PIV card was developed by the National Institute of Standards. Offerors were to provide services to implement the program nationwide to federal agencies using GSA's PIV capability. The contractor would provide 200 fixed-enrollment stations and 25 mobile ones nationwide in 10 months. The mobile stations will move eight times in the first year to support 200 other areas.

The Request for Quotes ("RFQ") was issued by GSA on January 12, 2007 under Special Item Number 132.62 of GSA's Federal Supply Schedule. Only SIN 132.62 schedule holders could participate in the procurement. The original date for submission of proposals was February 2, 2007.

Approved SIN 132.62 schedule holders were to submit technical proposals using selected products and services found on the GSA APL. One of the first mandatory requirements in the Statement of Work, §6.1 provides:

2. The system shall be designed with COTS products with a demonstrated track record wherever possible. Any COTS product shall be proven in at least 2 production deployments. For product categories requiring GSA approval, only services on the GSA FIPS 201 Approved Product List may be offered." (emphasis added).

Among the product/service categories required to be used to produce the PIV card were GP or EP services. These services were required to be performed at an offsite card printing facility by an approved vendor on the APL:

"87. The Card Printing facility shall personalize the PIV card. The personalized PIV Card shall meet all of the technical and interoperability specifications as defined in the NIST standards. Only Graphical Personalization, Electronic Personalization (product), and/or Electronic Personalization (services), as appropriate, as approved on the GSA FIPS-201 Approved Product List (APL) may be offered." Id. §6.1 (87) (emphasis added).

In short, an offeror could not perform these services in house unless it was on the APL. Therefore, the only solutions that could produce an acceptable PIV card had to employ the GP and EP services on the APL. Only one provider was approved (and still is)—Gemalto, Inc. See FIPS-201 APL Nos. 117 and 130. <http://fips201ep.cio.gov/apl.php>.

Offerors were to submit technical proposals in accordance with the following:

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“Each proposal must address the requirements, provisions, terms and conditions, and clauses stated in all sections of this solicitation.”

Following submission of the technical proposal, offerors were required to submit Operational Capability Demonstration (“OCD”) test plan and then perform a functional capability demonstration to technical requirements to be followed by a test for specific use case requirements for operational capability. The OCD tests themselves were to be evaluated on a demonstrate/could not demonstrate basis.

GSA was to evaluate the technical offers in four factors: (1) the OCD, (2) Understanding of and Capability to Perform Technical Requirements, (3) Project Management and (4) Past Performance. GSA stated:

“Offeror’s proposal will be evaluated to ensure that the Offeror fully understands and is capable of performing all technical requirements contained in this RFO. The proposal must demonstrate this understanding and that the proposed solution is technically sound.” (emphasis added).

Following the OCD and technical evaluation, GSA stated that only the offers highly rated technically would be permitted to submit pricing. No changes were permitted to be made to the technical proposals. Award was on a best value basis.

B. OCD and Proposal Submission

CLW is a small business that is teamed with a number of contractors with substantial experience in production of cards and similar services including Clear Government Solutions, Inc., CACI, Inc. and ADT, Inc. Technical proposals were due on February 16, 2007.

CLW was required to demonstrate to GSA that it was only using products and services on the APL. CLW did so employing Gemalto’s GP and EP services.

CLW submitted a compliant OCD test plan and an OCD test was conducted.

[REDACTED]

[REDACTED]

HOLMES & GORDON**C. CLW's Meeting with GSA Commissioner**

CLW was concerned that no parts of the HSPD-12, including those not covered by this procurement, were being set aside for small business. CLW's representative arranged to meet with the GSA Commissioner and GSA's small business representative on March 19, 2007. CLW representatives were shocked to learn that the GSA Commissioner considered this procurement to be beyond the capability of a small business. CLW pointed out that its CLW team was fully capable of performing the contract. However, GSA's Commissioner did not withdraw his views and GSA's small business representative merely stated that he would look into the matter.

D. Notification of Elimination, Award and Debriefing

An e-mail dated April 5, 2007 was sent to CLW indicating that it was not considered one of the technically highly rated proposals. The highly rated proposals were submitted by EDS, Xtec and BearingPoint. Nothing in the e-mail gave a reason that CLW was not among the technically highly rated. GSA elected not to provide CLW with a debriefing until after award is made. CLW then learned that BearingPoint had elected not to submit pricing.

Notice of award to EDS was received on April 23, 2007. CLW timely requested a debriefing which was provided on April 26, 2007. CLW was advised that the successful offeror had an overall excellent technical proposal, with low risk. CLW was told [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CLW asked GSA a few questions in the limited time provided. One question asked why the debriefing indicated that the evaluation factors were no longer weighed equally as stated in the RFQ. GSA advised CLW that an amendment had been issued making this change. CLW never received this amendment even though the Contracting Officer had promised to provide all amendments and updates.

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E. Non-Compliance of EDS, Xtec, and Lockheed with GPS and EPS Requirements

Following notification of the award to EDS, CLW learned that EDS, Xtec and Lockheed (one of the offerors not highly rated technically) had not proposed Gemalto GP and EP services. That necessarily meant that none proposed a solution capable of meeting the contract requirements. This protest followed.

