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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: American Title Services, a Joint Venture

File: B-404455

Date: February 4, 2011

Richard Talley for the protester.

Jud E. McNatt, Esq., Department of Housing and Urban Development, for the agency. Jeanette M. Soares, Esq., Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement for real estate closing services, an agency reasonably found the protester's proposal technically unacceptable where the solicitation provided for the evaluation of the offeror's ability to legally perform closings, and the protester's proposal did not demonstrate that the protester, a joint venture consisting of an out-of-state, non-licensed firm and an in-state, licensed firm, could legally perform closings in California.

DECISION

American Title Services, (ATS), a joint venture, of Greenwood Village, Colorado, protests the rejection of its proposal and the award of contracts to Chicago Title Company of Bakersfield, California, by the Department of Housing and Urban Development (HUD) under request for proposals (RFP) No. R-DEN-02467 for real estate closing services.¹

We deny the protest.

¹ ATS is a joint venture of American Title Services Company, of Greenwood Village, Colorado, and Fresno Escrow, Inc., of Fresno, California. Agency Report (AR), Tab 7, Joint Venture Agreement, Aug. 31, 2010. This agreement provided that the joint venture would be managed and controlled exclusively by American Title Services Company. *Id.* at 3.

BACKGROUND

The RFP sought offers for closing agent services for two areas of northern California. RFP amend. 1, § B.1. Offerors were informed that the agency would award a contract for each area to the offeror submitting the lowest-priced, technically acceptable proposal. Id. § M.3. The following non-price evaluation factors were identified: licensing/insurance, prior experience, past performance, qualifications of proposed staff, management capability, and quality control. Id. § M.1.

For the licensing/insurance factor, offerors were instructed to demonstrate their ability to perform and manage the work to be performed for each geographic area. At a minimum, offerors were required to describe, and submit copies of, applicable California law with respect to licensing and permits to perform real estate closings, and to discuss how the offeror satisfies California laws and requirements. Id. § L.7(1). The RFP also provided that in addition to considering the offeror's ability to satisfy licensing requirements as part of the agency's technical evaluation, the ability to satisfy the licensing requirements would also be considered a definitive responsibility matter. Id. Offerors were warned that a proposal that did not show

that the offeror knows, understands, and meets the legal requirements in the state of California for an entity to conduct real estate closings under the laws of that state, and does not submit copies of their state license and insurance with the Technical Proposal shall not be eligible for award.

Id.

Six firms, including ATS and Chicago Title, an incumbent contractor,² submitted proposals that were evaluated by the agency's technical evaluation panel (TEP). The evaluators determined that ATS's proposal was technically unacceptable under the licensing/insurance factor.³ AR, Tab 18, TEP Evaluation Report, at 7-8. Specifically, the TEP found that ATS had not shown that it could perform closings in California. The TEP was also concerned that, although ATS provided insurance information for Fresno Escrow, its California joint venturer, it had not provided insurance

² Chicago Title states that it has been performing closing services in northern California for HUD since 2008. Awardee's Technical Proposal at 2.

³ The TEP also found that ATS's proposal was technically unacceptable under two other evaluation factors. In response to ATS's agency-level protest, HUD concluded that ATS's proposal was unacceptable under only the licensing/insurance factor. Accordingly, we focus our decision upon the evaluation of ATS's proposal under this factor.

information for the joint venture itself.⁴ Id. at 8. Chicago Title's proposals were found to be technically acceptable.⁵ In this regard, the TEP noted that Chicago Title was fully licensed, had a qualified staff, and was currently performing closing agent services in California. Id. at 9.

Chicago Title received award for both areas of northern California.⁶ Following a debriefing, ATS filed an agency-level protest with HUD. HUD denied the agency-level protest, and ATS filed this protest with our Office.

