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**United States Government Accountability Office
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Decision

Matter of: Resource Title Agency, Inc.

File: B-402484.2

Date: May 18, 2010

William T. Schill, Esq., for the protester.

James S. DelSordo, Esq., Argus Legal, LLC, for Lakeside Escrow & Title Agency, Inc., an intervenor.

Elisa J. Yochim, Esq., Department of Housing and Urban Development, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of protester's proposal is denied where the record shows that agency evaluation was reasonable and consistent with the solicitation.

DECISION

Resource Title Agency, Inc., of Independence, Ohio, protests the rejection of its proposal and the award of a contract to Lakeside Title & Escrow Agency, Inc., also of Independence, Ohio, under request for proposals (RFP) No. R-CHI-00991, issued by the Department of Housing and Urban Development (HUD) for real estate property sales closing services for the state of Ohio. The protester objects to the agency's evaluation of proposals and to its decision to award only one contract.

We deny the protest.

BACKGROUND

The solicitation explains that when a borrower defaults on a loan insured by the Federal Housing Administration, the lender may file a claim for insurance benefits with the agency; in exchange for payment of the benefits, the lender conveys the foreclosed property to HUD, which then sells it. The closing services sought here are in support of these sales.

The RFP, which was issued on April 14, 2009 as a small business set-aside, sought services for a base period of 1 year and three 1-year options. For each year, the solicitation provided a guaranteed minimum, a maximum, and the best estimated quantity of closings to be performed. The RFP stated that the government intended to award two contracts under the solicitation. The solicitation provided for award to the responsible offeror(s) whose proposal(s) represented the best value to the government based on the following factors: technical and management approach, same or similar experience, past performance, and price. In the evaluation, the first two factors were to be of equal importance and the third factor of lesser weight, and the non-price factors, when combined, were to be of significantly greater importance than price.

The agency received 20 proposals by the May 4 closing date. The technical evaluation panel (TEP) determined that 11 of the proposals, including the protester's, were technically unacceptable.¹ The TEP found the remaining nine proposals to be technically acceptable. Of the nine acceptable proposals, Lakeside's was the lowest in price (at \$4,514,080);² it was also the only proposal to receive a rating of excellent under the experience and past performance factors and one of only two proposals to receive a rating of good under the technical/management approach factor.³

On December 14, the contracting officer notified the other firms that Lakeside had been selected as the apparent successful offeror. Seven offerors responded with small business size protests. On January 8, 2010, the Small Business Administration determined that Lakeside was a small business under the applicable size standard of \$7 million and thus was eligible for award of the contract, and on January 22, the contracting officer awarded Lakeside a contract. The agency notified the protester of the award on January 25, whereupon Resource requested a debriefing. The

¹ Of the 11 proposals that were rated unacceptable, eight (including the protester's) were rated as poor under both the technical/management and experience factors and three received a rating of fair under one of the factors and a rating of poor under the other. All of the proposals were rated as either fair or unknown for past performance.

² The other technically acceptable proposals ranged in price from \$5,139,000 to \$14,547,000.

³ All of the technically acceptable proposals other than Lakeside's received ratings of fair under the experience factor and all but one received ratings of fair under the technical/management factor; in addition, all were rated as either fair or unknown for past performance.

agency furnished the protester with a written debriefing on February 2.⁴ Resource protested to our Office on February 12, objecting to the evaluation of both Lakeside's proposal and its own and complaining that it was inconsistent with the terms of the RFP for the agency to have awarded only one contract.

ANALYSIS

As noted above, the evaluators determined the protester's proposal to be technically unacceptable, finding that it contained many weaknesses (and thus merited a rating of poor) under the technical/management approach factor, and that the protester had failed to furnish required information regarding its experience (and thus also merited a rating of poor under that factor). The protester disputes a number of the evaluators' findings. We first address its complaints regarding the findings of weakness under the technical/management approach factor.

