



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Shel-Ken Properties, Inc.

File: B-277250

Date: September 18, 1997

Charlotte C. Jenkins for the protester.

Virginia Kelly Stephens, Esq., Department of Housing & Urban Development, for the agency.

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DIGEST

Protest of elimination of proposal from the competitive range based on disagreement with agency's evaluation of the protester's proposal is denied where the evaluation was conducted in accordance with the criteria announced in the solicitation, and the record supports the evaluators' conclusions.

DECISION

Shel-Ken Properties, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. H03R96015600000, issued by the Department of Housing and Urban Development (HUD) for real estate asset management (REAM) services for single-family properties owned by HUD in its District of Columbia Office jurisdiction. Shel-Ken alleges that its proposal was improperly evaluated, that the contracting officer was biased against the firm, and that HUD was required to make a referral to the Small Business Administration for certificate of competency consideration before the agency could exclude Shel-Ken's proposal from the competitive range.

We deny the protest.

The RFP was issued on July 24, 1996, as a total small business set-aside for the acquisition of management and other related services. The RFP listed the following evaluation factors, with their relative weights, to be scored on a 100-point scale: prior management experience (30 points); past performance (25 points); office location(s) (20 points); and management capability (25 points). Award was to be made to the offeror submitting "the proposal that best conforms to the solicitation, and is most advantageous to the Government (that proposal which represents the best value.)"

The agency received 17 timely submitted proposals, including the protester's. After the proposals had been scored by individual technical evaluation panel (TEP) members, the TEP developed a consensus score for each proposal. Five offers were rated as technically acceptable, and seven offers, including Shel-Ken's, were deemed technically unacceptable in their current form but capable of being made acceptable through clarifications/discussions. These 12 proposals were included in the competitive range.

On February 3, the contracting officer notified Shel-Ken by letter that its proposal was considered to be within the competitive range for further negotiations, and identified areas in the proposal that required additional information and/or clarification. The letter requested further detail or specific information regarding Shel-Ken's experience, especially the property management experience of proposed employees; past performance (such as complete mailing addresses for references); proposed satellite offices; equipment to be provided; and responsibilities of the various proposed employees. The letter also transmitted an amendment to the RFP. HUD instructed Shel-Ken to submit an amended proposal and to complete a pricing schedule that was included in the solicitation amendment.

Shel-Ken submitted an amended proposal which was evaluated with the result that the protester's overall score improved by a total of 9 points. Nonetheless, the TEP concluded that the additional information and changes that Shel-Ken had provided were not sufficient to make its proposal acceptable. For example, the TEP continued to have concerns regarding the level of the firm's relevant experience and to question whether Shel-Ken proposed to provide fully equipped main and satellite offices.

Five amended technical proposals were considered superior to Shel-Ken's. Among these five, three offered a lower price. The contracting officer concluded that Shel-Ken's proposal did not have a reasonable chance of being selected for award and excluded it from the competitive range. Shel-Ken was notified of its exclusion, and this protest followed. The contract award has been stayed pending resolution of the protest.

Shel-Ken alleges that its proposal was excluded from the competitive range as the result of an improper evaluation. First, Shel-Ken essentially argues that its prior experience was not given the credit to which it was entitled under the evaluation criterion.

The RFP lists "prior management experience" as the most heavily-weighted single technical evaluation factor, and states:

The offeror shall provide evidence of the offeror's experience in the management of single family properties similar to the type of inventory covered by this solicitation. Prior management experience

must demonstrate the offeror's ability to perform the duties required under this RFP. If the offeror's property management experience is in areas other than single family property management, the offeror's proposal must demonstrate, to the satisfaction of HUD, that the experience relates to the duties required by this RFP. Include a description of work currently in progress and/or completed within the last three to five years that is relevant to this procurement. Include names, addresses, and telephone numbers of contact points for these clients. The government reserves the right to request information from any source so named. The government also reserves the right to obtain information from sources not named in the proposal.

In Shel-Ken's initial proposal, under the caption of "corporate history," Shel-Ken lists the dates, inventories, and references for its past and current contracts. The previously completed contracts consist of three HUD contracts that Shel-Ken performed between 1987 and 1993, including 600 single-family homes between 1987 and 1989, 150 homes between 1989 and 1990, and a range of 18 to 100 homes between 1990 and 1993. The list of current contracts is comprised of four private-sector contracts, with inventories ranging from 1 townhouse to 58 townhouses. Although the lists include references for these contracts, as well as a list of each property that was covered under the HUD contracts, Shel-Ken's initial proposal provided no narrative or other information concerning the type of contract or the nature of the work that was actually performed.

