



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Intown Properties, Inc.

File: B-256488

Date: June 27, 1994

Melvon Harrell for the protester.
Walter T. Cassidy, Esq., Department of Housing and Urban Development, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably awarded a contract to a higher-priced offeror which had a better prior performance record where prior experience was the most important evaluation criterion and where the price/technical tradeoff was reasonable and consistent with the solicitation's evaluation scheme.

DECISION

Intown Properties, Inc. protests the award of a contract to J.A. Martin Agency (JAMA) under request for proposals (RFP) No. 018-93-092, issued by the Department of Housing and Urban Development (HUD) for real estate asset management services (REAM) for single family properties owned by or in the custody of HUD in two counties in Minnesota. The protester basically challenges the agency's consideration of its recent performance under a contract for the identical services in the evaluation of the overall technical merit of its proposal.

We deny the protest.

The RFP, issued as a total small business set-aside on October 28, 1993, contemplated the award of an indefinite quantity, combination fixed-price/cost reimbursement-type contract for a 1-year base period and two 1-year option periods. The RFP required the successful contractor to

perform approximately 27 separate services as specified in the statement of work (SOW).¹

The RFP included the following technical evaluation factors and their respective point values:

"Demonstrated specific experience in the management of single family properties of a type and location similar to that covered by this solicitation. Evidence of capacity to carry out all service items specified in the solicitation, including both field and office management responsibilities (50 points).

"Evidence of qualified staff in appropriate numbers, adequate equipment, and subcontractors and contractors sufficient to carry out all duties specified in the solicitation (30 points).

"Evidence of sufficient resources (financial, staff, space, equipment) to carry out the responsibilities of this contract along with other current or expected business (HUD and/or non-HUD) (20 points)."

With respect to price, the RFP required an offeror's price to be reasonable and to reflect its proposed technical approach. The RFP provided that the award would be made to the responsible offeror whose proposal, conforming to the RFP, was deemed most advantageous (i.e., the best value) to the government, technical evaluation factors and price considered. The RFP stated that in determining the most advantageous offeror, the combination of technical evaluation factors would be considered more significant than an offeror's price.

¹For example, the SOW required the contractor to inspect properties; maintain files which would include defective paint and housekeeping inspection reports; eliminate defective paint hazards; provide housekeeping services; notify the homeowner's association and utility companies of HUD's interest in the property and forward bills to HUD; perform exterior and interior cleanup, including trash removal and disposal; arrange for wellwater tests; provide yard cleanup, mowing, and snow removal services; eliminate hazardous conditions, including providing necessary light bulbs, capping open gas and electrical lines, and installing electrical outlet covers where necessary; secure, winterize, and heat the properties; perform other repairs not exceeding \$1,000 with HUD's approval; and perform habitability inspections.

Nine offerors, including the protester, submitted initial technical and price proposals by the closing time for receipt of proposals on November 29. The proposals of seven of these offerors, including the protester, were included in the competitive range. Those offerors whose proposals were included in the competitive range received technical point scores ranging from 50 to 88. These scores were supported by narratives describing the strengths and weaknesses in each offeror's proposal. The protester, which submitted the low price, received a score of 62.

The agency acknowledged that the protester has provided management services for HUD properties in 18 states, including Minnesota. Specifically, the protester was awarded a contract in February 1993 to perform in three counties in Minnesota the identical REAM services as required under this RFP.² In its proposal, because the protester focused on its national experience, as opposed to its Minnesota experience, the agency listed as a weakness the protester's failure to address its relevant local experience. While the protester repeated the SOW requirements and submitted forms used for tracking the management of assigned properties, the agency listed as a weakness the protester's failure to provide substantive details demonstrating that it could satisfactorily perform the RFP requirements. In addition, while the protester described its proposed personnel, most of whom performed under its prior contract, and the work each individual would be expected to perform, the agency listed as a weakness the protester's lack of clarity concerning the on-site availability and/or qualifications of particular individuals. The agency believed that the protester's staffing numbers were adequate, that its office was well equipped and centrally located, and that the protester understood the financial commitments of the contract.

