



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Intown Properties, Inc.

File: B-262236.2; B-262237.2

Date: January 18, 1996

Melton Harrell for the protester.

Arnette L. Georges, Esq., Department of Housing and Urban Development, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency unreasonably evaluated protester's best and final offer (BAFO) submitted in response to solicitations for real estate acquisition management services where the protester, in response to discussions informing the protester that certain of its personnel were not considered qualified, proposed different personnel in its BAFO, but the agency did not consider this when determining the protester's low-priced BAFO to be unacceptable.

DECISION

Intown Properties, Inc. protests the award of two contracts to Asset Management Specialist, Inc., (AMS) under request for proposals (RFP) Nos. H02R95064000000 (RFP-40) and H02R95064100000 (RFP-41), issued by the Department of Housing and Urban Development (HUD) for real estate acquisition management (REAM) services. Intown, the incumbent contractor under RFP-40, argues that the agency's evaluation of its proposal and the selection of AMS for the awards were unreasonable.

We sustain the protests.

The RFPs provided for the awards of firm, fixed-price, indefinite quantity contracts for the performance of REAM services in the city of Camden (RFP-40), and Camden (excluding the city of Camden), Burlington, Mercer, and Gloucester counties, New Jersey (RFP-41).¹ The contractor(s) under the RFPs will be responsible for preserving and protecting single family properties owned or in the custody of HUD and located in these areas until the units are sold to the public or accepted by nonprofit organizations.

¹The RFPs are identical except for the different geographic locations.

The RFPs provided that awards would be made to the responsible offeror or offerors whose offer or offers, conforming to the solicitations, were determined most advantageous to the government, cost and other factors considered. The RFPs stated that technical merit would be more significant than price in the award selection, and listed the following technical evaluation factors to be evaluated on a 100-point scale:

"1. Demonstrated experience in the management of single family properties similar to and in the general area as those covered by this solicitation. [25 points]

"2. Subfactor A- Demonstrated ability to inspect properties as evidenced by the completion of the HUD-9516², and supporting documentation, for one of the following properties: Case # 352-216537 - 316 N. 5th St., Millville, NJ 08332 [or] Case # 351-190246 - 1202 N. 26th St., Camden, NJ 08105. [15 points]

"Subfactor B- Demonstrated experience in developing listings of needed repairs, such as is required by HUD's MPS [minimum property standards] and estimating the cost of repairs. [10 points]

"3. Demonstrated experience in soliciting repair bids, coordinating and overseeing repair work and inspecting for satisfactory completion. [15 points]

"4. Demonstrated experience in managing a rental program, including establishing fair market rentals and collections from present and former tenants, for single family properties. [10 points]

"5. Understanding HUD objectives and required tasks as specified in the solicitation. [10 points]

"6. Evidence of adequately staffed, trained, and equipped office (or the ability to establish such) reasonably located as to provide convenient service to HUD and its clients in the area to be served, and to carry out all duties specified in the solicitation. [15 points]"

The agency received seven proposals responding to both RFPs, including Intown's and AMS', and one proposal which responded to RFP-40 only. The proposals were evaluated by a technical evaluation panel (TEP). The TEP found in evaluating

²HUD 9516 is a standard form, the completion of which requires the entry of specified information concerning the condition of the property.

Intown's proposal that Intown had failed to "clearly state the location of [its] office." The TEP also found that two of Intown's key employees had left that company to form AMS, and that Intown had not adequately replaced these individuals with qualified staff. Although the agency rated Intown's proposal as "good" under this evaluation factor, and awarded it 7 out of 15 possible points, the agency concluded that Intown needed to address the deficiencies in its proposal concerning the location of its offices and qualifications of its personnel before its proposal could be considered technically acceptable. Overall, Intown's proposal received adjectival ratings of "good" or "excellent" under each of the evaluation factors and a total point score of 73.

Four proposals, including those of AMS and Intown, were included in the competitive range. Discussions were held, during which, among other things, Intown was informed of the agency's concerns with Intown's personnel and failure to specify office locations.

Best and final offers (BAFOs) were received and evaluated. Intown's BAFO received a score of 74 points at evaluated unit prices of \$798.90 for RFP-40 and \$630.24 for RFP-41, whereas AMS' BAFO received the highest technical score of 88 points at an evaluated unit price of \$914.12 for both RFPs.

In its BAFO, Intown provided an address at which it would locate an office if awarded either or both of the contracts under the RFPs. Intown's BAFO also acknowledged the performance problems of its current staff (that is, the staff that replaced the key individuals who had left Intown), and provided the name and detailed resume of an individual who would manage the office.

The agency, in its evaluation of Intown's BAFO, raised Intown's score "by 1 point since the BAFO addressed the TEP's concerns about office location." There is nothing in the record, however, which evidences that the agency considered the individual proposed by Intown in its BAFO to manage the contract or contracts if awarded. Although, as indicated, the adjectival ratings of Intown's proposal ranged from "good" to "excellent" for each evaluation factor, the agency concluded, for reasons which are unclear, that Intown's proposal remained technically unacceptable. Because Intown's low-priced proposal was found technically unacceptable, it was not considered by the agency in its best value determination.

The agency considered the proposals of AMS and another offeror, whose less expensive proposal received a lower technical rating, in its best value determination, and determined that the AMS proposal's technical advantages offset the other proposal's price advantage. AMS was awarded the contracts on July 21.

