Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tidewater Homes Realty, Inc.

File: B-274689.5

Date: August 11, 1998

Howard W. Roth, III, Esq., Arthur Serratelli, Esq., and Daniel R. Weckstein, Esq., Vandeventer Black, for the protester.
Anthony F. Radd, Esq., and Steven E. Heretick, Esq., and Glen M. Robertson, Esq., Payne, Gates, Farthing & Radd, an intervenor.
Virginia Kelly Stevens, Esq., Department of Housing & Urban Development, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award based on a lower-priced, lower-rated offer rather than a higher-rated, higher-priced one under a procurement in which technical merit was worth more than cost/price is proper where the agency reasonably determined that the higher-rated offer was not so significantly superior to the lower-rated one as to be worth the associated cost premium.

DECISION

Tidewater Homes Realty, Inc. protests the award of a contract to CitiWest Properties, Inc. under request for proposals (RFP) No. H03R95062400000, issued by the Department of Housing and Urban Development (HUD), for real estate asset manager services for single-family properties owned by HUD or in its custody in the Virginia Beach area.

We deny the protest.

The RFP, issued June 1, 1995, provided for the award of a fixed-price indefinite-quantity contract for a base year with 3 option years on a best-value basis with technical factors worth more than cost/price. RFP §§ B, M.2.a. The technical evaluation factors and corresponding values were as follows:

> 1. Demonstrated experience in the management of single-family properties similar to and in a like area as those covered by this solicitation. [25 points]

2. Demonstrated experience in developing lists of needed repairs, such as is required by HUD's Minimum Property Standards (MPS), and estimating the cost of repairs. [25 points]

3. Demonstrated experience in soliciting repair bids, coordinating and overseeing repair work, and inspecting for satisfactory work completion. [15 points]

4. Demonstrated experience in managing a rental program, including establishing fair market rentals and collections from present and former tenants, for single-family properties. [10 points]

5. Understanding of HUD objectives and the required tasks as specified in the solicitation. [10 points]

6. Evidence of adequate office--staffed with appropriately trained staff and equipped appropriately (or the ability to establish such), reasonably located so as to provide convenient service to HUD and its clients in the area to be served, and to carry out all duties specified in the solicitation. [15 points]

RFP § M.3. Among other things, the RFP required offerors to submit a completed Form 477, List of Repairs (included in RFP), for a specified property in Virginia Beach and cautioned that omission of the form may adversely affect the evaluation of the offeror's proposal under factor 2. RFP § L.2.b.

Twelve proposals were submitted in response to the RFP. Five proposals were included in the competitive range, including Tidewater's and CitiWest's. After advising the offerors (except CitiWest) of the weaknesses/deficiencies in their proposals, HUD received BAFOs. CitiWest's BAFO, at an evaluated unit price of $1,317, had no notable weaknesses/deficiencies and received a technical score of 91 points. Tidewater's BAFO, at an evaluated unit price of $1,233, received a technical score of 47 points. HUD made award to CitiWest on August 23, 1996, determining that its technically superior proposal was worth the additional cost. CitiWest has been performing the contract since that time.

Tidewater protested this award, and in Tidewater Homes Realty, Inc., B-274689, Dec. 26, 1996, 96-2 CPD ¶ 241, we sustained Tidewater's protest because the record evidenced that Tidewater's proposal was evaluated unequally vis-à-vis CitiWest's proposal, particularly under factors 2 and 6. In this regard, as discussed in our decision, under factor 2, Tidewater's proposal, which contained similar information and detail as Citiwest's proposal, received 6 points, while Citiwest's proposal received 24 points, despite not submitting a Form 477 or assessing the Virginia Beach property specified in the RFP. Similarly, under factor 6, the agency awarded Tidewater's proposal 7 points for being vague as to location of the office space and

the division of responsibilities among staff members, even though its proposal addressed these matters, while CitiWest's proposal was awarded 12 points, despite lacking the detail that Tidewater's proposal was said to lack.