ARGUMENT

In order to be eligible for award of a contract, an offeror must meet the minimum mandatory requirements. See Stocker & Yale, 70 Comp. Gen. 490, May 13, 1991, B-242568, 91-1 CPD ¶460. In this case, the RFQ required that all offerors propose GP and EP services listed on the APL. Indeed, at least CLW was required to represent that its PIV solution utilized products and services on the APL, which it did.

Upon information and belief, neither EDS nor Xtec could have legitimately proposed compliant GP and EP services because neither proposed the only qualified vendor on the APL- Gemalto. Without Gemalto GP and EP, an offeror was incapable of producing a compliant PIV solution because its PIV could not otherwise be processed at an offsite facility on the APL. Therefore, GSA was required to disqualify EDS and Xtec.

Since BearingPoint disqualified itself, only three potential compliant offerors remain. If capable of meeting the requirements, they should now be requested to submit price proposals. See FAR §8.405-2(c)(ii). CLW believes, based on the same source, that Lockheed also is non-compliant for the same reason. Moreover, even if another offeror remains compliant, CLW believes [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] in the amendment 4 which CLW should have, but did not receive.¹

[REDACTED] are unfortunately consistent with an apparent improper determination within GSA not to award to any small business. This reflected the views openly expressed by the GSA Commissioner that a small business would not be capable of performing the contract. GSA was not permitted to eliminate CLW for a perceived lack of capability. That is a function reserved to the Small Business Administration ("SBA") under the Certificate of Competency program. FAR §19.601. GSA's apparent and effective elimination of CLW as non-responsible was improper.

CLW has been competitively prejudiced. Upon information and belief, [REDACTED] than remaining large businesses offerors, if any, whose solutions were based on compliant APL products and services. Thus, CLW would have had a substantial chance of receiving the award.

¹ During the procurement, GSA did not provide an access to its E-Buy site prior to February 16, 2007. As a result, CLW did not receive at least one major amendment to the RFP. The Contracting Officer was aware of CLW's inability to access this site and promised he would provide CLW with amendments and updates. Although some submissions were provided, CLW was not advised of amendment 4. CLW is currently reviewing this amendment to ascertain additional prejudicial impacts on its proposal and will supplement this protest if necessary.

HOLMES & GORDONREQUEST FOR RELEVANT DOCUMENTS

In addition to all relevant documents being produced by the agency under 4 CFR §21.5, CLW requests all documents, not already produced, including internal agency communications, handwritten documents, drafts, metadata and e-mail, relating to:

1. The evaluation of all proposals, including but not limited to, questions and answers, memoranda relating to discussions, all communications relating to evaluation of the offerors' PIV Card production systems, the OCD test plans, OCDs, and all documents relating to the decisions on which three of the offerors were highly rated technically;
2. All communications between the GSA Commissioner's office and GSA procurement officials relating to the selection or non-selection of CLW or a small business for this procurement;
3. All communications between GSA and any offeror relating to the use of GSA FIPS-201 Approved Products and Services.
4. All communications between GSA and any offeror relating to any representations of the proposed use of a GP and an EP services other than Gemalto.

INTERESTED PARTY, TIMELINESS, SERVICE TO THE AGENCY, CICA STAY

CLW [REDACTED] passed the OCD test. But for GSA's failure to eliminate offerors failing to propose solutions capable of meeting fundamental requirements and its failure to notify CLW of the change in the ground rules in amendment 4, CLW would have been included in the competition as one of the technically highly rated offerors and upon information and belief, [REDACTED]. Accordingly, CLW is an interested party. 4 CFR §21.0(a).

CLW timely requested a debriefing following notification that it had been eliminated. GSA responded that no debriefing would be provided until after the award was made. CLW filed this protest within 10 days of learning of the award to EDS and within 5 days of the GSA-provided debriefing. Accordingly, this protest is timely. 4 CFR §21.2(a). Further, because this protest was filed within 10 days of award and 5 days of its debriefing, GSA must stay any performance of this contract until this protest is decided. 31 U.S.C. §3553(c).

A copy of this protest was served on the Contracting Officer by facsimile and federal express today. 4 CFR §21.1(e).

HOLMES & GORDONCONCLUSION AND REQUEST FOR RELIEF

CLW respectfully requests that this Office recommend that:

(a) EDS and XTec (and any other offeror not proposing Gemalto GPS and EPS in their solutions) be eliminated from the competition;

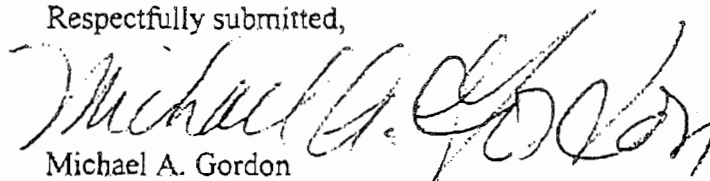
(b) GSA properly re-evaluate proposals, correct errors made in the initial evaluation,

(c) GSA find that CLW's proposal is, in any event, highly rated technically,

(d) GSA solicit CLW's pricing [REDACTED] be submitted, and

(e) determine that CLW is the best value.

Respectfully submitted,



Michael A. Gordon
Fran Baskin
Counsel for CLW

cc. Phillip L. Barber, Contracting Officer