On August 1, Intown received a letter from the agency informing it of the awards to AMS, and the prices at which the awards were made. On August 4, Intown

requested a debriefing from the agency, and after receiving no response, filed its protests with our Office on August 31. Intown's initial protests to our Office challenged, in general terms, the agency's evaluation of its proposal and the awards to AMS in light of AMS' significantly higher price. Based upon information provided by the agency in its report, Intown specifically argues that the evaluation of its BAFO was unreasonable because the agency failed to consider the personnel proposed by Intown in its BAFO. Intown points out that, as demonstrated by their resumes, each of the individuals proposed in its BAFO has extensive experience in providing REAM services.

As an initial matter, the agency argues that Intown's protests are untimely because they were not filed within 10 days of Intown's receipt of the agency's letter informing Intown that the awards had been made to AMS. The agency points out that although Intown requested a debriefing by letter dated August 4, the debriefing was not held until after Intown filed its protests, and Intown did not learn anything new between August 1, the date on which it was informed that the awards had been made to AMS, and August 31, the date on which Intown filed its protests.³

Intown concedes that it did not learn any new information between August 1, when it became aware that the contracts had been awarded to AMS, and August 31, when it filed its protests. Intown explains that it filed its protests "in general terms" because the agency had not acted upon Intown's debriefing request through the time of the protests' filing, and because of this, Intown was unaware of its exact grounds for protest.

We do not consider the protest untimely. At the time Intown was apprised of the award it was uncertain as to whether it had a basis to protest because the agency had not yet advised it of why its proposal was not accepted. Intown therefore promptly requested a debriefing within 3 days of its receipt of the award letter. Protesters may generally delay filing a protest in such circumstances until after a receipt of information in response to a diligently pursued debriefing. PRC, Inc., B-247036, Apr. 27, 1992, 92-1 CPD ¶ 396; S-Cubed, a Div. of Maxwell Labs., Inc., B-242871, June 17, 1991, 91-1 CPD ¶ 571. A disappointed offeror may not, however, await indefinitely for a response.⁴ Where an agency does not respond to a

³Intown's protests are dated August 28, but were not received by our Office, and therefore filed, until August 31.

⁴While in the cited cases the protesters obtained information on which their protests were based through their respective debriefings or FOIA requests, it would be anomalous to consider Intown's untimely, merely because in Intown's case the agency chose not to act upon Intown's debriefing request; as Intown points out,

(continued...)

debriefing or information request within a reasonable period of time, a protester must reiterate its request or file on the basis of whatever information it has. See John W. Gracey, B-232156.2, Jan. 23, 1989, 89-1 CPD ¶ 50; Marine Hydraulics Int'l, Inc., B-219683, Nov. 26, 1985, 85-2 CPD ¶ 602. Here, Intown protested within four weeks of its debriefing request, and such a 4-week wait for a promptly requested debriefing is not in our view unreasonable. See Lawrence H. Suid, B-255546, Mar. 9, 1994, 94-1 CPD ¶ 187. Under the circumstances, we consider Intown's protest to be timely filed.

With regard to the merits of Intown's protests, while the evaluation of technical proposals is a matter within the discretion of the contracting agency because the agency is responsible for defining its needs and the best method of accommodating them, Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16, the record here does not support the reasonableness of the agency's evaluation of Intown's BAFO. Specifically, there is no recognition in the TEP's evaluation, or anywhere else in the record, of the individual proposed by Intown in its BAFO to manage the Intown office that would be responsible for either or both of the contracts. Indeed, the contracting officer, in her report on the protests, expressly states that Intown "did not identify any permanent Intown employees" in response to the agency's expressed concerns, raised during discussions, about Intown's personnel. Since this is clearly belied by a review of Intown's BAFO, we conclude that this portion of the evaluation was unreasonable. Jaycor, B-240029.2 et al., Oct. 31, 1990, 90-2 CPD ¶ 354.

Further, the record does not support the agency's conclusion that Intown's BAFO was technically unacceptable. As mentioned previously, there is no clear explanation in the record as to why the agency reached this conclusion while rating Intown's proposal as "good" or "excellent" under each of the six evaluation factors. Additionally, the record suggests that the agency's determination that Intown's BAFO was technically unacceptable was premised on the agency's failure to consider the individual proposed in Intown's BAFO to manage the office responsible for the contract or contracts.

Because the agency's evaluation of Intown's BAFO was unreasonable, and its conclusion that Intown's BAFO was technically unacceptable is unsupported, the agency's consequent exclusion of Intown's significantly lower-priced proposal from its best value determination, and selection of AMS for the awards, were unreasonable. NITCO, B-246185, Feb. 21, 1992, 92-1 CPD ¶ 212.

⁴(...continued)

such a decision by our Office would permit an agency to avoid a protest "through the simple use of ignoring a request for a debriefing until the time for protest expired."

We recommend that the agency reevaluate the BAFOs. If after the reevaluation the agency concludes that Intown's BAFO is technically acceptable, the agency should consider Intown's BAFO in a new best value determination. If the agency finds that Intown should have received award under either or both of the solicitations, the appropriate contract or contracts should be terminated, and the award or awards made to Intown. We also find that Intown is entitled to the reasonable costs of filing and pursuing its protests. 4 C.F.R. § 21.6(d)(1). The protester should submit its certified claim for costs directly to the agency within 60 working days of its receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protests are sustained.

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