In response to our decision, HUD convened a new technical evaluation panel (TEP) to reevaluate the previously submitted BAFOs. CitiWest's proposal received a score of 81 points. Under factor 2, the proposal received 25 points, despite the absence of a Form 477, because the TEP found that CitiWest otherwise demonstrated its experience in identifying needed repairs and estimating costs in accordance with HUD standards. However, the TEP downgraded the proposal under factor 5 to a score of 8 points because CitiWest did not submit a Form 477 on the specified Virginia Beach property. In addition, the proposal was downgraded under factor 6 to a score of 7 points because it merely reported on the office it obtained after award and reflected that CitiWest had not selected an office as of the time of award.

Tidewater's proposal received a score of 99 points and two other proposals were scored at 97 points. Based on the differences in point scores, the proposals of CitiWest and another lower-scored offeror were eliminated from the competitive range. Tidewater's lowest-priced proposal of those included in the competitive range was then selected for the award as the best value.

CitiWest then protested that HUD treated it unfairly and unequally because while the other offerors were given the opportunity to improve their proposals through discussions, CitiWest had not been provided a similar opportunity prior to its exclusion from the competitive range. We agreed in CitiWest Properties, Inc., B-274689.4, Nov. 26, 1997, 98-1 CPD ¶ 3, sustaining CitiWest's protest and finding that HUD failed to conduct meaningful discussions with Citiwest with regard to the weaknesses/deficiencies in its proposal indicated in our initial decision, which were the reasons given by HUD for downgrading CitiWest's proposal, but had not been brought to CitiWest's attention during the discussions leading to the initial award. We recommended that HUD reopen and conduct appropriate discussions with all offerors in the initially established competitive range, including CitiWest, request BAFOs, and make a new source selection.

In response to this decision, HUD conducted another round of discussions with the competitive range offerors, pointing out the weaknesses/deficiencies in each offeror's proposal, including CitiWest's, and requested revised BAFOs by February 3, 1998. CitiWest's BAFO, at the lowest total price of $1,423,200, received a point score of 90 points. The TEP awarded CitiWest 9 additional points under factor 1 due to experience it had gained while performing the contract, but declined to upgrade CitiWest's BAFO under factors 5 or 6. The score on factor 5 did not change because even though CitiWest had submitted a Form 477 on the specified property, the TEP found that it could not modify the original score because the property was no longer in the original condition. The score on factor 6 did not

change because the necessary details relating to CitiWest's office were established after award had been made of the initial contract, and the TEP did not believe it could consider CitiWest's post-contract award status in evaluating this factor, but only CitiWest's undefined description in its previous BAFO. Tidewater's BAFO, at the third lowest total price of $1,639,200, received the highest technical score of 100 points. Two other proposals received point scores of 97; one of these proposals had a slightly lower price than Tidewater's.[1]

The contracting officer determined that CitiWest's lowest-priced BAFO represented the best value to the government because the difference between the scores of the higher-rated proposals was found not to represent a material superiority in these offerors' ability to perform the contract and did not provide significant technical superiority which would justify paying the approximately 15 percent price premium. The contracting officer specifically noted that CitiWest's proposal received maximum point scores on four of the six technical factors, including factors 1 and 2, which were the most important, and that although CitiWest's proposal was downgraded under factors 5 and 6, it had submitted an acceptable report on an alternate property reflecting its ability to estimate repairs, and was currently operating in acceptable office space for the contract. The source selection official concurred with the contracting officer's determination and the award to CitiWest was confirmed.

Tidewater now protests that HUD misevaluated CitiWest's proposal under factors 1, 2, 5, and 6. Specifically, Tidewater asserts that it was improper for the TEP to credit CitiWest for experience it obtained while performing the contract. Tidewater also argues that CitiWest's proposal should not have received the maximum point score under factor 2 and should have been further downgraded under factor 5, since it did not submit a meaningful Form 477 on the property specified in the RFP which had been previously repaired. Tidewater contends the alleged misevaluation of CitiWest's proposal resulted in an improper cost/technical tradeoff and best value decision.