The evaluation of proposals is a matter within the discretion of the procuring agency, since the agency is responsible for defining its needs and deciding on the best methods of accommodating them. We will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. LOGMET, B-400535, Oct. 30, 2008, 2008 CPD ¶ 199 at 3. Since an agency's evaluation is dependent on the information furnished in a proposal, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate. Id. An offeror that fails to do so runs the risk that its proposal will be evaluated unfavorably. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

The solicitation furnished offerors with detailed guidance as to the required content of their proposals; with regard to their technical/management approaches, offerors were instructed to furnish the following:

- Plan of Operations
 - A detailed plan of operations that (1) reflects the offeror's strategy for timely completion of work assignments throughout the state, including details "concerning [the offeror's] awareness of closing customs or practices unique to certain localities throughout OH, if any exist and . . . how those requirements will be met;" (2) provides a detailed discussion of customer service goals and processes; (3) describes the offeror's methodology for determining staffing levels, including how the offeror will address any increases in order

⁴ The agency also furnished Resource with a second debriefing letter dated February 11. The second letter furnished responses to questions submitted by the protester on February 4.

quantities up to the specified maximums; and (4) furnishes evidence of the offeror's ability to meet the RFP's financial resource requirements.

- Oversight and Quality Control
 - A clear and concise oversight and quality plan that satisfactorily (1) identifies the methods/processes that the offeror will use to ensure timely and quality performance and to prevent, detect, and correct any deficiencies in performance, including information on intended software applications, and (2) sets out acceptable procedures and controls to prevent/eliminate the potential for fraud, waste, and abuse of funds received. The plan is to address the management and oversight of the HUD trust account and to discuss how documents are managed and controlled to prevent the disclosure of purchasers' personal information to unauthorized third parties.

- Key Personnel
 - A thorough description of key personnel, including individuals serving as contract manager, alternate contract manager, quality control manager, escrow and account fund manager, and all closers, and the following:
 - An organizational chart identifying all key personnel, including their title, office location, and whether or not the individual is an employee or subcontractor.
 - A description of the participation of all team members/subcontractors, including letters of commitment from any individuals who are not employees of the offeror.
 - A description of the effort to be contributed by the key personnel under the contract, including the individual's role, qualifications, and the percentage of time involved in performance of the contract.
 - A certification of criminal background check for all personnel.
 - A statement as to whether or not any key personnel have been committed to any other current or proposed contract, teaming arrangement, or employment, and, if so, details of any such commitment.

RFP at 79-80.

The evaluators identified the following weaknesses in Resource's proposal:

- Plan of Operations
 - The proposal did not address local closing customs or practices. The proposal did not provide the offeror's strategy for completion of work assignments throughout the state of Ohio.
 - The proposal did not provide a detailed discussion of the offeror's customer service goals and processes.
 - The proposal did not provide [the offeror's] methodology for determining staffing levels or how they will address any increases in volume.

- Quality Control Plan
 - The proposal provided no information on [the offeror's] intended software applications.
 - The proposal does not provide the offeror's procedures and controls to prevent/eliminate the potential for fraud, waste and abuse of HUD and/or other funds received in the performance of the contract. The proposal did not discuss how the offeror would limit access to the funds, who would have check writing and wire authority or how the funds would be safeguarded with a 3rd party closer.

- Key Personnel
 - An organizational chart was provided showing the names and positions of most key personnel. Closers are considered key personnel but none were identified. The organizational chart provides the location of the two offices but does not identify who will work where as required by the [evaluation] factor.
 - The proposal did not address the percentage of time each employee would dedicate to the performance of the contract. Resumes were provided for identified key personnel. Closers are considered key personnel; however, closers were not identified.
 - The offeror did not provide the required statement as to whether or not key personnel have been committed to any other contract, teaming arrangement or employment.

Technical Evaluation Report at 36-38. As noted above, the protester takes issue with a number of these findings.

