

McArthur
147273



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Renic Corporation, Government Systems Division

File: B-248100

Date: July 29, 1992

Richard J. Ike, Jr., for the protester.
Lewis Nixon, Esq., Department of Housing and Urban
Development, for the agency.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where agency advised protester during discussions that its initial proposal lacked evidence of experience with and knowledge of real estate principles and practices, as well as other deficiencies, all of which the solicitation required offerors to demonstrate, agency conducted meaningful discussions.
2. Small Business Administration's certificate of competency procedures do not apply where technical proposals are evaluated comparatively to determine most advantageous proposal.

DECISION

Renic Corporation, Government Systems Division, protests the award of a contract under request for proposals (RFP) No. DU205C91356, issued by the Department of Housing and Urban Development (HUD) for technical review services. The protester contends that discussions were inadequate and the evaluation process was otherwise flawed.

We deny the protest.

On August 14, 1991, the agency issued the solicitation for a firm, fixed-price requirements contract for an estimated 3,000 technical review services for fiscal year 1992, with a 1-year option, for the agency's Indianapolis regional office. The statement of work required the successful contractor to review real estate appraisals to ensure that the factual information in the appraisals was correct and that the appraisals were consistent with similar appraisals and complied with agency regulations. The contractor would also

provide an evaluation of the appraisals as "good," "fair," or "poor" in accordance with standards established by the solicitation.

The solicitation provided for award to the responsible offeror whose offer was most advantageous to the government, price and technical factors considered. Technical factors were of greater importance than price and were as follows:

(1) extent to which the offeror's experience demonstrates (a) knowledge of realty practices and principles as they relate to the value of real property, (b) ability to apply the principles, practices, methods, and techniques of appraising, (c) skill in collecting and assembling data, and (d) ability to prepare clear and concise reports (25 points);

(2) demonstrated capacity of the offeror to (a) perform the government's estimated need for the services and (b) provide additional workload capability (25 points);

(3) demonstrated capability of the offeror's proposed key personnel and subcontractors to perform technical review (20 points);

(4) extent to which the offeror's proposal demonstrates an understanding of the work requirements (15 points); and

(5) extent to which the offeror's proposal demonstrates an explicit and feasible management plan for timely pick-up and delivery of cases, performance of technical reviews, and quality control over completed reviews (15 points).

The agency received four proposals on September 13 and forwarded them to its technical evaluation panel (TEP) on September 24. Two panel members completed their evaluation on November 18, but the third member's evaluation and the development of a consensus score was delayed until December 31. The record indicates that completion of the technical evaluation was delayed by the need to consider the effects of HUD reform legislation, as well as the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 3331 et seq. (Supp. II 1990), both of which imposed requirements for licensing of real estate appraisers. Upon receipt of guidance from HUD headquarters regarding implementation of the new legislation, the TEP forwarded its report to the contracting officer on January 15, 1992.

All three evaluators, including the two who completed their evaluations in November, found the protester's proposal unacceptable, and the consensus report therefore concluded that the proposal was unacceptable, primarily because the proposal did not document the offeror's experience with the valuation and appraisal of real property. Nevertheless, since the protester was performing adequately on similar contracts, the contracting officer found the deficiencies primarily informational in nature and, believing that they were susceptible to correction through discussions, retained Renic in the competitive range.

On January 27, the contracting officer conducted oral discussions concerning various matters and deficiencies with the protester and the two other offerors in the competitive range. In response to a question from the protester whether offerors would be required to comply with Indiana appraiser licensing requirements, the agency delayed its request for best and final offers (BAFOs) until February 25. By letter of that date, the agency provided offerors a copy of its counsel's opinion that the Indiana licensing requirements were applicable and requested submission of BAFOs by March 6.

In response to the BAFO request, the protester provided no response to the agency's request for information to support and revise its technical proposal, nor did it offer to meet the licensing requirement. The highest rated offeror, Dakota Leasing & Realty, Inc., of Williston, North Dakota, also did not offer to meet the licensing requirement; in response to a question from the TEP, the agency examined the issue whether an Indiana license was required for appraisals prepared outside of Indiana and concluded that it was not. Although the protester's price was slightly lower than Dakota's, \$7.94 per review versus Dakota's \$8.00 price, the contracting officer found that the technical superiority of the Dakota proposal, which received a score of 985 versus the protester's score of 700, was well worth the slight additional cost. Accordingly, the agency awarded a contract to Dakota on March 13, and this protest followed.

Renic first contends that the oral discussions conducted by the agency were misleading. In its initial protest, Renic did not elaborate upon its allegations that discussions were misleading or inadequate. Agencies must generally conduct written and oral discussions with all offerors within a competitive range, advising them of weaknesses, excesses, or deficiencies in their proposals, and providing them the opportunity to satisfy the government's requirements. tg Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 349.

Our review of the record shows that the major deficiencies noted by the TEP in the protester's initial proposal were in Renic's failure to demonstrate experience with realty practices and principles, the ability to apply principles, practices, methods, and techniques of appraising, the skill to collect and assemble data, and the ability to prepare clear and concise reports. In addition, the lack of appraisal experience in its key personnel, who were chiefly experienced with mortgage loan applications rather than property appraisals, was also a significant weakness. The agency has submitted its written notes of oral discussions, indicating that the contracting officer discussed each of these concerns with the protester; the protester does not deny that the agency identified the deficiencies in its proposal during discussions. The record before us therefore clearly shows that the agency pointed out the protester's deficiencies during discussions and afforded the protester the opportunity to submit the additional information necessary to establish its technical acceptability, which is the essence of meaningful discussions. Tate-Griffin Joint Venture, B-241377.2, Jan. 7, 1992, 92-1 CPD ¶ 29. We find no basis to conclude that the discussions held with the protester were other than adequate.¹

The protester also contends that firms such as Renic's should have been permitted to demonstrate their acceptability through the Small Business Administration's certificate of competency (COC) procedures. It is not improper in a negotiated procurement to include traditional responsibility criteria, such as experience and personnel qualifications, among the technical evaluation criteria. B & W Serv. Indus., Inc., B-224392.2, Oct. 2, 1986, 86-2 CPD ¶ 384. As long as the factors are limited to areas which, when evaluated comparatively, can provide an appropriate basis for a selection that will be in the government's best interest, COC procedures do not apply to a technical proposal deficient in those areas. Arrowsmith Indus., Inc., B-233212, Feb. 8, 1989, 89-1 CPD ¶ 129. Here, the record shows that the evaluation of offerors' demonstrated expertise, capacity, and capability was a comparative one, based on the material submitted with the offers. Accordingly, COC procedures were inapplicable to the agency's decision to reject the protester's proposal, and there was no requirement for the agency to obtain the SBA's advice in the evaluation of proposals.

¹In its comments, the protester also argues that, during discussions, the agency was at first unable to answer the protester's inquiries whether the use of state-licensed appraisers was required. The record shows, however, that the agency's uncertainty over the issue affected neither the evaluation of proposals nor the award decision.

The protester also contends that the selection of a higher priced offeror on the basis of technical superiority is inconsistent with selection decisions made by the agency under other solicitations. However, Renic's protests against the awards under these other solicitations, Nos. DU205C91354 and DU205C91355, were dismissed by our Office as untimely and the protester did not request reconsideration of the decision to dismiss those protests. Moreover, each procurement stands alone, and a selection decision made under another procurement does not govern the selection under a different procurement. See GMI Indus., Inc.--Recon, B-231998.2, Mar. 23, 1989, 89-1 CPD ¶ 297.²

We deny the protest.


for James F. Hinchman
General Counsel

²Renic also objects to the length of time taken to reach a selection decision, particularly the 4-month delay between the initial evaluation and the award. We find no evidence that the delay affected the evaluation of proposals or the award decision in any way.