Notwithstanding a solicitation's emphasis on technical merit, an agency may properly select a lower-priced, lower-technically rated proposal if it decides that the cost premium involved in selecting a higher-rated, higher-priced proposal is not justified, given the acceptable level of technical competence available at the lower price. See Research Triangle Inst., B-278254, Jan. 12, 1998, 98-1 CPD ¶ 22 at 6. The determining factor is not the difference in technical merit, per se, but the contracting agency's judgment concerning the significance of that difference. In this regard, evaluation scores are merely guides for the source selection authority, who must use his or her judgment to determine what the technical difference between competing proposal might mean to contract performance, and who must consider

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[1]The other proposal was scored at 67 points.

what it would cost to take advantage of it. In making such a determination the source selection authority has broad discretion, and the extent to which technical merit may be sacrificed for price, or vice versa, is limited only by the requirement that the tradeoff decision be reasonable in light of the established evaluation criteria. Where, as here, cost is secondary to technical considerations, selection of a lower-priced, lower-rated proposal over a higher-rated proposal requires an adequate justification, i.e., one showing that the agency reasonably concluded that the higher technical score did not reflect actual technical superiority or that the higher technical score was not worth the cost premium. Id. at 6-7.

Here, the record reflects that although three proposals were rated higher than CitiWest's, HUD reasonably did not consider any technical superiority reflected in Tidewater's and the other higher-ranked proposals to be worth the associated cost premiums.

First, we believe that the agency can properly credit CitiWest's proposal for experience it has obtained and the office it has set up since the award of the contract. In this regard, when an agency undertakes to implement corrective action resulting from an improper award, it generally has the discretion to permit offerors to update certain aspects of their proposal due to changed circumstances, and to evaluate the updated proposals. See NavCom Defense Elecs., Inc., B-276163.3, Oct. 31, 1997, 97-2 CPD ¶ 126 at 3; BNF Techs., Inc., B-254953.4, Dec. 22, 1994, 94-2 CPD ¶ 258 at 4. Here, the best value determination states that CitiWest has been successfully performing this contract since 1996 and that CitiWest's office has been appropriately equipped and located since contract performance commenced, and that this shows that CitiWest has the ability to successfully perform the contract. Source selection officials are not bound by the recommendations or evaluation judgments of lower-level evaluators, even though the working-level evaluators may normally be expected to have the technical expertise required for such evaluations. Research Triangle Inst., supra, at 9. Here, we cannot find unreasonable or improper the source selection official's decision to discount the evaluated technical advantages of the other proposals, based on CitiWest's current contract performance, in making the award selection. See Veda, Inc., B-278516.2, Mar. 19, 1998, 98-1 CPD ¶ 112 at 11-12.

Similarly, while Tidewater contends that CitiWest's proposal was not sufficiently downgraded for its failure to provide a Form 477 on the property designated in the solicitation before that property was repaired, the source selection determination shows complete cognizance of this problem in CitiWest's proposal as well as a discounting of this problem since the proposal otherwise demonstrated a complete ability to list and estimate repairs based on an inspection (albeit on another property and another form). While the RFP warns that offerors may not receive full credit if they fail to provide a Form 477 on the designated property, it also provides that proposals would not be rejected for failing to do so. RFP § L.2.b. Under the

circumstances, we cannot say the agency failed to adequately account for CitiWest's failure to provide a Form 477 on the designated property before it was repaired.

In sum, we find that HUD made a permissible best-value determination, since it reasonably explained and documented the justification for making award to CitiWest. In this regard, the record reflects that the contracting officer and source selection official reasonably considered the weaknesses in CitiWest's proposal that resulted in its lower technical score and concluded that the technical differences between it and the higher-ranked proposals, including Tidewater's, were not significant enough to justify selection of the higher-rated, higher-priced offers.

The protest is denied.

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