



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

Decision

Matter of: Patricia A. Geringer

File: B-247562

Date: June 11, 1992

Patricia A. Geringer, Esq., and Robert A. Heins, Esq., for the protester.
Joyce Castelnovo for TRW Real Estate Loan Services, an interested party.
Joseph James, 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

1. Protest is denied where the protester's proposal was reasonably evaluated in accordance with the solicitation's stated evaluation criteria.
2. Protest is denied where, despite the fact that the protester and awardee submitted very good technical proposals and the protester's price was 2 percent less than the awardee's price, the agency reasonably awarded a contract for the following requirements to the incumbent contractor which was found in the evaluation to have more extensive experience and a proven, satisfactory performance record in providing the required services to the agency.

DECISION

Patricia A. Geringer protests the award of a contract to TRW Real Estate Loan Services under request for proposals (RFP) No. 103-91-04, issued by the Department of Housing and Urban Development (HUD) for real estate property closing services. The protester challenges the agency's evaluation of its proposal and the contracting officer's award decision.

We deny the protest.

The RFP, issued on October 16, 1991, contemplated the awards of indefinite quantity, firm, fixed-price contracts for the performance of real estate property closing services for a 1-year base period and two 1-year option periods in the following geographic areas: Area I, consisting of eight

counties in Nebraska and one county in Iowa, and Area II, consisting of the remaining counties in Nebraska. Offerors could submit proposals for one or both of these areas.

The RFP contained the following technical and management evaluation factors and the percentage weight factor assigned to each evaluation factor:

- (1) demonstrated prior and current experience in closing sales of
 - (a) single family properties (15);
 - (b) FHA properties (20); and
 - (c) properties in the geographic location covered by this solicitation (15);
- (2) evidence of an adequately staffed, trained, and equipped office with the ability to timely carry out the duties specified in the solicitation (20);
- (3) demonstrated ability to review title information and resolve any routine title issues (15); and
- (4) the extent to which the proposal demonstrates
 - (a) a realistic plan to safeguard closing proceeds, to ensure timely wire transfers of closing proceeds, and to forward closing packages in accordance with the solicitation (30); and
 - (b) sufficient internal controls to minimize the potential misuse or theft of funds relating to the sale of HUD-owned properties (30).

The RFP, which provided for multiple awards, stated that the awards would be made to the responsible offerors whose proposals, conforming to the solicitation, were most advantageous to the government, price and other factors considered. The RFP stated that technical and management quality was more important than price, but as proposals became more equal in their technical merit, price would become more important. The RFP provided that the awards could be made to other than the lowest priced offerors and contemplated an award in each geographic area solicited.

Two firms--the protester and TRW, the incumbent--submitted initial technical proposals for Area I by the amended closing date of November 15.¹ The agency's four-member technical evaluation panel (TEP) individually scored each

¹A third offeror was the only firm which submitted a proposal for Area II.

offeror's proposal for each technical evaluation factor by assigning points corresponding to adjectival descriptions (i.e., unacceptable--0 points; poor--1 to 3 points; fair--4 to 5 points; good--7 to 8 points; very good--9 points; and excellent--10 points). The individual scores for each evaluation factor were supported by narratives listing the strengths and weaknesses of each offeror's proposal. These scores then were multiplied by the assigned percentage weight factor to determine a total weighted technical score from each TEP member. The TEP then determined an overall weighted consensus score for each offeror.

The contracting officer, who also served as the source selection authority, reviewed the TEP's narratives, the corresponding point scores, and each offeror's price. The contracting officer determined that the proposals of the protester and TRW were both acceptable and therefore included both proposals in the competitive range for Area I. The contracting officer conducted oral and written discussions with the protester and TRW, and requested the submission of best and final offers (BAFO) by December 13.

The TEP evaluated the BAFOs using the identical scoring methodology, including narratives, as it used to evaluate the initial proposals. The protester's final weighted consensus score was 1,275 out of 1,450 points and TRW's final weighted consensus score was 1,349 out of 1,450 points. The TEP recommended that the award for Area I be made to TRW.

After reviewing the TEP's evaluation of BAFOs and each offeror's final price, the contracting officer concurred with the TEP's recommendation that the award for Area I be made to TRW as the most advantageous offeror. The contracting officer acknowledged that while the protester submitted a very good proposal and her prices for the base and option periods were slightly lower than TRW's prices, by less than 2 percent, TRW, because of its demonstrated satisfactory performance as the incumbent contractor, had greater technical expertise in HUD closings than the protester. Accordingly, the contracting officer determined that TRW's technical superiority offset the small price savings which would have resulted from awarding a contract to the protester. Therefore, on December 24, the contracting officer awarded a contract for Area I to TRW. The protester subsequently filed this protest challenging the TEP's evaluation of her proposal and the contracting officer's award decision.

The protester primarily argues that her proposal was improperly evaluated for evaluation factors (1)(c) and (2) and that she should have been rated higher for these

factors. She asserts that if her proposal had been properly evaluated, she would have received the award as the most advantageous offeror based on her proposal rating and lower price.

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 stated 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. Here, based on our review of the record, we conclude that the evaluation of the protester's proposal was reasonable and in accordance with the solicitation's stated evaluation criteria.

Evaluation factor (1)(c) required offerors to demonstrate prior and current experience in closing sales of "properties in the geographic location covered by this solicitation." Area I, the geographic location for which the protester submitted a proposal, was comprised of nine specifically named counties--eight in Nebraska and one in Iowa. These counties were listed on the cover page and in clause B.3. of the solicitation. The protester, who had closing experience in two metropolitan counties in the Omaha, Nebraska area, but no closing experience in the other seven, primarily rural, counties in Area I, argues that the TEP improperly deducted points because she lacked experience in closing properties in each separate county in Area I. The protester believes that her experience in two counties in Area I should have been sufficient to demonstrate her experience in Area I overall.

