



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Intown Properties, Inc.

File: B-272524

Date: October 21, 1996

Melton Harrell for the protester.

Mary C. Merchant, Esq., Department of Housing and Urban Development, for the agency.

John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably excluded protester's proposal from the competitive range where the proposal was considered technically inferior to all of the competitive range proposals, and its price was substantially higher than two of the four competitive range proposals.

DECISION

Intown Properties, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. H06R95006700000, issued by the Department of Housing and Urban Development (HUD) for real estate asset manager (REAM) services. Intown challenges a number of alleged weaknesses listed by agency technical evaluators in the firm's proposal and argues that the evaluation process was "superficial" and included numerous other flaws.

We deny the protest.

The RFP contemplated the award of a firm, fixed-price, indefinite quantity contract for 1 year and 3 option years. Award was to be made to the responsible offeror whose proposal conformed to the solicitation and was most advantageous to the government, price and other factors considered. The RFP listed as technical evaluation factors (1) staff; (2) management plan; and (3) past/current contract performance and prior experience, and stated that the combined merit of these factors would be more significant than price in the selection decision.

The agency received 15 proposals in response to the RFP. The contracting officer established a competitive range of four proposals, with the following technical scores and prices for the base and option years:

Technical scores	Prices
100	\$10,102,800
100	\$12,559,400
95	\$29,294,080
87	\$24,252,580

Intown's proposal, priced at \$23,250,240 and assigned a technical score of 76, was considered unacceptable. The agency ultimately awarded a contract to Golden Feather Realty Services, Inc. at a price of \$9,310,800.

The evaluation of proposals and the resulting determination of whether a particular offer is in the competitive range are matters within the discretion of the contracting agency, since it is responsible for defining its needs and the best method of accommodating them. Crown Logistics Servs., B-253740, Oct. 19, 1993, 93-2 CPD ¶ 228. In reviewing challenges to an agency's competitive range determination, our Office does not independently reevaluate proposals; rather, we examine the evaluation to determine whether it was reasonable and in accordance with the solicitation criteria. Id.

Intown's challenge to the evaluation focuses on a number of criticisms by agency evaluators concerning the firm's proposal. For instance, under the staff evaluation factor, on which Intown was assigned 50 out of 60 possible points, the evaluators commented that "[s]ome of the key personnel will only be assigned to this contract for one month." Intown argues that this comment, while true, ignores the permanent assignment of several key personnel to the contract. Intown also argues that no firm, except the incumbent, can have staff standing by and available for this contract.

The agency explains that the evaluators were concerned with Intown's plan to assign some key personnel to the contract for 1 month and then replace them. The evaluators believed this arrangement could create a lack of continuity, that there would be insufficient time to establish a working relationship with HUD, and that the replacement staff would not have appropriate knowledge and experience.

We have no basis to conclude that the evaluators' concerns were unreasonable. First, although Intown states that the evaluators ignored the permanent assignment of several key personnel to the contract, since the criticism focused on "some" key personnel, we think it is implicit that the evaluators recognized that other key personnel would be permanently assigned. Moreover, Intown concedes that it proposed to assign staff to the contract and then to replace those personnel a

month later. While Intown maintains that this is the only arrangement available to it, this does not respond to the concerns of the evaluators about continuity and the experience and knowledge of the replacement staff. We agree with the evaluators that these are legitimate concerns that justify the decision to assign the firm less than the full points available under the staffing evaluation factor.

Under the management plan evaluation factor, the evaluators commented on Intown's proposal:

"The offeror's plan just repeats the solicitation without giving specifics.

"Offeror does not understand the full scope of the solicitation because they do not give details of their plan of action."

The agency explains that the evaluators were concerned that Intown's management plan was generic and it did not accurately reflect the solicitation requirements for Texas, where the work is to be performed. For these reasons, and others, the evaluators assigned Intown's proposal a score of 12 of a possible 25 points for this factor.

Noting that the management plan included in its proposal was 59-pages long, Intown argues it is not true that its plan just repeats the solicitation. According to the protester, its management plan covers all aspects of the duties outlined in the RFP and is based on the firm's experience as an REAM contractor in Texas and other states. Intown also challenges the criticism that its management plan is not detailed and argues that, even if the plan lacked details, it is unreasonable to assume that the firm does not understand the work since Intown has many years of REAM experience managing many thousands of houses. In addition, Intown argues that the evaluators deducted an unreasonable number of points from the total available points to it under the management plan evaluation factor.

Although Intown's management plan appears to us to address many, if not all, of the duties required under the contract, in some areas, such as the initial inspection of assigned properties, the plan is not even as detailed as the RFP statement of work. In addition, our review reveals that the plan is generic and was not prepared specifically for this solicitation. For instance, although Intown's proposal stated that initial pest control inspections would be at the contractor's expense, the agency points out that this was the procedure under a previous contract, but not under this solicitation. We think that, based on this proposal statement, the evaluators could reasonably question the offeror's understanding of the requirements of this contract.

Also, to the extent Intown expected to rely on its performance of previous contracts to demonstrate its capability, it did so at its own risk. In negotiated procurements, since the agency's technical evaluation of proposal quality generally is based upon information submitted with the proposal, the burden is on the offeror to submit an adequately written proposal. See Will-Burt Co., B-250626.2, Jan. 25, 1993, 93-1 CPD ¶ 61. Under the circumstances, while the protester disagrees with the evaluators' conclusions regarding its management plan and asserts that its proposal should have received a higher score on that factor, Intown has not provided any basis to establish that its evaluation was unreasonable or inconsistent with the solicitation's evaluation criteria.

Under the past performance evaluation factor, Intown notes that one of the individual evaluator score sheets for its proposal includes no points and questions whether its proposal was assigned any points by that evaluator for that factor. Although one evaluator's score sheet included no points for Intown's proposal under the past performance evaluation factor, the other three evaluators did assign individual scores and the overall, "consensus" score assigned to Intown's proposal for that factor is essentially an average of those three individual scores. This procedure is consistent with that used throughout the evaluation and the missing score resulted in no penalty to Intown.

Although Intown raises various other matters concerning the technical evaluation of its proposal, we find nothing in the evaluation that is arbitrary, improper or inconsistent with the RFP. As a result, we conclude that the evaluation and scoring of Intown's proposal was reasonable.

We also conclude that the contracting officer reasonably excluded Intown's proposal from the competitive range. The competitive range consists of all proposals that have a reasonable chance of being selected for award, and generally includes proposals that are technically acceptable or reasonably susceptible of being made acceptable through discussions. American Envtl. Servs., Inc., B-257297, Sept. 8, 1994, 94-2 CPD ¶ 97. However, even a technically acceptable proposal may be excluded from the competitive range if, based upon the array of technical ratings actually obtained by the offerors and consideration of proposed prices, the proposal does not stand a real chance of being selected for award. The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271. We will not disturb a determination to exclude a proposal from the competitive range unless the record indicates that the determination was unreasonable. Motorola, Inc., B-247937.2, Sept. 9, 1992, 92-2 CPD ¶ 334.

Intown's proposal, which was considered unacceptable, was assigned a score of 76, compared to the four competitive range proposals which received scores of 87, 95, 100, and 100. In addition, in the view of agency officials, Intown's proposal would require substantial rewriting to become acceptable. Moreover, Intown's price was

considerably higher than those of the two proposals with technical scores of 100. Since Intown's proposal was considered technically inferior to all of the competitive range proposals, and in light of the firm's high price, there was no reason to believe that the firm had a reasonable chance for award. Under the circumstances, the agency's exclusion of Intown's proposal from the competitive range is not legally objectionable.

The protest is denied.

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