The agency conducted discussions with all competitive range offerors. Since an offeror's experience managing HUD properties was the most important technical evaluation factor, during discussions, the agency focused on a firm's performance of similar HUD contracts, affording each offeror the opportunity to explain any negative performance as documented in the agency's contract performance files (which contained performance reviews, notes, and correspondence between contractors and the agency).

Regarding the protester, the agency's contract performance files showed that under its prior contract in Minnesota, the

²The agency reports that the SOW requirements under the protester's prior contract, as modified, were identical to the SOW requirements under this RFP.

protester, for example, generally failed to remove paint cans from properties and objected to performing at its own expense minor repairs (e.g., providing necessary light bulbs and capping open gas and electrical lines). The protester also had problems with continual staff turnover and with the failure of its management to provide adequate training, expertise, and direction to its personnel, with the result that the agency had to perform many quality control and oversight functions. The protester's performance was deemed poor and unsatisfactory, and because of the protester's failure to satisfactorily cure the referenced problems, the agency did not exercise any options under the protester's contract.

Based on the information in its contract performance files, during discussions, the agency requested that the protester address its recent Minnesota experience, specifically its prior performance problems, including a discussion of the causes and solutions to these problems. The agency requested that the protester address its significant staff turnover and the on-site availability and/or qualifications of particular staff members. The agency also requested that the protester acknowledge its obligation to remove paint cans and that the protester demonstrate its ability to perform minor repairs at its own expense.

The competitive range offerors, including the protester, submitted best and final offers (BAFO) by the closing time on January 19, 1994. Concerning its prior performance problems, in its BAFO, the protester limited its discussion to generally describing how its area manager, who also was a field inspector, improved office operations by being a strong administrator and manager. The protester stated that its significant staff turnover was a result of deciding not to retain unqualified and improperly assigned staff. The protester explained that if awarded this contract, one of its regional managers, based in California, would go to Minnesota for as long as it took to increase staff and facilities to handle the RFP requirements, and another regional manager would go to Minnesota for up to 1 month to provide additional supervisory assistance, if necessary. The protester acknowledged its responsibility to remove paint cans and to perform minor repairs at its own expense.

The technical point scores for BAFOs ranged from 47--the protester's score, to 88. While the protester remained the low-priced offeror, the agency downgraded the protester based on its poor and unsatisfactory prior performance in Minnesota, as documented in the agency's contract performance files.

The agency subsequently determined that JAMA, which received a score of 85 and was the second low-priced offeror, offered

the most advantageous, best value proposal to the government, technical evaluation factors and price considered. In this regard, since 1991, JAMA has been the incumbent contractor which, according to the agency's contract performance files, has satisfactorily provided REAM services for HUD properties in the two counties in Minnesota which are the subject of this RFP. The agency favorably viewed JAMA's proposed property management tracking system and its proposed office management approach, which included defining the responsibilities of the firm's employees and an analysis of the activities which employees were qualified or not qualified to perform. The agency considered JAMA's proposed staffing to be good. The agency noted that JAMA had an extensive subcontractor pool and good space and equipment resources. The agency also believed that JAMA understood the financial commitments of this contract. The agency awarded a contract to JAMA, a higher technically rated, higher-priced offeror in comparison to the protester.

Although the protester does not challenge the agency's evaluation of its proposal for each individual technical evaluation factor, the protester does contend that the agency unreasonably considered its prior performance in Minnesota in evaluating the overall technical merit of its proposal. The protester also maintains that as the low-priced offeror it should have been awarded the contract.

In reviewing protests against the propriety of an agency's evaluation of proposals, we will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria in the RFP. Honolulu Marine, Inc., B-245329, Dec. 27, 1991, 91-2 CPD ¶ 586; Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129; Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93.

