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United States General Accounting Office  
Washington, DC 20548

Comptroller General  
of the United States

## Decision

**Matter of:** EAA Capital Company, L.L.C.

**File:** B-287460

**Date:** June 19, 2001

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Bernard S. Oleniacz for the protester.

Jud E. McNatt, Esq., Department of Housing & Urban Development, for the agency.  
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

An agency determination to exclude proposal from the competitive range is unobjectionable where agency concluded, on the basis of evaluation which was reasonable and consistent with solicitation evaluation criteria, that proposal had no reasonable chance of being selected for award.

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### DECISION

EAA Capital Company, L.L.C. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. R-ATL-01629, issued by the Department of Housing and Urban Development (HUD) for services in connection with home mortgage loans which originated at the Single Family Homeownership Center (HOC) located in Atlanta, Georgia. EAA contends that HUD failed to evaluate its proposal according to the terms of the solicitation and thereby improperly excluded EAA's proposal from the competitive range.

We deny the protest.

On December 7, 2000, HUD issued this RFP to obtain one or more contractors to perform post endorsement technical reviews to be conducted for two geographic areas under the jurisdiction of the Atlanta HOC. These technical reviews are for the purpose of determining "the accuracy and the quality of the closing documents, the mortgage credit documentation/underwriting as well as to identify the degree of risk, if any, present in each case file insured." RFP at C.3(a). The RFP contemplated the award of an indefinite-quantity contract with fixed-priced line items for a base year and four 1-year options. The RFP stated that technical factors were more important than price; and that, among the technical factors, "management and oversight

capability” and “technical understanding” were equally important; each of these factors was worth a maximum of 30 points and was slightly more important than the remaining technical factors, “prior experience” and “past performance,” each of which was worth a maximum of 20 points. Additionally, the RFP provided that if an offeror received an unacceptable rating under the prior experience or management & oversight capability factors, “the entire proposal may be rated as technically unacceptable and may not be evaluated further.” RFP § M.2.

EAA was one of nine firms which submitted timely proposals by the January 8, 2001 closing date. The technical evaluation panel (TEP) individually scored all nine proposals, and then the panel arrived at consensus scores for each proposal. The consensus scores assigned to the nine proposals ranged from a low of 22 to a high of 73 out of the 100 points available. Agency Report (AR), Tab 10, Technical Evaluation Memorandum. Eight of the nine proposals, including EAA’s with an assigned score of 37, were viewed as technically unacceptable by the TEP. As relevant here, the agency found numerous weaknesses and deficiencies in EAA’s technical proposal and concluded that EAA’s proposal was unacceptable.

Under the first technical evaluation factor, “management and oversight capability,” the RFP required that an offeror provide adequate information to demonstrate the ability to manage and oversee the work to be performed for each geographic area proposed to ensure quality of performance. RFP § M.5(a). The RFP stated that sufficient evidence included at a minimum: an acceptable quality control plan, acceptable evidence of a plan to handle conflicting and/or multiple use of resources if employees or subcontractors will be used on other contracts, and an acceptable plan for identifying and managing cases where any organizational or individual conflict of interest might be identified. Id. EAA received only 8 out of a possible 30 points for this factor. The TEP found that EAA did not provide a production control plan to deal with workload conflicts or to address how deadlines would be met in the case of business interruptions. AR, Tab 11, EAA Evaluation. The TEP viewed EAA’s plan for handling conflicts of interest as weak because it contained no plan of action for how an employee would identify what constitutes a conflict and the measures to be taken by EAA if the policy was not followed. Id.

Under the technical understanding factor, the RFP required offerors to submit a complete technical plan to perform the work, which clearly reflected an understanding of the skills and processes needed to perform the work within the required parameters identified in the statement of work (SOW). RFP § M.5(b). The plan was to clearly show how the projected numbers of staff would perform the estimated quantities of work required in each area proposed, including time-on-task estimates for each function (such as valuation review, underwriting review, and quality control check). Id. EAA’s proposal received only 8 out of 30 points for this factor because the evaluators found that, while EAA’s plan provided a general overview of its technical understanding and ability, it lacked sufficient details to make a determination of the soundness and the ability of the plan to function. Contracting Officer’s Statement at 4. According to the agency, the plan did not

provide the projected number of staff, how the work would be assigned, or how the staff would perform the estimated quantity of work required in each function. The agency also found that the plan neglected to address the vital area of reviewing appraisals, failed to project the estimated quantities of work required in each proposed function (including time-on-task for each function), and provided no indication of the timeframe it would take to perform a complete review. Id.

