



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sunbelt Properties, Inc.

File: B-245729.5; B-245729.6

Date: June 18, 1992

John Powell Walker for the protester.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Request for reconsideration is denied where request does not set forth errors of fact or law in prior decision that warrant reversing or otherwise modifying that decision.
2. Protest that procuring agency failed to establish a proper evaluation board and improperly utilized a predetermined cut-off score for determining acceptable proposals is dismissed as untimely when filed more than 10 working days after the protester knew or should have known the basis of the protest.
3. Protest that solicitation for real estate asset management services provided an unreasonable estimate of properties the successful contractor could be expected to manage is dismissed as untimely when not filed prior to the closing date for the receipt of proposals.

DECISION

Sunbelt Properties, Inc. requests that we reconsider our decision in Sunbelt Properties, Inc., B-245729.3, Mar. 12, 1992, 92-1 CPD ¶ 278, in which we denied Sunbelt's protest that the Department of Housing and Urban Development (HUD) improperly eliminated from the competitive range the proposal that Sunbelt submitted in response to request for proposals (RFP) No. 39-91-117, issued for real estate asset management services. Sunbelt also raises additional protest grounds concerning HUD's actions in conducting the procurement.

We deny the request for reconsideration, and dismiss the new protest grounds as untimely.

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The RFP was issued on May 15, 1991, for real estate management of properties owned by or in the custody of HUD in the Oklahoma City Metroplex area. The RFP listed the services that the successful contractor would have to perform in executing the contract. The solicitation also listed five technical evaluation criteria against which proposals would be evaluated. The RFP provided that technical factors were worth more than cost in the award decision and advised offerors that the evaluation would be based upon the completeness and thoroughness of the proposals submitted. The contract was to be awarded to the responsible offeror whose offer conformed to the solicitation and was most advantageous to the government.

Sunbelt submitted its proposal by July 9, 1991, the closing date for the receipt of proposals. The evaluation panel reviewed Sunbelt's proposal and awarded it 25 out of 100 points, essentially finding that Sunbelt did not provide sufficient information under any of the evaluation factors. The contracting officer reviewed the evaluation and eliminated Sunbelt from the competitive range because he concluded that the firm did not have a reasonable chance of being selected for award. After HUD denied a protest that Sunbelt submitted to the agency, Sunbelt protested to our Office.

We reviewed Sunbelt's proposal and the agency's evaluation of that proposal and concluded that HUD's evaluation was reasonable. Essentially, we found that HUD had reasonably concluded that Sunbelt did not provide sufficient detail in its proposal to demonstrate its ability to perform the contract. For example, evaluation factor one required offerors to have demonstrated experience in the management of single-family properties similar to, and in the same general areas as, those covered by the solicitation. In its brief proposal, Sunbelt simply stated that during the past 19 months, it was the area management broker (AMB) for HUD area XIII in the Oklahoma City area and that, during that time, it sold more than 135 homes representing in excess of \$6,500,000 from HUD's active inventory. The protester also stated that the average time from the date it acquired a property to the date a sale was closed was approximately 135 days, which is less than HUD's area-wide average of 180 days. Finally, Sunbelt stated that during the same time period, it managed for its own account other rental properties.

We found that the information Sunbelt provided was not sufficient to show demonstrated experience in the management of single-family homes. Specifically, while Sunbelt provided data concerning the number of properties that it sold and the total dollar value of that inventory, as well as the

number of properties that it managed for its own account, there was a total lack of information in the proposal concerning the specific duties and functions the firm previously performed or the experience it actually possessed. We also found that there was no reason that the evaluators should have known that Sunbelt had experience in managing single family homes simply because it was an AMB. In this regard, since the solicitation listed a number of services that an AMB could be required to perform, some of which could involve the management of single family homes, the evaluators could not know what specific services Sunbelt performed as an AMB or how extensive those services were. Similarly, we found that Sunbelt had not provided adequate information in its proposal under the other four evaluation factors for the agency to be able to conclude that Sunbelt could perform the contract.

We also noted that Sunbelt questioned whether the agency gave sufficient weight to cost in establishing the competitive range. We found that since Sunbelt's proposal was considered technically unacceptable, HUD could properly eliminate the firm's proposal from the competitive range without considering cost. See Star Techs., Inc., B-233489; B-233489.2, Mar. 16, 1989, 89-1 CPD ¶ 279.

Sunbelt requests that we reconsider and reverse our decision because in the decision we stated that the solicitation listed 40 services that the successful contractor would be required to perform when in fact that number was reduced to 36 services by amendment No. 1. Sunbelt also argues that HUD never told the firm that its proposal was considered technically unacceptable. Sunbelt asserts that by allegedly hiding its true objections to Sunbelt's proposal, HUD denied Sunbelt the opportunity to protest the true basis of its proposal's disqualification. Finally, Sunbelt asserts that the Chief of the Property Disposition Branch, who was a member of the technical evaluation committee as well as the contracting officer's supervisor, was biased against Sunbelt.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must either show that our prior decision contains errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1992); Head, Inc.--Recon., B-233066.2, May 16, 1989, 89-1 CPD ¶ 461. Sunbelt has not met this standard here.