Resource argues that the evaluators unreasonably concluded that it had failed to furnish a detailed discussion of its customer service goals and processes.⁵ The protester maintains that pages 5 and 6 of its proposal identified “the processes to be used to ensure that the requirements of the HUD contract are satisfied and that the customer receives the best possible service.” Protester’s Comments, Apr. 5, 2010, at 11. Pages 5 and 6 of the protester’s proposal identify the major tasks to be accomplished under the contract—for example, establishing and maintaining an escrow account, performing closing transactions, conducting title searches, and preparing deeds. The protester’s argument, as we understand it, is that it addressed the requirement for a detailed description of its customer service goals and processes by summarizing the tasks that it will perform under the contract because it will serve the customer by accomplishing the contract tasks. We think that the protester’s argument is unpersuasive; in requesting information regarding customer service goals and processes, the agency clearly was not seeking a summary of the contract performance goals and processes. Because the protester otherwise furnished only general statements regarding its approach to customer service, such as that it “is committed to the highest quality of service to all of its clients,” Resource Proposal at 22, we think that the evaluators reasonably concluded that it had not adequately addressed the requirement for a detailed discussion of its customer service goals and processes.

Next, the protester argues that the evaluators unfairly criticized its proposal for failing to explain how increases in the volume of closings would be addressed. According to the protester, such an explanation was unnecessary because it proposed a level of staffing capable of meeting any volume of closings up to the maximum specified in the RFP.

First, we point out that the weakness identified by the evaluators was not simply that Resource had failed to explain how it would address increases in the volume of closings, but, more broadly, that it had failed to describe its methodology for determining staffing levels. The protester has not challenged the latter finding; that is, it does not dispute that it did not explain how it would adjust staffing levels to correspond to fluctuations in the numbers of closings.⁶ With regard to the

⁵ In its comments on the agency report filed on April 5, the protester also argued that it was unreasonable for the evaluators to have identified as a weakness its failure to furnish required information pertaining to local closing customs or practices. This argument is untimely because Resource did not raise it in its initial protest despite being advised of the agency’s finding at the time of its February debriefing. In this connection, our Bid Protest Regulations require that to be timely, this ground of protest must have been filed no more than 10 days after the basis of protest was, or should have been, known. 4 C.F.R. § 21.2(a)(2) (2010).

⁶ Similarly, the protester challenges the evaluators’ finding that it failed to describe procedures for preventing the misappropriation of HUD funds, but does not contend

protester's argument that it did not need to address how it would deal with increases in quantities up to the specified maximum because its proposed staff is capable of meeting the maximums, if the protester's position is that it proposed a staff large enough to address any upward fluctuations in the number of closings, then it needed to say so in its proposal, which it did not do. As previously noted, it is the responsibility of the offeror to submit an adequately written proposal.

Resource also disputes the agency finding that it did not provide information on its intended software applications. The protester maintains that its proposal did identify several software programs--specifically, programs that prepare settlement statements, archive documents, and permit daily reconciliation of transactions. According to the protester, the government is unfairly penalizing it for the evaluators' lack of familiarity with the advanced software that it is proposing. In response, the agency argues that the protester failed to provide details regarding the proposed software's capabilities and features; that is, the proposal provided only general information such as that Resource would maintain files using its archival system, 'FileScan'.TM; use a "secure accounting program that enables 'E-Bank Recon', whereby the bank's file of [its] transactions is downloaded daily and reconciled;" and utilize "its special computer software to accurately and timely prepare all HUD-1 settlement statements." Resource Proposal at 6, 25. Given that the solicitation instructed offerors to include information on the software applications that they intended to use to ensure timely quality performance, we think that it was the responsibility of the protester to furnish some detail in its proposal as to its software's capabilities and features, which--with the possible exception of the accounting software--Resource failed to do.

