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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Republic Realty Services, Inc.

**File:** B-242629

**Date:** May 7, 1991

John B. Denniston, Esq., Covington & Burling, for the protester.  
Dorothy Crow-Willard, Esq., Department of Housing and Urban Development, for the agency.  
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Termination of contract for the convenience of the government and resolicitation of the requirement were not improper where shortly after award agency determined that proposals were improperly evaluated because the solicitation's evaluation criteria did not reveal the relative weights of the evaluation factors as applied in the evaluation process.

### DECISION

Republic Realty Services, Inc. protests the action of the Department of Housing and Urban Development (HUD) in terminating for the convenience of the government a contract awarded to Republic under request for proposals (RFP) No. S19-90-101 and HUD's subsequent issuance of RFP No. S02-91-101. Both solicitations were issued for property management services for multifamily projects in several states, including Colorado, owned or held as mortgagee-in-possession by HUD.

We deny the protest.

The initial RFP was issued on August 16, 1990, and provided for award to the responsible offeror whose offer conforming to the solicitation would be most advantageous to the government.

The RFP contained the following specific technical and management evaluation factors:

"M-2 Technical and Management Factors

1. Demonstrated experience and capability of the offeror in successfully managing 6 to 300 unit residential and mixed residential/commercial properties.
2. Demonstrated understanding of HUD Property Disposition and Loan Management regulations, policies and procedures.
3. Extent to which the proposal demonstrates that the offeror understands the physical, economic, social and security aspects of property management.
4. Extent to which the proposal demonstrates that the offeror can provide a clear detailed and feasible management plan.
5. Demonstrated experience of the offeror in managing a repair program, including the ability to prepare specifications and cost estimates for minor repairs, and inspect repair work, to return the property to and maintain it in a decent, safe, and sanitary condition.
6. Demonstrated capability of the offeror's key personnel and expressed commitment of the key personnel to HUD property management."

The RFP did not provide any weights for the technical and management evaluation factors, each of which offerors were required to address in their technical proposals. It did, however, provide that proposed price was secondary to the technical and management considerations.

By the September 17 deadline for the submission of initial proposals, HUD received 14 proposals for project management

services in Colorado. The Source Evaluation Board (SEB) evaluated the proposals and awarded the following point value for each technical and management factor:

Factor 1 - 30 points  
Factor 2 - 5 points  
Factor 3 - 8 points  
Factor 4 - 27 points  
Factor 5 - 25 points  
Factor 6 - 5 points

Although the RFP did not require any specific documentation, the SEB in its evaluation gave points for an offeror's attachment of many different kinds of samples, including: forms used for internal processing; marketing strategies, such as brochures; leases used by the offeror; a capital improvement budget "with definition of work and realistic cost estimates"; repair contracts and programs; a management plan "or equivalent which provides a broad-based, detailed description of regional, community and neighborhood demographics, characteristics and statistics"; an actual management plan for the project(s) in question with details on maintenance and security, financial management procedures, leasing and occupancy, management/tenant relations and general management practices.

The SEB determined that only Republic and another offeror were technically acceptable and within the competitive range. Award was made for the Colorado projects, without discussions, to Republic on October 31.

On November 1, Urban, Inc., the incumbent contractor which was excluded from the competitive range, was orally notified of the award to Republic. Written notification of the award was provided to all unsuccessful offerors on November 2. Also on November 2, Urban filed an agency-level protest alleging, among other things, that the proposals were not properly evaluated.

In reviewing Urban's protest, HUD determined that the proposals were improperly evaluated because the RFP's evaluation criteria did not reveal the relative weights of the evaluation factors as applied in the evaluation process. In addition, HUD determined that the SEB in its evaluation focused on whether the offerors included particular documentation in their proposals, although the RFP did not specifically require the detailed information on which the proposal evaluation scores were based. Consequently, HUD sustained Urban's protest and decided to revise the evaluation criteria and issue a new solicitation for Colorado multifamily management services and to ultimately terminate for convenience the contract awarded to Republic.

Republic contends in its protest that the agency's decision to resolicit and then to terminate its contract was improper because Urban's protest of the defects in the solicitation was untimely. Republic argues that the lack of numerical weights does not justify resolicitation because federal procurement law does not require the inclusion of numerical weights in a solicitation.<sup>1/</sup> Republic also argues that the lack of numerical weights was a defect that was apparent on the face of the solicitation and therefore should have been protested prior to the initial date for receipt of proposals. Republic also argues that HUD's decision to terminate its contract and resolicit the Colorado project management contract is unreasonable and Republic would be unfairly penalized because its prices have been revealed.