First, the fact that our decision incorrectly stated that the solicitation listed 40 services that the successful contractor would be required to perform is not an error of

fact that warrants reversing our initial decision. While the number of services required was mentioned in describing the solicitation, it was not a fact on which we relied in reaching our conclusion that HUD properly eliminated the proposal Sunbelt submitted from the competitive range because Sunbelt did not provide sufficient information under any evaluation factor. In pointing out this error, Sunbelt has not explained how our conclusion that the proposal was properly eliminated from the competitive range would change if our decision had indicated the correct number of services the successful contractor could be required to perform. Nor has Sunbelt challenged any of the specific conclusions we reached concerning HUD's evaluation of the firm's proposal.

Second, while the agency may not have told Sunbelt that its proposal was considered technically unacceptable, our finding in this regard was based on our review of the evaluation documents which state that the evaluation panel considered the proposal technically unacceptable. Accordingly, our conclusion that HUD was not required to consider the cost Sunbelt proposed when it eliminated Sunbelt's proposal from the competitive range is not factually or legally incorrect.¹ In any event, Sunbelt was not harmed by the agency's failure to specifically use the term "technically unacceptable" since Sunbelt was provided with a detailed analysis of the basis for the agency's decision to eliminate the proposal from the competitive range. That is, Sunbelt was provided with the specific reasons why the agency found Sunbelt's proposal deficient under each evaluation factor. Sunbelt had the opportunity to address each finding in its protest. Accordingly, the fact that Sunbelt was not specifically told that the proposal was "technically unacceptable" did not prejudice Sunbelt's ability to protest the actual basis on which the proposal was eliminated from the competitive range.

Finally, there is no evidence to substantiate Sunbelt's allegation that the Chief of the Property Disposition Branch was biased against Sunbelt in the evaluation of Sunbelt's proposal. In this regard, Sunbelt has not produced any evidence to support this contention and we will not attribute bias in the evaluation of proposals on the basis of inference or supposition. See TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37. Moreover, as indicated in our decision, our review of the record demonstrates that the agency's evaluation of Sunbelt's proposal was reasonable and

¹We note, however, that the record demonstrates that in fact HUD did consider cost in establishing the competitive range.

that the proposal properly was rejected because it was unacceptable. Accordingly, there is no basis to conclude that the evaluation of the proposal was predicated on bias. Id.

On April 27, 1992, Sunbelt submitted an additional protest concerning the procurement at issue to our Office. In that protest Sunbelt asserts that because the expected cost of the contract to be performed under the solicitation was in excess of \$500,000, in conducting the procurement the agency was required by its internal regulations to use formal acquisition procedures including establishing a source evaluation board consisting of a chairperson, voting members, and advisors. Sunbelt argues that HUD did not comply with this requirement in that its evaluation board did not include any advisors. Sunbelt also protests that in conducting the procurement, HUD improperly used predetermined cut-off scores to establish a threshold level of acceptability for proposals. Finally, Sunbelt complains that the estimate in the solicitation of the number of properties that the successful contractor would be required to manage was unreasonable.

These bases of protest are untimely and will not be considered on the merits. Under our Bid Protest Regulations, a protest that is not based on improprieties apparent from the solicitation must be filed not later than 10 working days after the protester knows or should have known of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, Sunbelt asserts, without explaining how or why, that it learned of these three bases of protest on April 20. Our review of the record, however, shows that Sunbelt's first ground of protest--that HUD did not appoint any advisors to the evaluation board for the procurement--was evident from the contracting officer's statement of fact which was dated October 29, 1991, and submitted with the agency's report on Sunbelt's initial protest. Sunbelt's protest that the agency improperly used a predetermined cut-off score in conducting the procurement is also based on information that was in the same contracting officer's report. Sunbelt received the agency's report, at the latest, on November 8, 1991, which is when it submitted its comments on that report. Accordingly, at the latest, Sunbelt was required to raise these two issues no later than November 25, 1991, 10 working days later. Since they were not raised until April 27, 1992, they are untimely and will not be considered.

Sunbelt's protest that the solicitation contained an unreasonable estimate of the number of properties that the successful contractor would be required to manage also is untimely. A protest based upon an impropriety apparent from

the face of an RFP must be filed no later than the time set for the receipt of proposals. 4 C.F.R. § 21.2(a)(1). Here, the closing date for proposals was July 9, 1991. Since the estimate was apparent from the face of the RFP and Sunbelt did not file its protest that the estimate was unreasonable until April 27, 1992, it is untimely.

The request for reconsideration is denied and the new protest is dismissed.

Robert P. Murphy
for James F. Hinchman
General Counsel