Resource also contends that the evaluators unreasonably determined that it had failed to furnish a statement in its proposal as to whether or not any key personnel were committed to another contract. The protester asserts that it was clear from the introductory portion of its proposal--where Resource states that the firm's key personnel were "fully committed to the performance of essential roles as described in the proposal," Resource Proposal at 2--that its proposed personnel had no other commitments. We do not think that the foregoing statement clearly conveys the absence of other commitments on the part of the protester's key personnel; being

(...continued)

that it discussed the specific matters noted by the evaluators pertaining to the management and oversight of the HUD fund account and the management of documents to prevent the disclosure of purchasers' personal information to third parties, such as how it would limit access to the fund and how the funds would be safeguarded when a third party closer is used. Likewise, it argues that it should not have been criticized for failing to include closers on its organizational chart, but does not dispute that it failed to identify, and furnish resumes for, its closers, as required by the RFP.

fully committed to performance does not necessarily convey that the protester's personnel are committing to perform on a full-time basis.

In sum, we are not persuaded that the evaluators' findings of weakness, and the resultant rating of the protester's proposal as poor under the technical/management approach factor, lacked a reasonable basis or deviated from the terms of the solicitation.

We turn then to the protester's complaint that its proposal should not have received a rating of poor under the experience factor.

The RFP required offerors to provide information demonstrating prior experience in performing the same or similar work within the past 3 years. The solicitation specified that, at a minimum, this information was to include "a detailed description of services, location performed, monthly volume of services, period of performance and contact information including name, title, address, telephone and e-mail address." RFP at 80.

Resource responded to the requirement for detailed information demonstrating related experience by providing a list of six clients, with a brief description of the work performed for each;⁷ it also furnished completed past performance evaluation surveys for four of the six. While the past performance surveys furnished more detail than the experience list, none of them made clear the monthly volume of residential closings performed by the protester—two of the surveys furnished no information regarding the volume of services performed by the protester; one noted that Resource had performed "real estate residential closings and title searches" and that the volume of services performed had "averaged hundreds per month," but failed to furnish any breakdown as to the type of service (*i.e.*, how many were closings and how many were title searches); and the fourth stated that the protester had performed "residential real estate title and closing services" in volumes varying from a "few dozen" to "well over 100" per month—again, however, the reference furnished no breakdown as to the type of service furnished. *Id.* at 47, 49. Where, as here, a solicitation requires an offeror to furnish detailed information regarding its experience to enable the agency to assess the similarity of its past work efforts to the solicited work, and the offeror fails to provide the requested information, it is reasonable for the evaluators to assign the proposal an unfavorable rating under the experience factor. See Prudent Techs., Inc., B-297425, Jan. 25, 2006, 2006 CPD ¶ 16 at 3-4.

⁷ For example, the protester furnished the following summary of its work for one of the firms: "Our firm has closed thousands of transactions over the years and we are given high marks for our speedy closings and remedying of title problems. We are also given high marks for customer service." Resource Proposal at 38.

The protester also challenges the agency's evaluation of Lakeside's proposal, its affirmative determination of Lakeside's responsibility, and its decision to award only one contract under the solicitation. We will not consider these arguments. Given our conclusion that the overall rating of its technical proposal as unacceptable was reasonable, Resource would not be in line for award if either of these grounds of protest were sustained; thus it is not an interested party to raise either argument. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. In this connection, only an interested party may file a protest, and only an offeror with a direct economic interest in the outcome qualifies as an interested party. Bid Protest Regulations, 4 C.F.R. §§ 21.0(a)(1), 21.1(a).⁸

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁸ While, as noted above, the protester is not an interested party to object to the agency's failure to award more than one contract, we point out that it is well-settled under our case law that a statement in a solicitation that the agency intends to award two contracts does not legally obligate the agency to make two awards. See, e.g., Canadian Commercial Corp./Liftking Indus., Inc., B-282334 et al., June 30, 1999, 99-2 CPD ¶ 11 at 9.