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Decision

Matter of: Lakeside Escrow & Title Agency, Inc.

File: B-299745.2

Date: August 17, 2007

James S. DelSordo, Esq., Argus Legal, LLC, for the protester.
John L. Janczur, Esq., for Kokoszka & Janczur, P.C., the intervenor.
James E. Blackmon, Esq., Department of Housing and Urban Development, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's evaluation of proposal as technically unacceptable is denied where the record shows the procuring agency reasonably found deficiencies in the proposal, which made the proposal ineligible for award under the solicitation's evaluation scheme.

DECISION

Lakeside Escrow & Title Agency, Inc. protests the award of a contract to Kokoszka & Janczur, P.C. under request for proposals (RFP) No. R-ATL-01855, issued by the Department of Housing and Urban Development (HUD), for closing agent services. Lakeside objects to the evaluation of its proposal as technically unacceptable and not being afforded the opportunity for discussions.

We deny the protest.

The RFP, issued as a small business set aside, sought proposals for closing agent services for northern Illinois. The RFP contemplated the award of a fixed-price requirements contract for a base period with 4 option years.

The RFP provided for award on a "Best Value Tradeoff" basis and notified offerors that "HUD anticipates awarding contracts without entering into discussions with offerors." It further explained that "the final selection will be made using qualitative factors and price as the tradeoff factors for only those proposals determined to be technically acceptable for all factors evaluated" and that "[a]ny offers rated overall as unacceptable (including unacceptable but capable of being made acceptable) on

either or both of the Technical Evaluation Factors shall not be eligible for award.” RFP § M.1. The evaluation factors were: (1) prior experience and past performance,¹ (2) technical qualification and management capability, and (3) price. The first two factors were equal in importance and in combination were significantly more important than price. RFP §§ M.2, M.3. The RFP provided significant details as to how each technical factor was to be evaluated. For example, under the prior experience and past performance factor, the RFP required the offeror to provide documentation of prior closing agent experience, as well as references to support its past performance, including evaluation survey forms to be completed by the references. The technical qualification and management capability factor required offerors to “[a]t a minimum . . . provide adequate information to demonstrate the ability to perform and manage the work,” and provided a detailed description of what “minimum” evidence was to be included in the proposal.² RFP § M.3

Eleven proposals were received in response to the RFP, including Lakeside’s and Kokoszka & Janczur’s. Nine proposals, including Lakeside’s, were determined to be technically unacceptable. While Lakeside’s proposal received an acceptable rating under prior experience, it was not rated for past performance because Lakeside’s references failed to return their evaluation surveys in a timely manner, and it was rated unacceptable under the technical qualification and management capability factor based on a number of identified deficiencies. The source selection official determined that the two acceptable proposals were technically equal and made award to Kokoszka & Janczur because it offered the lowest price of the two. This protest followed.

Lakeside protests the agency’s evaluation finding it technically unacceptable. Our role in reviewing protests against evaluations is to examine the record to determine whether the agency’s judgment was reasonable and in accord with the evaluation factors set forth in the RFP, and with applicable statutes and regulations. See Delta Dental of California, B-296307, B-296307.2, July 28, 2005, 2005 CPD ¶ 152 at 6.

The agency found the following deficiencies in Lakeside’s proposal that led to its unacceptable rating under the technical qualification and management capability factor:

¹ This factor was comprised of two subfactors: prior experience and past performance.

² The RFP further explained that “proposals must contain enough detail to allow for thorough evaluation. . . [and] should address this particular solicitation with specific statements relevant to the PWS [performance work statement]. . . . The Government considers all unsubstantiated statements such as ‘The offeror understands and will perform in accordance with the PWS’ as being technically unacceptable.” RFP § L.6.

1. The work flow chart was not detailed in reflecting the process and steps the assigned cases would follow in a timely manner. [DELETED].
2. The narrative part of the work flow chart omitted discussion of notifications to the [Management and Marketing Contractor], deposit of earnest monies no later than 3 days after receipt, rental monies, cancelled contract notification, and the reporting requirements for audit and summary.
3. The proposal statement [DELETED] is an incorrect statement. Extension fees can be applied when the sale closes prior to the expiration of the extension, in which case the buyer shall be credited with a prorated . . . portion of the fee.
4. Offeror does not provide the appropriate requirements on how to handle third party closings.
5. Offeror does not detail requirements for closings, to include obtaining signatures, table funded closings, disbursing allowable expenses, providing customer service and broker surveys.
6. Offeror did not use specific statements to address asset control areas, but used an unsubstantiated statements, as [DELETED].
7. The proposal discussed charging the buyer wire transfer fees. As set forth in Section B of the solicitation, the contractor cannot separately charge for this item.
8. Offeror's quality control plan does not clearly articulate procedures that will prevent or eliminate fraud, waste, or abuse of funds or ensure quality and timely performance of the contract requirements as reflected by the examples listed below. . . .

[DELETED]

Contracting Officer's Statement at 4-6.

While the protester contests the validity of the bulk of these deficiencies, our review of the record reveals that the agency had a reasonable basis to find Lakeside's proposal contained numerous deficiencies that rendered it unacceptable. We discuss a few of these deficiencies below.