Here, the cover page and clause B.3. of the solicitation listed the agency's requirements that the awardee for Area I perform closing services in nine specifically named counties comprising Area I. Although evaluation factor (1)(c) did not expressly list the nine counties, the other sections of the solicitation clearly gave offerors notice that they were expected to demonstrate their experience in providing closing services in the area for which they submitted a proposal, and hence, all of the counties included within that area. We believe that the solicitation reasonably advised offerors that experience in providing closing services in the separate counties of Area I would be evaluated.

The record further shows that as part of written discussions, the contracting officer stated that in the protester's initial proposal, she had referenced her experience in the Omaha metropolitan area only. The

contracting officer requested that the protester address in her BAFO her experience in the remainder of Area I. In her BAFO, the protester acknowledged that her experience in closing sales of properties in Area I was limited to two metropolitan counties, but hoped that the absence of any experience in the other seven counties would not negatively impact the evaluation of her proposal. We find that the protester was aware under the solicitation and through discussions that the evaluation of experience would cover all designated areas and not just the two counties in the Omaha metropolitan area. Thus, the TEP reasonably deducted points for this aspect of her proposal. The record shows that in evaluating her lack of experience in closing sales of properties in the seven other counties, the protester still received roughly 80 percent of the points for this evaluation factor and was rated "good."²

The protester also argues that she was improperly evaluated for evaluation factor (2) because she did not furnish a resume for her secretary.

The solicitation required offerors to identify in their proposals all personnel expected to perform the contract and to provide a resume detailing the qualifications and experience of all key personnel who were expected to conduct closings. The record shows that in her initial proposal, the protester listed, by proper name and title, herself, another attorney, and a secretary (who had experience with computer accounting software) as the personnel expected to participate in performing the contract. The protester represented that these individuals were prepared to begin performing closing services if her firm were awarded the contract. The protester furnished her resume and stated that a resume for the other attorney would be furnished if she were awarded the contract. The protester made no reference to providing a resume for the secretary.

During discussions, the contracting officer specifically requested that the protester provide resumes with her BAFO for the second attorney and for the secretary, both of whom the contracting officer referred to by proper name. In her BAFO, the protester provided a resume for the attorney, but

²Additionally, while the protester contends that her experience in two metropolitan counties in Area I should have been sufficient to demonstrate her experience in Area I overall, arguing that the legal requirements and procedures for closing services did not really vary between the counties, the TEP narratives show that the legal requirements and procedures for closing services, including the manner in which property taxes were calculated, were not uniform across the nine counties.

included no resume for the secretary. The TEP evaluation narratives show that points were deducted because the protester did not submit the resume, as requested during discussions, for the secretary. Now, for the first time in her comments to the agency report, the protester explains that the reason she did not submit a resume for the secretary was because the individual proposed for the position was no longer employed by the protester at the time she submitted her BAFO and, in any event, the secretarial position was not a key personnel position.

While the protester, in her comments to the agency report, offers a reasonable explanation for why she did not provide in her BAFO a resume for the individual named and proposed for the secretarial position, as requested by the contracting officer during discussions, we find that the protester has offered this explanation too late to impact the evaluation of her proposal for evaluation factor (2). In our view, the TEP reasonably evaluated the information which was in the protester's BAFO and properly deducted points for her failure to respond to a specific discussion request. We also think a fair reading of the protester's initial proposal was that the secretary was important to her closing process and the agency reasonably could request a resume to evaluate the secretary's experience and capabilities.

The protester also challenges the contracting officer's price/technical tradeoff determination which resulted in the award to TRW. The protester contends, based on the closeness of the technical scores received, that her proposal was technically equal to TRW's proposal and that because she submitted a lower price, she should have received the award.

In a negotiated procurement, there is no requirement that award be made on the basis of the cost or price unless the RFP so specifies. Technical Evaluation Research, Inc., B-247200, May 1, 1992, 92-1 CPD ¶ ____; Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Here, the RFP did not require the awards to be made to the offerors with the lowest price, technically acceptable proposals. The RFP stated that the awards would be made to the offerors whose proposals, conforming to the solicitation, were most advantageous to the government, price and technical evaluation factors considered.

Where the RFP does not provide for award on the basis of the lowest price, 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, Hercules Engines, Inc., B-246731, Mar. 19, 1992, 92-1 CPD ¶ 297; General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44; Pemco Aeroplex, Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367.

Here, the record shows that the technical scores were relatively close and that the protester and TRW submitted proposals which were rated very good. However, the TEP found that the primary difference between the two offerors was that TRW, referencing in its proposal its current contract with HUD, demonstrated that it had significantly more closing experience in Area I as the incumbent contractor and that it had a proven, satisfactory performance record with HUD. The TEP narratives specifically show that HUD found TRW's performance over the past 2 years to be excellent with no performance problems noted. The record reflects the TEP's consideration of the advantages to the government if TRW were awarded the contract for the follow-on requirements--for example, continuity of services because of TRW's existing operation, its proven performance history, specifically with HUD, and its knowledge of the legal requirements and procedures for closing services in all counties in Area I. We believe the TEP reasonably gave TRW appropriate credit for its favorable incumbency experience.

An agency is not required to equalize competition with respect to incumbency advantages so long as the advantages do not result from unfair action by the government. See Institute of Modern Procedures, Inc., supra. Contrary to the position taken by the protester, we find the contracting officer reasonably determined that because of incumbency advantages, TRW submitted the most advantageous offer to the government and its technical superiority offset the less than 2 percent price savings which would have resulted if the award had been made to the protester.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel