



Comptroller General
of the United States
Washington, D.C. 20548

441119

Decision

Matter of: Shel-Ken Properties, Inc.
File: B-253614
Date: September 10, 1993

Charlotte C. Jenkins for the protester.
Melton Harrell for Intown Properties, Inc., an interested party.
Sharon Swain, Esq., Department of Housing and Urban Development, for the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester that does not protest its proposal's elimination from the competitive range is not an interested party to protest the awardee's eligibility for award and the agency's evaluation of the awardee's proposal where several other offerors would be in line for award if the protest were sustained on those issues.

DECISION

Shel-Ken Properties, Inc. protests the Department of Housing and Urban Development's award of a contract to Intown Properties, Inc. for management and related services pertaining to single family properties pursuant to request for proposals (RFP) No. DU203-92-R-0137.

We dismiss the protest.

Issued on November 12, 1992, the RFP solicited offers to provide real estate asset manager services for HUD's Washington, D.C. field office.¹ The contractor would be

¹The RFP divided the Washington, D.C. geographic area into three smaller areas: Area 1--the Washington, D.C. metropolitan area; Area 2--Maryland (Montgomery and Prince Georges counties); and Area 3--Virginia (the cities of Alexandria, Arlington, Falls Church and Manassas and Fairfax, Loudoun and Prince William counties).

required to perform a multitude of management services, including: inspecting newly listed properties, removing and disposing of trash, securing property against unauthorized entry, maintaining landscaping, contracting for and inspecting repairs, determining the amount of and collecting rent, investigating and recommending resolution of tenant complaints, and initiating evictions. The RFP contemplated a 1-year contract with options for 2 additional years.

Shel-Ken was 1 of 13 offerors submitting initial proposals by the January 20, 1993, closing date. The source evaluation board evaluated initial proposals and determined that nine offers were acceptable or capable of being made acceptable. The evaluation board also determined that Shel-Ken's proposal and those of three other offerors were unacceptable and would have to be rewritten entirely to achieve acceptable ratings; those four offers were eliminated from the competitive range. By letter of April 1, the contracting officer notified all four offerors that their proposals would not be considered because they were determined not to be within the competitive range. After discussions and evaluation of best and final offers (BAFO), the contract was awarded to Intown Properties on May 26. Shel-Ken filed its protest in our Office on June 1.²

The protester argues that Intown Properties was not eligible for award because: (1) Intown Properties was not licensed to perform real estate services in the District of Columbia at the time of award; (2) Intown Properties was not registered as a foreign corporation in the state of Maryland at the time of award; (3) Intown Properties was not incorporated in the state of Virginia until 60 days after the January 20 deadline for submission of initial proposals; (4) Intown Properties certified that it had not paid a contingent fee to any person to obtain the contract when, in fact, it had subcontracted with a real estate broker to perform work under the contract. The protester also contends that HUD's high evaluation of Intown Properties' proposal was not justified. Furthermore, Shel-Ken charges that HUD engages in racial discrimination, using the Small Business and Minority Business Certification provision to identify and reject offers submitted by minority firms.

To the extent that the protester is contending that Intown Properties was not eligible for award, is not qualified to perform the work, or that HUD's evaluation of Intown Properties' proposal was incorrect, the protester is not an interested party to advance these arguments. A party is not interested to maintain a protest if it would not be in line

²The protest letter was dated May 27, 1993.

for award if the protest were sustained. See Airport Sys. Int'l, Inc., B-252007, Mar. 19, 1993, 93-1 CPD ¶ 249; Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1993).

Here, after initial proposals were evaluated, Shel-Ken's proposal was determined to be unacceptable and was eliminated from the competitive range. In addition to Intown Properties, eight other offerors submitted proposals that were included in the competitive range. The record shows that several offerors other than Intown Properties also received high ratings on their BAFOs and are eligible for award. Shel-Ken's protest concerns only the eligibility of Intown Properties, but does not concern the eligibility of any of the other offerors. Nor did Shel-Ken protest the agency's decision to eliminate its own proposal from the competitive range.³ Thus, since Shel-Ken would not be in line for award even if the protest were sustained, Shel-Ken is not an interested party to maintain the protest against the award to Intown Properties. Airport Sys. Int'l, Inc., supra.

Shel-Ken's allegation that HUD generally engages in racial discrimination, rejecting minority businesses once it has identified them, contains no detail or support. Our Bid Protest Regulations provide that protests must "set forth a detailed statement of the . . . factual grounds of protest," and that failure to provide such information is a basis for dismissing the protest. 4 C.F.R. § 21.1. In its comments to the agency report, Shel-Ken also fails to elaborate on

³By letter dated April 27, 1993, Shel-Ken attempted to file a protest with our Office alleging, among other things, a multitude of solicitation improprieties and including a very general protest that its own proposal was improperly rejected. However, that letter was not sent to the proper address for filing a protest as set forth in our Bid Protest Regulations, 4 C.F.R. § 21.1(b). Instead, the letter was sent to the General Accounting Office "HOTLINE" at a completely different street address. We first received the April 27 letter in our Procurement Law Control Group on June 1, at which time it was untimely because it was filed more than 10 working days after Shel-Ken knew its basis for protest. See Mountain Technical Indus., B-235477, May 17, 1989, 89-1 CPD ¶ 476; Johnson & Gordon Sec. Inc., B-225237, Dec. 2, 1986, 86-2 CPD ¶ 631. In any event, Shel-Ken's April 27 letter was untimely on the day it was mailed because the allegations of solicitation improprieties had to be filed before the closing date for receipt of initial proposals (January 20) and the protest of HUD's rejection of its proposal had to be filed within 10 days after March 31, the day Shel-Ken says it was notified of the rejection. See 4 C.F.R. § 21.2(a).

its initial protest of racial bias in this procurement. Therefore, Shel-Ken's unsupported allegation of racism is insufficient to form a valid basis for protest. See Medical Serv. Corp. Int'l, B-252801, Apr. 19, 1993, 93-1 CPD ¶ 335.

The protest is dismissed.


Michael R. Golden
Assistant General Counsel