Under the prior experience factor, the RFP required documented evidence of the offeror's staff performance of the same or substantially similar services, including underwriting experience for the entire past 3-year period prior to the closing date of this solicitation, and other specific experience. RFP § M.5(c). Documented evidence included resumes that clearly show the employee/subcontractor meeting the stated qualifications requirements for appraisers and underwriters. Id. Resumes were to reflect whether the individual was an employee of the offeror; if the individual was not already an employee, the offeror was to include an attached letter of intent to work for the offeror if awarded the contract. EAA received only 4 out of a possible 20 points. EAA's proposal was downgraded because only two of its proposed underwriters, identified as key personnel, had the required credentials. Contracting Officer's Statement at 5. Moreover, one qualified underwriter was not an employee of EAA and no letter of intent was provided with the proposal. In several other instances, EAA proposed individuals, but failed to provide resumes and letters of intent. EAA also proposed several individuals in dual capacities. The evaluators believed that these individuals could not perform their tasks based on the hours proposed. EAA also provided no resume for the appraiser. AR, Tab 11, EAA Evaluation.

On the basis of this evaluation, the agency concluded that EAA's proposal was unacceptable and eliminated it from the competitive range. EAA was subsequently advised of its exclusion; this protest followed.

EAA protests that the agency failed to evaluate its proposal in accordance with the terms of the solicitation. EAA primarily expresses disagreement with the agency regarding the bases for the evaluated weaknesses and deficiencies.

Contracting agencies are not required to retain in the competitive range a proposal that is not among the most highly rated ones or that the agency otherwise reasonably concludes has no realistic prospect of award. Federal Acquisition Regulation § 15.306(c)(1); SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5. Thus, where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, the agency is not required to include the proposal in the competitive range. Laboratory Sys. Servs., Inc., B-256323, June 10, 1994, 94-1 CPD ¶ 359 at 2.

The evaluation of proposals and the determination of whether a proposal is in the competitive range are principally matters within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best

method for meeting them. In reviewing an agency's decision to eliminate a proposal from the competitive range, we will not evaluate the proposal anew, but instead will simply examine the agency's evaluation to ensure that it was reasonable and in accord with the provisions of the solicitation. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 3-4. A protester's mere disagreement with an agency's evaluation does not, without more, establish that the evaluation was unreasonable. Keco Indus., Inc., B-261159, Aug. 25, 1995, 95-2 CPD ¶ 85 at 4-5.

Although EAA expresses disagreement with the agency's technical evaluation, it offers no persuasive argument that the agency materially erred in this evaluation. As described above, the agency provided detailed and specific explanations concerning the weaknesses and deficiencies in EAA's proposal.<sup>1</sup> For example, the agency points out that EAA's proposed staff either did not meet the solicitation qualification requirements or in several instances that EAA failed to submit the required letters of intent for the proposed staff. In its response to HUD's report, EAA simply states that the individuals proposed are individuals it has relied on for years and that they met or exceeded the qualifications but fails to establish where in its proposal it addressed its staff's qualifications. In fact, EAA essentially concedes it did not demonstrate its compliance with the solicitation requirement for letters of intent, when it states in its comments that it has "handshake agreements" with the individuals proposed to perform the solicitation requirements.

In its response to the agency's report, EAA argued that the agency improperly downgraded its proposal because, according to the agency, its management plan neglected to address the vital area of reviewing appraisals. EAA contended that Amendment No. 0001, issued December 28, 2000, deleted the need for appraisal reviews from the solicitation. The agency submitted a supplemental report which clearly demonstrated that no work requirements were removed from the solicitation by Amendment No. 0001, and that the amendment only deleted the requirement that the contractor have a state licensed appraiser conduct the appraisal reviews. In its response to the agency's supplemental report, the protester does not rebut the agency's position that the appraisal review requirement was not deleted from the solicitation. We conclude that the protester's proposal failed to address a specific solicitation requirement and, in accordance with the solicitation evaluation criteria, was reasonably downgraded in this area.<sup>2</sup>

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<sup>1</sup> EAA complains that its proposal submitted here was based on a proposal EAA submitted to HUD's Philadelphia office in response to a solicitation covering the same type of file review services and that its proposal received 96 out of 100 points. However, each procurement stands alone, and a selection decision made under another procurement does not govern the selection under a different procurement. Renic Corp., Gov't Sys. Div., B-248100, July 29, 1992, 92-2 CPD ¶ 60 at 5.

<sup>2</sup> In its response to the agency's supplemental report, EAA raised several concerns, such as HUD's allegedly improper use of the Inspector General Audit Memorandum (continued...)

More generally, the evaluation criteria included requirements for detailed information demonstrating the offeror's technical understanding, describing how the offeror would perform the SOW, and establishing that it had adequate and qualified staff to perform the work and that the proposed staff would be available to perform the work. In these critical areas, EAA simply failed to provide the required information. Thus, EAA's proposal reasonably was downgraded and ultimately rejected as technically unacceptable.

The protest is denied.

Anthony H. Gamboa  
General Counsel

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(...continued)

and HUD's violation of a settlement agreement. These concerns are not relevant to the issue of the reasonableness of the agency's evaluation of EAA's proposal submitted in response to this solicitation, and we therefore will not address them.