In response to the discussion request to provide additional information concerning its experience, Shel-Ken responded with a narrative account of the services provided. The TEP considered this response to be a "better, more detailed explanation of the company's experience," and increased Shel-Ken's score in this area from 16 to 21 points (out of a possible 30 points). The agency noted that the level of inventory that Shel-Ken has managed in the past is significantly lower than required under the current procurement, which is projected to be approximately 100 new homes per month, and questioned whether the protester's experience is comparable to this requirement. In addition, the RFP sought information regarding offerors' experience during the past 3 to 5 years, and Shel-Ken's only comparable-volume contract was performed 8 to 10 years ago.

Shel-Ken contends that its experience under Area Management Broker contracts involved more difficult management responsibilities than would be the case under the REAM contract at issue here, and therefore should have received more credit. The protester takes the position that its expertise would allow it to "manage the entire inventory Nationwide of approximately 29,000 with the same precision and speed as 200."

The evaluation of proposals is primarily a matter within the agency's discretion since it is responsible for defining its needs and for deciding on the best methods for accommodating them. Seair Transport Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458 at 4. Thus, we question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the RFP's evaluation criteria. Id.

Here, the record establishes that HUD's evaluation was reasonable. The RFP instructed offerors to provide evidence of their experience in the management of single family properties "similar to the type of inventory covered by this solicitation." (Emphasis added.) The volume of houses managed by Shel-Ken under its current contracts does not approach the volume involved in this procurement. Further, the solicitation calls for a description of relevant work completed within the last 3 to 5 years; Shel-Ken's proposal described experience with comparable-volume contracts which occurred 8 to 10 years ago. The TEP's downgrading of Shel-Ken's proposal in this area was consistent with the RFP evaluation criterion. The evaluation factor at issue here pertains to the value of the offeror's actual past experience. Thus, the protester's mere assertion that it is capable of managing a significantly higher volume of properties than it has in the past does not entitle its technical proposal to receive an enhanced score under an evaluation factor intended to assess a firm's actual experience. While the additional information elicited from Shel-Ken during discussions permitted the evaluators to increase the protester's score in this area, the agency properly discounted Shel-Ken's most relevant experience as stale and downgraded the more recent experience because of the lack of comparable volume. Shel-Ken's mere disagreement with the agency does not in itself render the evaluation unreasonable. Seair Transport Servs., supra.

Shel-Ken also objects to the agency's evaluation of its proposal under each of the remaining evaluation factors. For example, under the "past performance" evaluation factor, the RFP required offerors to provide evidence of their past similar performance, including points of contact and references that the agency could contact. When the agency attempted to contact the protester's listed references, only one firm responded. Shel-Ken alleges, in essence, that the agency did not make a sufficient effort to contact the references. However, Shel-Ken's score for this factor was in the "excellent" range, notwithstanding the paucity of information available to the agency, and Shel-Ken does not allege any deviation from the evaluation criteria or otherwise show why it believes this factor was improperly scored. In these circumstances, there is no basis to object to the agency's evaluation in this area.

Under the "office location" evaluation factor, the RFP required offerors to "provide evidence of an adequately staffed and equipped office (or offices) - or the ability to establish such an office in a timely manner - reasonably located to provide convenient service to HUD and its clients in the geographical area to be served, and to efficiently perform all contractual requirements." Shel-Ken stated in its initial proposal that it would establish a main office and two satellite offices. In written discussions, the contracting officer requested additional details concerning the offices and the specific property management experience of the proposed staff. Shel-Ken provided some additional information, and its score in this area was increased by 4 points. Shel-Ken takes the position that because the RFP referred to "office (or offices)," and Shel-Ken's proposed main office satisfied the minimum of one office, its proposal was entitled to essentially a maximum score without taking the satellite offices into consideration. The premise that satisfaction of a minimum requirement entitles a proposal to a perfect score is meritless on its face, and we conclude that the agency's evaluation was consistent with the terms of the RFP.