DISCUSSION

ATS challenges HUD's determination that its proposal was technically unacceptable under the licensing/insurance factor.⁷ Protest at 2. With respect to the protester's ability to legally conduct real estate closings in California, ATS argues that there is no clear restriction under California law prohibiting a joint venture comprised of a licensed California firm and a non-licensed, Colorado firm, from conducting real estate closings in California. Comments at 4. Although ATS acknowledges that the joint venture agreement provided that American Title Services Company would have complete authority and control of the ATS joint venture, it argues that this did not affect Fresno's ability to conduct closings in California. See id. at 3. Accordingly, ATS contends that HUD's unacceptability determination is unreasonable, because HUD has not demonstrated that ATS will be unable to legally perform real estate closings in California.

In reviewing protests of alleged improper evaluations and source selections, our Office examines the record to determine whether the agency's judgment was

⁴ HUD acknowledges in its report that insurance policies were submitted for both joint venturers, but not the joint venture itself. See Contracting Officer's (CO) Statement at 9.

⁵ Chicago Title submitted separate proposals for each northern California area.

⁶ With respect to area one, Chicago Title's proposal was the lowest priced of the technically acceptable offers. With respect to area two, Chicago Title submitted the only technically acceptable offer. AR, Tab 18, TEP Evaluation Report, at 9.

⁷ In its initial protest, ATS appeared to argue that HUD was required to discuss its unacceptability determination with ATS before making award to Chicago Title. See Protest at 2. In its report, HUD addressed ATS's arguments in this regard, contending that it was not required to conduct discussions with offerors. See Legal Memorandum at 11; CO's Statement at 9. ATS did not respond to the agency's arguments in its comments, and therefore we find that it abandoned this protest allegation. COB EventLizenz GmbH, B-401999.2, Jan. 12, 2010, 2010 CPD ¶ 24 at 3 n.2.

reasonable and in accord with the stated evaluation criteria and applicable procurement laws. See ABT Assocs., Inc., B-237060.2, Feb., 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The RFP here required offerors to affirmatively demonstrate their ability to legally perform real estate closings in California. In this regard, offerors were required to identify in their proposals applicable California law. See RFP § L.7(1). The TEP found that ATS had not made such an affirmative showing in its proposal with respect to the joint venture. Specifically, the evaluators were concerned that ATS had not provided any information in its proposal "regarding how a Colorado joint venture member can legally manage its California joint venture partner with regard to performing closing services under a California license." See AR, Tab 18, TEP Evaluation Report, at 8.

We find HUD's evaluation of ATS's proposal to be reasonable. Although ATS argues that HUD did not demonstrate that the joint venture would be unable to legally perform closings in California, it was the protester's responsibility under the RFP to affirmatively establish that the joint venture could comply with California law in performing the contract. ATS did not do so in its proposal. That is, despite the fact that Fresno may be licensed to perform closings in California, the joint venture agreement provided that the joint venture (which submitted the offer here) would be controlled and managed by American Title Services Company. ATS did not show in its proposal or in its protest submissions that this business arrangement would be permitted under state law to perform closings in California. In short, ATS merely disagrees with the agency's evaluation, which does not demonstrate that the evaluation was unreasonable.⁸

ATS also complains that HUD treated ATS and Chicago Title disparately in its evaluation. Specifically, the protester objects that Chicago Title's proposals were found acceptable under the licensing/insurance factor, even though the awardee did not include copies of all the applicable California laws as required by the

⁸ ATS also challenges HUD's determination that the protester did not satisfy the solicitation requirements for insurance. Because we find that ATS's proposal was reasonably determined to be unacceptable with respect to the licensing requirements, we do not need to address this argument.

solicitation.⁹ We find no merit to this argument. Here, the CO recognized that Chicago Title failed to provide copies of all applicable California laws as required. See AR, Tab 19, Source Selection Decision, at 2. The CO found, however, that this was a minor informality, because Chicago Title's proposals identified the applicable California law, provided copies of its state license to perform closings, and demonstrated that the firm was currently performing closings in California. Id.; Chicago Title Technical Proposal at 2, 4. In short, the record shows that the firms were not treated disparately, given that Chicago Title's proposals showed that the awardee could perform closings in California in accordance with that state's laws and that ATS's proposal did not.

The protest is denied.

Lynn H. Gibson
General Counsel

⁹ ATS states that it is not asserting that Chicago Title's proposals should have been found unacceptable for failing to provide copies of applicable California laws. Supp. Comments at 1.