For example, the RFP provided that a proposal must provide “adequate information to demonstrate the ability to perform and manage the work,” which “at a minimum” would include:

(a) A detailed work flow chart reflecting the process/steps the assigned cases would follow, with necessary accompanying narrative, which will clearly reflect the offeror’s strategy for 1) timely completion of case assignments, 2) how work deadlines will be met, 3) that table funding of closings will occur, or if prohibited by state law, how funding of closings will be completed, and 4) how the geographic area will be serviced (including names of staff in key assignments).

RFP § M.3.

Our review of Lakeside’s proposal confirms that the agency reasonably found that Lakeside’s work flow chart did not sufficiently detail the process and steps the assigned cases would follow in a timely manner. The agency also reasonably found that the proposal lacked the required minimum level of detail required by the RFP, such as “no later than dates,” and contained some timelines not in compliance with the RFP requirements, such as notification of [DELETED] prior to the latest closing date.³ See RFP § C.4.B.3.c. Moreover, as reasonably found by the agency and not disputed by the protester, the proposal failed to discuss notifications of the Management and Marketing Contractor or the other required details mentioned in the second listed deficiency above.⁴ While Lakeside maintains that its proposal included dates that were in excess of what was required by the RFP, it also admits to at least one “typographical error.” Since Lakeside has not shown in its protest, nor do we find evidence, that the proposal contained the level of detail that the RFP requested with regard to the work flow chart, but merely disagrees with the agency’s assessment, the agency could reasonably find this lack of detail and other identified discrepancies to constitute deficiencies in Lakeside’s proposal.⁵

Another deficiency in Lakeside’s proposal found by the agency concerns the statement in Lakeside’s proposal that [DELETED] which the agency found did not comply with the RFP. Lakeside states that this statement is taken out of context from Lakeside’s proposal where it states:

³ Lakeside’s proposal provided for such notification [DELETED] prior to latest possible closing date. Agency Report, Tab 7, Lakeside Proposal, at 13.

⁴ The RFP specifications required the offeror to complete certain tasks within certain timeframes.

⁵ In contrast, our review of the record shows the awardee’s work flow chart reflects a far greater level of detail, including the required dates and timelines.

The Lender Relations Department shall reflect extension fees on the HUD-1 by [DELETED]. At no time shall the extension fees be applied to the proceeds due from the Buyer.

Agency Report, Tab 7, Lakeside's Proposal, at 15. As indicated by the agency, the RFP expressly allowed extension fees to be applied to the amount due to the buyer when the sale closed prior to the expiration of the extension. RFP § C.4.B.7.b. While, as noted by the protester, its proposal did recognize that extension fees could be credited, we agree with the agency that Lakeside's proposal was at best ambiguous as to whether extension fees could be applied to the proceeds due from the buyer and the agency could reasonably regard this as a proposal deficiency.

One more example involves Lakeside's quality control plan. The RFP stated that the following, "at a minimum," was required to be included in the proposal:

A clear plan for general oversight of the contract and quality control. An acceptable oversight and [quality control] plan will, at a minimum, identify the methods/processes the offeror will use to oversee contract performance to clearly ensure quality and timely performance and to prevent, detect, and correct any deficiencies in contract performance with little or no need for Government intervention. An acceptable [quality control] plan will also include acceptable procedures, processes, and controls the contractor will use to prevent/eliminate the potential for fraud, waste, or abuse of HUD funds and/or any other funds received in the performance of the contract.

RFP § M.3.

As to the specific problems found in its quality control plan identified in the eighth deficiency quoted above, Lakeside argues that the discussion in its proposal [DELETED] evidence of a back-up system; that the proposal discussed the reconciliation of bank accounts in [DELETED]; that throughout the proposal it discussed the importance of discovering issues or problems and quickly and efficiently correcting them; and that HUD has 24-hour access to all contractor records. Declaration of Lakeside's Owner at 1-3.

While Lakeside has shown that its proposal addressed quality control to some extent, it has not furnished a reason for us to question the agency concerns regarding the lack of detail in its quality control plan. Our review of the proposal confirms the reasonableness of the agency's concerns that the quality control plan was vague on timelines on corrective action on problems found in contract performance. Moreover, the fact that Lakeside's offices are equipped with a back-up system in the event that it is unable to access the Internet does not address the question the agency had regarding the potential failure of the [DELETED], which

was how Lakeside planned to eliminate fraud or misappropriation of HUD funds. Based on our review, the agency could reasonably assign a deficiency to Lakeside's proposal.

Thus, based on our review of the deficiencies reasonably found in Lakeside's proposal under the technical qualifications and management capability factor, the agency could reasonably determine its proposal unacceptable and ineligible for award under the solicitation's evaluation scheme, particularly given that the agency had received two acceptable, reasonably-priced, proposals.⁶

The protest is denied.

Gary L. Kepplinger
General Counsel

⁶ While Lakeside asserts that discussions should have been conducted, where, as here, the RFP specifically advised offerors of the intent to award a contract on the basis of initial proposals, an agency is generally not obligated to conduct discussions. Incident Catering Servs., LLC, B-296435.2 et al., Sept. 7, 2005, 2005 CPD ¶ 193 at 9. We need not address Lakeside's other contentions, including those regarding its proposal weaknesses and the past performance evaluation, given that Lakeside's proposal was reasonably determined to be unacceptable.