There are no timeliness rules generally applicable to protests to agencies. An agency may properly determine to cancel a solicitation (and terminate the resultant contract) no matter when the information justifying the cancellation first surfaces. Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 CPD ¶ 667; Amarillo Aircraft Sales & Serv., Inc., B-214225, Sept. 10, 1984, 84-2 CPD ¶ 269. Thus, there is basis for questioning HUD's action based upon when Urban protested to the agency.<sup>2/</sup>

Our Office generally does not review an agency's decision to terminate a contract for the convenience of the government, since that is a matter of contract administration which is not within our bid protest function. However, we will review such a termination, where, as here, it is based upon an agency determination that the initial contract award was improper. Norfolk Shipbuilding and Drydock Corp., B-219988.3, supra.

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<sup>1/</sup> Republic maintains that the solicitation did contain relative weights in that it provided that price was secondary to technical and management considerations in the evaluation of proposals. There is no evidence in the record that price and technical were not evaluated in accordance with this solicitation provision.

<sup>2/</sup> Contrary to Republic's assertion, had our timeliness rules been applicable, Urban's agency-level protests was timely--it did not concern alleged defects in the solicitation, but rather the agency's evaluation of proposals as inconsistent with the RFP evaluation scheme, under which offerors were entitled to assume that each factor carried essentially the same weight. Our rules do not govern whether an agency may entertain and resolve a protest, but whether we will consider a protest following adverse agency action on a protest initially filed with the agency. 4 C.F.R. § 21.2(a) (1991).

It is fundamental that offerors must be advised of the basis upon which their proposals will be evaluated. The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425. In particular, contracting agencies are required to set forth in a solicitation all significant evaluation factors and their relative importance, 41 U.S.C. § 253a(b)(1)(A) and (B) (1988); agencies may not give importance to specific criteria beyond that which would reasonably be expected by offerors. See Coopers & Lybrand, 66 Comp. Gen. 217 (1987), 87-1 CPD ¶ 100. A solicitation that does not set forth a common basis for evaluating offers, which ensures that all firms are on notice of the factors for award and can compete on an equal basis, is materially defective. See The Faxon Co., Inc., 67 Comp. Gen. 39, supra.

Here, the solicitation did not state the relative importance of any of the technical and management evaluation factors. Nothing in the solicitation advised offerors of the large disparity in the actual weights used by the evaluators with respect to the six technical factors. Although the solicitation expressly stated that cost was not as important as technical and management, it gave no indication of the significance of the individual technical and management factors, which were obviously a significant part of the award decision. We agree with the agency that the offerors were not advised of the basis on which their proposals were to be evaluated and that, because of this, competition may have been affected. Only 2 of the 14 proposals received were determined to be acceptable and in the competitive range. Offerors may have submitted entirely different proposals if they had been aware that factors 1, 4, and 5 were weighted significantly higher than the other three factors and thus more offerors may have been found acceptable and included in the competitive range.<sup>3/</sup> This is especially significant since Republic submitted the fifth-lowest price proposal.

The agency states that its needs cannot be fully met by weighing all the factors equally because the actual weights used during the evaluation actually reflect its minimum needs. It reasonably believes that had offerors known of the

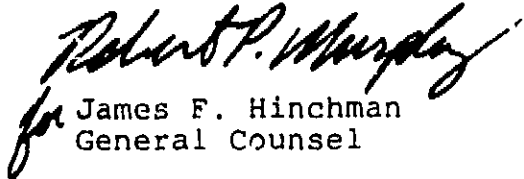
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<sup>3/</sup> For example, Urban received no points on two of six technical factors which were heavily weighted during the actual evaluation. This resulted in Urban's exclusion from the competitive range. The record thus contains ample evidence of prejudice to Urban by the flawed evaluation.

importance of property management and repair experience (factors 1 and 5), for example, they would have treated those factors more significantly and thus addressed these matters in more detail. Thus, merely reevaluating the offers on the basis that all technical factors were equal would not have satisfied the agency's requirements. We therefore believe the agency had a reasonable basis for its decision to revise the solicitation and resolicit.

With regard to Republic's contention that the termination of its contract and resolicitation were improper because its prices have been exposed, where, as here, termination and resolicitation are otherwise proper, prior disclosure of an offeror's price does not preclude resolicitation. See generally The Faxon Co., Inc., 67 Comp. Gen. 39, supra.

The protest is denied.

  
for James F. Hinchman  
General Counsel