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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comprehensive Marketing Systems, Inc.

File: B-238596

Date: May 29, 1990

James F. Heffernan, Esq., Baker & Daniels, for the protester.
Carolyn B. Lieberman, Esq., Office of General Counsel Department of Housing and Urban Development, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that evaluation factors in solicitation for loan servicing should have included prior experience as a separate factor is denied where prior experience was included under several evaluation factors and the record shows that the agency did consider the protester's prior experience in its evaluation.

2. Protest that agency improperly extended the period contractors would be responsible for delinquent accounts without providing notice to offerors and affording firms an opportunity to revise offers is denied where the requirement was modified in writing, the written modification was given to offerors during discussions, and the evaluation of best and final offers was consistent with the revised terms.

3. Protest that agency did not give credit for an alleged reduction in cost in protester's proposal is denied where the solicitation basically required the protester to factor this reduction into the fixed-unit rate it submitted as its cost and the protester failed to do this. Furthermore, where the alleged reduction would not render the protester's cost lower than the awardee's cost, where cost was in any case less important than technical considerations and the awardee's offer was technically superior, failure to consider this reduction did not prejudice the award decision.

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DECISION

Comprehensive Marketing Systems, Inc. (CMS), protests the award of a loan-servicing contract for Federal National Mortgage Association (FNMA)-held mortgages to GC Services Limited Partnership (GCS) under request for proposals (RFP) No. HC-15594, issued by the Department of Housing and Urban Development (HUD). We dismiss the protest in part and deny it in part.

Section 312 of the Housing Act of 1964, as amended, 42 U.S.C. § 1452b (1982), authorizes HUD to provide direct, long-term loans at below-market interest rates for the rehabilitation of properties. The "Section 312 Program" is intended to provide financing in areas served by other HUD programs and where similar financing is generally not available. In the past, FNMA serviced all new loans placed under this program, returning seriously delinquent loans to HUD. HUD personnel would then service the delinquent loans. In 1981, HUD contracted with CMS to assist in servicing the delinquent loans, in a position it calls the "Master Servicer," while FNMA continued to service the new loans. In 1982, HUD contracted with CMS to service all new loans, while FNMA continued to service the loans in its portfolio.

The instant solicitation was issued to cover the servicing of the loans that remained in FNMA's portfolio. The successful contractor was to be a "general servicer" whose numerous responsibilities would include servicing delinquent accounts up to 90 days, after which time the delinquent account would be assigned to HUD's master servicer.

The RFP provided for award to the firm whose proposal was considered the most advantageous to the government, price and other factors considered. The RFP also advised that award could be made to other than the lowest offeror on the basis of a best value determination. The RFP listed evaluation factors for award. The RFP listed technical and management factors including organization/corporate ability. This subfactor advised that the proposer's past and current experience with collecting loan installments through a centralized depository would be evaluated. Other evaluation factors included personnel qualifications and experience to perform loan servicing work, facilities and equipment and equal opportunity and affirmative action. Cost was secondary in importance to the technical factors and offerors were to state cost as a fixed-unit rate per loan per month. The RFP listed detailed cost items to be considered in preparing a rate including initial start-up and transition period costs.

The protester and the awardee submitted the only offers in response to the solicitation. Both were considered within the competitive range, and the agency conducted discussions with each offeror. When discussions were held, the agency gave each offeror a document listing clarifications and changes to the RFP, which amended the solicitation to increase the time during which the contractor would service delinquent loans from 60 days to 90 days. Each firm submitted its best and final offer (BAFO), which was then evaluated by the source evaluation board (SEB). The source selection official selected GCS for award based on the SEB finding that GCS' proposal was technically superior and significantly lower in cost than the CMS offer. When CMS was notified that it had not received the award, it requested and received a debriefing. This protest followed.

CMS first protests that the solicitation's evaluation factors should have included prior experience in portfolio servicing as a separate factor, separately weighted, as previous solicitations had and that the omission of this factor discriminated against CMS, as a contractor with such experience.

Initially, we note that, contrary to CMS' allegation, the RFP did contain evaluation factors concerning prior experience. For example, under technical factors, offerors were to be evaluated for the firm's experience with collecting loan installments through a centralized system of the type used by HUD. Also, under personnel, the RFP called for evaluation of the qualifications and experience of personnel to service a large mortgage loan portfolio. Thus, under the evaluation scheme, experience was a factor for evaluation. The evaluation documents show that with regard to experience, the evaluators rated CMS as currently performing at a "highly successful level," recognizing that CMS, as the master servicer of the section 312 portfolio, had demonstrated its ability to service this type of loan. CMS thus scored higher than GCS in demonstrated corporate ability. Also, under personnel, the evaluators recognized the experience and qualifications of CMS' key personnel. CMS was downgraded in this area, however, because of the agency's concern regarding the time these personnel were allocated to this contract under CMS' proposal and CMS' ability to rapidly hire and train, if necessary, 34 new employees which it proposed. We thus conclude that prior experience was an evaluation factor under both corporate ability and personnel and that CMS' experience was rated in accordance with the evaluation scheme and given appropriate credit by the evaluators.

CMS believes the RFP evaluation scheme should have given greater importance to prior experience, by including it as a separate factor. This contention is untimely. Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1990). Here, it was apparent when the solicitation was issued that it did not include a separate factor for prior experience, yet CMS did not protest this omission until after the contract had been awarded. CMS also alleges that the agency, without giving notice to offerors and providing an opportunity to firms to revise offers, changed the RFP requirements to increase the time during which the contractor would be responsible for delinquent accounts from 60 to 90 days. The protester contends that the change eliminated a competitive advantage for CMS under the original terms of the RFP.

To the extent CMS is protesting that its proposal was evaluated under terms that were different from those established by the RFP when it was issued, we do not find its protest supported by the record. The record indicates that the protested change to the RFP was communicated, in writing, to all offerors at the time discussions were held. As such, it constituted an amendment to the RFP. See Ingersoll-Rand, B-225996, May 5, 1987, 87-1 CPD ¶ 474. Moreover, offerors had the opportunity to consider this change in their BAFOs and the agency then properly evaluated the BAFOs in accordance with the revised RFP terms. Furthermore, it is apparent that CMS did change its proposal in this regard. In its initial proposal, CMS provided for the transfer of delinquent accounts after a delinquency of 60 days.1/ In its BAFO, however, CMS noted that "transfer of loans to the master servicer will be made after the 90th day of delinquency, rather than 60 days." Accordingly, we find no support for the allegation that this change was not properly communicated to the offerors, and this portion of the protest is therefore denied.

CMS is apparently protesting that the RFP was defective by this change in terms. To be considered timely under our

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1/ CMS also suggested an alternative procedure in its proposal, under which it would attempt to cure delinquencies and reinstate loans between the 60th and 90th days of the delinquency. This suggestion was intended to eliminate any potential conflict of interest arising from the fact that CMS was the incumbent master servicer to whom the delinquent account would be transferred.

Bid Protest Regulations, this issue had to be raised before the closing date for receipt of BAFOs. See 4 C.F.R. § 21.2(a)(1); Nova Research Co., B-236504, Dec. 13, 1989, 89-2 CPD ¶ 548. Accordingly, if this is the intended basis of this portion of the protest, since it was filed after award, it is dismissed as untimely.

CMS also protests that its cost proposal was improperly evaluated because it was not given credit for a reduction in days for the transition period required of a new contractor. The solicitation's statement of work advised offerors that "the RFP envisions a phase-in period of up to 180 days to allow for the complete transition of all loan servicing responsibilities from FNMA to the selected contractor." During the last 2 months of this period (i.e., of whatever period the contractor proposed), the contractor was to service the accounts in parallel with FNMA prior to fully taking over loan servicing operations.

As indicated above, offerors were to provide a fixed-unit rate per loan per month in their cost proposals, reflecting all of the costs necessary to meet the contract requirements. A "Special Proposal Instructions" section of the solicitation included a list of items for offerors to consider in developing this rate. One of these items was the parallel operation that was to take place during the last 2 months of the transition period.

The protester included in its cost proposal a section for "key assumptions underlying our cost projections," which included a discussion of this transition period requirement. The proposal explains, "while our cost proposal addresses a parallel period, we feel that our expertise and experience can be effective in the elimination of this phase of servicing transfer. Therefore, our proposal provides a 120-day transition period rather than the 180-day period provided in the RFP."

Our review of the record reveals no basis upon which to object to the agency's evaluation of this aspect of CMS' proposal. Under the RFP terms, the parallel performance period that CMS proposed to eliminate was one of the items that CMS itself was to take into account when it prepared its fixed-unit rate; it was not a factor to be evaluated by the agency. To the extent it represented a reduction in cost, under the RFP, it should have been reflected in the price CMS offered. We therefore find no error in the agency's evaluation of CMS' proposal. Furthermore, although the protester contends that it represents a $500,000 savings, the agency correctly points out that CMS has not explained the basis for this assertion, and that even if CMS

was correct in asserting that its price should be reduced by this amount for comparison purposes, CMS' price would still be approximately $1,000,000 higher than GCS' cost. In addition, as noted previously, GCS' proposal was found technically superior to CMS' offer and the RFP advised offerors that the fixed-unit rate was secondary in importance to the technical factors for award. Thus, CMS was not prejudiced by the agency's failure to consider the $500,000 reduction.

The protest is dismissed in part and denied in part.

for James F. Hinchman
General Counsel