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**Comptroller General
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Decision

Matter of: Patry Family Realty, Inc.

File: B-402296.7; B-402296.9

Date: October 7, 2010

Andrew J. Mohr, Esq., and William J. Bainbridge, Esq., Cohen Mohr LLP, for the protester.

Blythe I. Rodgers, Esq., Todd P. Maiberger, Esq., and Patrick W. Simien, Esq., Department of Housing and Urban Development, for the agency.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal as unacceptable is denied, where the agency's evaluation of the proposal was consistent with the evaluation criteria and the assessment of a significant weakness for key personnel and a deficiency for transition was reasonable.

DECISION

Patry Family Realty, Inc., of Old Orchard Beach, Maine, a small business, protests the award of multiple contracts by the Department of Housing and Urban Development (HUD) under request for proposals (RFP) No. R-OPC-23447 for residential property management services. Patry argues that HUD misevaluated the firm's proposal.

We deny the protest.

BACKGROUND

HUD issued the RFP on September 16, 2009, seeking proposals to manage residential properties located in 10 geographic areas that are administered through four homeownership centers (HOC). RFP attach. 1. The properties consist of single-family homes that were covered by Federal Housing Administration financing, and that have been conveyed to HUD by lenders following foreclosure, pursuant to the terms of the single-family mortgage insurance program. Agency Report (AR) at 1. In order to manage the resulting inventory of single-family homes until they can

be sold, HUD uses property managers to inspect, make certain enhancements and repairs, perform ongoing maintenance, and provide security for each property.

Offerors were permitted to submit only one proposal in response to the RFP, but they could propose to provide services in any or all of the 10 geographic areas within the four HOC areas.¹ In order to take custody of property records and provide the services, the RFP specified that each contractor was required to establish “a fully staffed and equipped office in the HOC jurisdiction for the awarded contract area.” RFP amend. 3, attach 2 (¶ H.12). HUD further explained the requirement for this office in responding to questions from the potential offerors:

[Question:] This section [regarding office facilities] is unclear. The vendor is required to maintain a fully staffed office in the awarded HOC contract area. Is it required to have an office in each contract area or in the areas controlled by each HOC? In other words, if an FSM vendor is awarded two contract areas, is it required to have two offices if the contracts awarded are under the jurisdiction of the same HOC?

Response: A fully staffed office is required within the HOC jurisdiction. If a vendor is awarded more than one contract area, additional offices will not be required within that HOC.

RFP amend. 3, at 36.

In response to other offerors’ questions, HUD explained that the contractor was required to provide a fully staffed office within the jurisdiction of the HOC, and also that key personnel were to be located in that office. RFP amend. 3, at 25, 43.

Elsewhere, the RFP included a number of transition requirements, which ranged from establishing a physical presence, acquiring technology, and retaining qualified staff, to obtaining local licenses and submitting quality control, contingency, and property maintenance plans. Other transition tasks included taking custody from the incumbent contractor of the records for the existing inventory of properties to be managed, and inspecting and dealing with necessary emergency repairs and hazardous conditions at any of those properties. RFP amend. 3, attach. 3, at 47-51.

The RFP provided that proposals would be evaluated based on a pass/fail criterion (possession of adequate credit access), and four additional factors, listed in descending order of importance: technical approach, quality control plan, past performance, and price. RFP amend. 3, attach. 5, at 245-46. Under the technical approach factor (at issue here), the RFP provided that the evaluation would consider: whether the offeror’s approach demonstrated the capacity to provide all

¹ The 10 geographic areas ranged in size from one to eight states.

required services to the entire contract area (and to expand capacity as required), the offeror's procedures for properly maintaining properties, the offeror's list of proposed key personnel and the positions they would hold, and the offeror's ability to mobilize resources to accomplish the transition requirements described in the solicitation. RFP amend. 3, attach 5, at 245. The RFP provided for the award of multiple contracts in each geographic area, some as small business set-asides, based on an assessment of which proposals offered the best value under the evaluation scheme. Id. at 247-48.