Under the "management capability" evaluation factor, offerors were to describe their organization and, among other things, "provide the names, position descriptions and resumes to support the qualifications, including relevant experience, specialized training and education, of all proposed key personnel." The agency report shows that throughout the evaluation process, and as indicated to Shel-Ken during discussion, the TEP had concerns regarding the property management experience of the proposed staff. Further, the TEP considered the protester's plan to have required weekly inspections performed by subcontractors to be a weakness. Shel-Ken objects, pointing out that its amended proposal stated that three of its staff members "have more than eight (8) years experience in the field of property management." However, the information provided in Shel-Ken's proposal did not disclose the nature of the experience and was too vague to permit favorable evaluation. For example, for one employee, the proposal stated that an employee had worked for Shel-Ken "on a part-time basis, for the past several years." It neither described the type of work performed nor the actual length of experience. For the proposed field operations director, the proposal described only the duties that the proposed employee would perform, and listed no experience at all. We see no basis to object to the agency's downgrading of Shel-Ken's proposal in this area. The technical evaluation of a proposal is based on information submitted in it and an offeror runs the risk of having its proposal rejected or downgraded if the proposal submitted is inadequately written. See Research Analysis and Maintenance, Inc., B-242836.4, Oct. 29, 1991, 91-2 CPD ¶ 387 at 5.

In its summary of its protest comments, Shel-Ken also lists a number of instances in which the agency allegedly applied evaluation factors that were not disclosed in the solicitation. For example, the protester alleges that the TEP required the entire proposed staff to have more than 10 years property management experience rather than the key personnel only; that offerors had to be currently managing a particular number of properties; that staff experience had to date from no earlier than 1993;

and that the CEO had to have extensive experience in the operation of computers. In each instance, Shel-Ken is either mistaken with respect to the requirements as they appeared in the RFP, or mistaken as to the basis for the evaluation conclusions. The TEP questioned the exact length and type of experience of the proposed personnel, which was not discernible from Shel-Ken's proposal; the evaluation scheme in the RFP required experience in the management of an inventory (i.e., number and type of properties) similar to the requirement here; the RFP asked for relevant experience completed within the last 3 to 5 years; and the CEO's qualifications were questioned because of the type of work for which she was proposed to have responsibility in the proposal. In short, these allegations are refuted by the record.

Shel-Ken mistakenly asserts that its proposal cannot be eliminated from the competitive range without referral of the matter to the Small Business Administration (SBA) for consideration under that agency's certificate of competency (COC) proceedings. Where an agency finds that a small business is nonresponsible, the agency is required to refer the matter to the SBA for consideration under the COC procedures. Federal Acquisition Regulation Subpart 19.6. In a negotiated procurement, SBA referral is mandatory where the solicitation includes for evaluation on a pass/fail basis a criterion that is traditionally a responsibility-type factor, and the contracting agency determines that a small business's proposal should be rejected for failing that criterion. This is so because, in these circumstances, the agency is viewed as having made a nonresponsibility determination notwithstanding its use of and reliance on a technical evaluation criterion. Docusort, Inc., B-254852, Jan. 25, 1994, 94-1 CPD ¶ 38 at 5-7. However, the requirement for referral does not apply where, as here, proposals are comparatively evaluated and assigned a comparative adjectival rating. In these circumstances, the agency does not make a responsibility determination, but simply integrates its relative assessment of past performance into the overall determination of which proposal is most advantageous to the government, and there is no requirement for referral to the SBA. Tri-Servs., Inc., B-256196.4, Sept. 30, 1994, 94-2 CPD ¶ 121 at 3-4.

Shel-Ken also makes various allegations of agency bias against the protester and dishonesty on the part of HUD personnel. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. In addition to producing credible evidence showing bias, the protester must demonstrate that the agency bias translated into action that unfairly affected the protester's competitive position. Id.

Shel-Ken has furnished no credible evidence to support its allegation; moreover, since the record supports HUD's evaluation of Shel-Ken's proposal (and its consequent exclusion from the competition), it provides no basis upon which to question the motives of the evaluators.¹

The protest is denied.

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¹Shel-Ken also alleges in its protest comments that the agency "tampered" with documents. Shel-Ken received two copies of the agency report and contracting officer's statement from which source-selection sensitive materials had been redacted. Because the two copies differed slightly from each other, Shel-Ken accuses the agency of malice and deception. The agency explains that when the protester complained that it had not received a legible copy of these documents, the agency took that opportunity to revise its previous redactions slightly. We have reviewed the documents; the variations are minor and insignificant, and they provide no basis for protest.