The agency's records clearly document that the protester's performance was poor and unsatisfactory under its prior contract and that the protester did not remedy this negative performance. For example, the protester's problems with not performing contract requirements, with staff turnover, and in failing to provide adequate training, expertise, and direction to its personnel and in relying on the agency to provide quality control and oversight, were acknowledged by the protester in a letter to the agency dated September 8, 1993, some 7 months into performance of the prior contract and in response to the agency's cure letter dated August 27. The protester acknowledged that "[the firm] ha[d] become painfully aware that [its] REAM work in [the three Minnesota] counties was not in compliance with the standards set by [its] contract with [the agency]." The protester explained that to remedy the situation, it had sent an individual to Minnesota to assist its manager with further

training and closer supervision, and that after this individual's arrival, there was a complete turnover in staff which necessitated hiring and training new personnel. The protester continued that "[while its] operational philosophy ha[d] been to work closely with [the agency's] representatives who supervise[d] [the firm], . . . [it could] now see that [its] training in this regard lead to [its] being too dependent on [the agency]." The protester conceded that "[it] failed to provide sufficient training to [its] staff to overcome any lack of experience." The protester concluded by stating that "it hope[d] to quickly correct the flaws in [its] operation [and to] improve [its] service to the government and begin to earn the assignment of new properties." Despite these statements, the record shows that by letter dated December 7, the agency notified the protester that "[its] performance remain[ed] unsatisfactory" and that the agency would not exercise any options to extend the protester's contract.

Given that the RFP's most important technical evaluation factor encompassed an offeror's demonstrated specific experience in the management of single family properties of a type and location similar to that covered by the RFP and evidence of an offeror's capacity to carry out all RFP service requirements, the agency reasonably considered the protester's prior performance record.³ Moreover, the protester's documented poor and unsatisfactory performance of REAM services, specifically, its failure to perform in accordance with the terms of its prior contract, its staff turnover problems, its inadequate personnel training, and its dependency on the agency--all of which the protester basically concedes occurred under that contract--provided a reasonable basis for the agency to downgrade the protester's proposal and conclude that the protester, which proposed most of the same personnel who performed under the prior contract, had not shown its capability to perform the identical services under this RFP. See Pearl Properties; DNL Properties, Inc., B-253614.6; B-253614.7, May 23, 1994, 94-1 CPD ¶ ____.

Finally, while the protester states that as the low-priced offeror it was entitled to the award, we point out that the RFP did not require the award to be made to the offeror with the lowest-priced, technically acceptable proposal. Rather, the RFP stated that the award would be made to the offeror whose proposal, conforming to the RFP, was deemed most advantageous, i.e., the best value, to the government, with technical evaluation factors being considered more

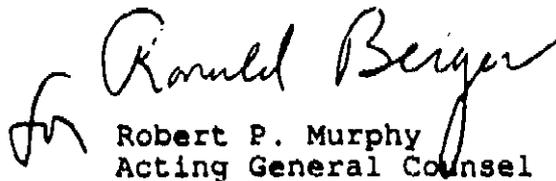
³The protester does not allege that discussions concerning its negative prior performance were not meaningful.

significant than price. Patricia A. Geringer, B-247562, June 11, 1992, 92-1 CPD ¶ 511.

Where the RFP does not provide for the award on the basis of the lowest-priced, technically acceptable proposal, an agency has the discretion to make the award to an offeror with a higher technical score and a higher price where it reasonably determines that the price premium is justified considering the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. Id.; General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44.

Here, while JAMA's price was approximately 9 percent higher than the protester's price, JAMA's technical score was significantly higher--by approximately 45 percent--than the protester's technical score. The agency's contract performance files for JAMA show that it has satisfactorily performed REAM services for the past 3 years in the two Minnesota counties which are the subject of this RFP. The record shows that JAMA timely followed through and responded to problems as they arose under its prior contract, and that on several occasions JAMA did more than what was expected under the terms of its contract. The agency also determined that JAMA's proposed personnel were well qualified to perform the RFP requirements. In light of these evaluation results, the agency reasonably awarded the contract to JAMA as the most advantageous offeror.

Accordingly, the protest is denied.


Robert P. Murphy
Acting General Counsel