HUD received 49 proposals. Patry submitted a proposal to provide services in all 10 geographic areas (and thus, all 4 HOC areas). As relevant to the protest issues, Patry's proposal listed six key personnel by name and title, but the proposal did not identify to which of the four HOC offices each person would be assigned. AR, Tab 49, Patry Proposal, Vol. I, at 3. In describing Patry's technical approach, the proposal explained how the firm would inspect and manage each additional property when it was assigned. Id. at 6-7. However, the proposal did not mention or explain the firm's approach to the specific requirements of the transition.

After reviewing Patry's proposal, HUD's evaluators assigned two strengths, a significant weakness, and a deficiency to the proposal under the technical approach factor. The strengths acknowledged that Patry's proposal presented a detailed workflow plan, and a comprehensive explanation of how the firm would handle the property maintenance requirements. However, the significant weakness was based on Patry's failure to identify key personnel for each of the HOC areas where it submitted a proposal, and the evaluators noted that if Patry received awards to perform in multiple HOCs, that omission posed a risk. The evaluators assigned a deficiency due to the proposal's failure to discuss Patry's approach to mobilizing resources to perform the transition requirements. The evaluators considered the omission of a transition approach to pose uncertainty, which increased the risk of unsuccessful performance to an unacceptable level. AR, Tab 22, Technical Evaluation Panel Report, at 166-67. Based on the significant weakness and deficiency, the evaluators rated Patry's proposal unacceptable under the technical approach factor.² AR, Tab 22, Technical Evaluation Panel Report, at 166.

After considering the ratings and report by the technical evaluation panel, the source selection advisory committee (SSAC) concurred, finding that Patry had submitted an unacceptable proposal, and therefore the SSAC did not consider awarding a contract to Patry. AR, Tab 25, SSAC Report, at 4-10. The source selection official reviewed and adopted the rationale of the SSAC, and selected 11 firms other than Patry for

² A rating of unacceptable was defined as: a proposal that "fails to meet one or more of the Government's stated requirements," or where a proposal "does not demonstrate [that the offeror] has the ability to mobilize resources to accomplish the Transition requirements." AR, Tab 23, Source Selection Plan, at 39-40.

contract awards in multiple geographic areas. AR at 5; Tab 26, Source Selection Decision Document, at 1-2.

After being notified of the award and receiving a debriefing, Patry filed this protest.

DISCUSSION

Patry protests the evaluation of its proposal as unacceptable under the technical approach factor. In this regard, Patry argues that the assessment of both a significant weakness and a deficiency under the technical approach factor was unreasonable.³

In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting activity. Barens Group, L.L.C., B-276082, B-276082.2, May 9, 1997, 97-1 CPD ¶ 164 at 6. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation, and complies with applicable procurement statutes and regulations; a protester's mere disagreement with the evaluation does not show it lacked a reasonable basis. Id. Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas within each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. Chenega Tech. Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 5.

With respect to the significant weakness assigned to Patry's proposal for not identifying key personnel for each HOC area, Patry argues that the RFP did not explicitly require it to identify in its proposal which key personnel were assigned to which HOC. Protest at 21. HUD argues that its evaluation was reasonable and consistent with the RFP requirement to identify key personnel and their positions, in light of the requirement that key personnel be assigned to each HOC office. Supp. AR at 9.

As noted by HUD, the RFP required offerors to list key personnel and identify their positions, and it also required offerors to staff the HOC for each awarded contract area. RFP amend. 3, at 25, 36, 43; attach. 2 (¶ H.12). In Patry's case, since it proposed to perform in geographic areas within all four HOCs, it was reasonable for HUD to consider whether, consistent with Patry's proposed scope of services, key

³ Although another offeror was awarded a contract notwithstanding a significant weakness associated with its key personnel, the other offeror's proposal was not also assigned a deficiency. Supp. AR at 9. Therefore, to the extent that Patry alleges disparate treatment in the selection of this offeror's proposal for award, we deny the protest ground.

personnel were assigned to staff each of the HOCs. In short, we agree with HUD that the evaluation of the technical approach factor reasonably encompassed consideration of whether an offeror that proposed to perform services in multiple HOCs had proposed key personnel to staff the office in each of the HOCs. See Health & Human Servs. Group, B-402139.2, Apr. 8, 2010, 2010 CPD ¶ 205 at 3-4. Since Patry's proposal did not provide information showing the assignment of key personnel to offices in each HOC where Patry proposed to provide services, HUD reasonably assigned a significant weakness to the proposal.⁴

Next, with respect to the deficiency assigned to Patry's proposal for failing to address how it would mobilize resources to accomplish the transition, Patry argues that the RFP did not require the firm to explain how it would perform the transition. Additionally, Patry maintains that the transition requirements are undemanding, and thus required only limited resources, and correspondingly little explanation. Protest at 26-27; Comments at 8; Supp. Comments at 8. Patry also argues broadly that the "entirety of Patry's proposal unquestionably demonstrated" the firm's ability to mobilize resources for transition, especially given the fact that the firm listed its existing office in its home region. Suppl. Comments at 9.

HUD responds that Patry's proposal does not address any transition activities, and this omission was reasonably evaluated as a deficiency. HUD argues that an agency cannot make a "leap of faith" that an offeror is prepared to take over responsibility for an inventory of properties from the incumbent contractor where the firm's proposal fails to demonstrate that. HUD argues that particularly in light of the troubled state of the domestic housing market now, the agency cannot simply assume that an offeror will capably assume its property management duties. AR at 10-12.

An offeror bears the responsibility to submit an adequately written proposal that demonstrates the merits of its approach, and risks rejection if it fails to do so. Managed Care Concepts, LLC, B-402750, July 15, 2010, 2010 CPD ¶ 164 at 4. Here, the RFP notified offerors that the technical approach evaluation would consider the

⁴ The evaluators noted that the significant weakness regarding Patry's key personnel could be mitigated if Patry received only contracts for properties in a single HOC. See AR, Tab 22, Technical Evaluation Panel Report, at 167. Even though HUD could make award for fewer geographic areas than an offeror proposed, Patry submitted a proposal to perform services in all four HOC areas, and therefore the potential mitigation of this weakness in one HOC area does not call into question the reasonableness of HUD's assignment of a significant weakness to the overall proposal. To the extent that Patry complains that the agency unreasonably evaluated proposals on an "all or nothing" basis, see Supp. Protest at 4-6, the record shows that the agency evaluated proposals consistent with the RFP, considering staffing for each HOC and taking this into account in the evaluation.

offeror's ability to mobilize resources to accomplish a variety of transition tasks, from establishing an office, to actually taking responsibility for managing an inventory of properties from the incumbent contractors. RFP amend. 3, at 245; id. attach. 3, at 47-50. Patry failed to present an approach to transition, or otherwise demonstrate its ability to accomplish those tasks. We are not persuaded by Patry's arguments that the evaluators should have discerned its response from the proposal as a whole, and that the transition tasks are so simple that no specific response was needed beyond the indications in its proposal that Patry currently performs property management services in its home office area. Accordingly, we find that the evaluation of Patry's approach to transition as a deficiency was consistent with the RFP and was reasonable.

Because the evaluation of Patry's significant weakness and deficiency under the technical approach factor was reasonable, we have no basis to question the resulting unacceptable rating assigned to Patry's proposal.⁵

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁵ Patry raises additional challenges to the evaluation of its proposal; however, we need not address these issues given our finding, above, that its proposal was reasonably determined unacceptable on other bases. Patry also challenges other aspects of the evaluation involving the awardees' proposals; however, it is not an interested party to raise these protest grounds, given that its proposal was reasonably found unacceptable and ineligible for award, and other firms that did not receive awards are in line for award ahead of the protester. See 4 C.F.R. §§ 21.0(a)(1), 21.1(a) (2010); Resource Title Agency, Inc., B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9.