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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: DIY, Inc.

File: B-293105.13

Date: February 7, 2005

Malcolm L. Pritzker, Esq., for the protester.

Richard J. Vacura, Esq., Holly Emrick Svetz, Esq., and Peter C. Sales, Esq., Morrison & Foerster, for HomeSource Real Estate Assets Services, Inc., an intervenor.
Rachael Blackburn, Esq., and R. René Dupuy, Esq., Department of Housing and Urban Development, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging contracting agency's evaluation of protester's proposal, and resultant exclusion of proposal from competitive range, is denied where evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

DIY, Inc. protests the exclusion of its proposal from the competitive range, and the subsequent award of a contract to HomeSource Real Estate Assets Services, Inc. under request for proposals (RFP) No. R-OPC-22505, issued by the Department of Housing and Urban Development (HUD) for management and marketing (M & M) services in connection with the disposition of single-family homes and other property owned by or in the custody of HUD. The protester principally argues that the evaluation of its proposal, and its resultant exclusion from the competitive range, were unreasonable.

We deny the protest.

The solicitation, issued August 6, 2003, contemplated the award of indefinite-delivery, indefinite-quantity, fixed-unit-price contracts for M & M services in 24 geographic regions, for a base year, with four 1-year options. DIY's protest concerns the contract (a small business set-aside) for Area 4 of the Philadelphia Home Ownership Center, which covers properties located in Maryland and Washington, DC. Proposals were to include two separate volumes--a

technical/management proposal describing the firm's organization and management, and a business proposal that included, among other things, price sheets and past performance evaluation surveys. Award was to be made on a "best value" basis considering price and the following technical evaluation factors (in descending order of importance): (1) management capability/proposed management plan; (2) past performance; (3) experience; (4) proposed key personnel; (5) subcontract management; and (6) small business subcontracting participation. Price was significantly less important than the technical factors, which were rated using an adjectival scale of excellent, good, fair, marginal, and unacceptable.

The agency received 16 proposals, including DIY's and HomeSource's. Based on the initial evaluation by the technical evaluation panel (TEP), the contracting officer determined that the eight most highly technically rated proposals would be included in the competitive range. DIY's proposal received an overall rating of fair, and by letter dated May 5 the agency notified DIY that its proposal was eliminated from the competitive range and from further consideration for contract award. The agency conducted discussions with the competitive range offerors, received and evaluated revised proposals, and made award to HomeSource on October 14 at a price of \$19,675,660 for the base year (including pass-through expenses and incentives). HUD provided DIY a written debriefing by letter dated October 29, in which the agency identified significant weaknesses under the management capability/proposed management plan, key personnel, and subcontract management factors. DIY maintains that HUD's evaluation of its proposal under these three factors was unreasonable, and that, as a result, the agency had no reasonable basis for eliminating its proposal from the competitive range.

In reviewing protests challenging the evaluation of proposals and their exclusion from the competitive range, we will not conduct a new evaluation or substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation evaluation criteria and applicable procurement laws and regulations. Information Sys. Tech. Corp., B-291747, Mar. 17, 2003, 2003 CPD ¶ 72 at 2. Contracting agencies are not required to retain a proposal in the competitive range where it is not among the most highly rated or where the agency otherwise reasonably concludes that the proposal has no realistic chance of being selected for award. Federal Acquisition Regulation § 15.306(c) (1); Americom Gov't Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 3. Proposals with significant informational deficiencies may be excluded from the competitive range whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. American Med. Depot, B-285060 et al., July 12, 2000, 2002 CPD ¶ 7 at 6-7.

We have considered all of DIY's arguments and find that HUD's evaluation of its proposal, and subsequent exclusion of the proposal from the competitive range, were reasonable. We discuss DIY's principal arguments below.

MANAGEMENT CAPABILITY/PROPOSED MANAGEMENT PLAN

Under this factor, the RFP advised offerors that their proposals should demonstrate the firm's ability to execute the proposed performance work statement (PWS) (which included general requirements, mortgagee compliance, property management, and marketing) and include quality control (QC), property management, and marketing plans. RFP at 277. The RFP further advised that proposals must demonstrate the firm's ability and capacity to manage properties that are in remote locations and/or are a great distance from each other. Id. HUD downgraded DIY's proposal for, among other things, failing to explain how the firm would select, compensate and utilize local listing brokers (LLBs), comply with the requirement that LLBs be located within reasonable proximity to the properties, and explain its QC plan.

DIY asserts that it discussed all of the required topics in its proposal, as required. For example, although DIY intended that the marketing of the homes would be primarily "driven from [deleted]," rather than by LLBs, Protest at 2, its proposal addressed how DIY "would follow through with the selling agents" on pages 35 and 36, provided other details regarding LLBs at various identified pages, and described in detail DIY's process for selecting subcontractors, presumably including LLBs, in section 5, Subcontract Management. Id. DIY further asserts that the solicitation did not require that a QC plan be presented until after award, and that, in any event, its proposal, at section 1B, Management Plan, described DIY's QC procedures and the specific types of reports to be generated, and set forth additional QC specifics on pages 20 through 22. Id. at 2-3.

DIY's assertion that it provided the required detailed LLB and QC information is belied by the record. While DIY's proposal stated generally that the principal types of services to be subcontracted included, for example, asset management, appraisals, electronic bidding, inspections, quality monitoring and property maintenance and management, DIY Proposal at 134-35, we find nothing in the proposal, and DIY points to nothing, stating that DIY would be primarily responsible for marketing the homes. Moreover, we have reviewed the areas of the proposal cited by the protester and find nothing that explains how DIY intended to select and compensate LLBs, and how it would ensure that LLBs are located within reasonable proximity to the property, as required by the solicitation. For example, section 5 of the proposal lists as "routine sources" for identifying subcontractors (presumably including LLBs) such sources as DIY's own database of contractors, Small Business Administration source lists, and advertisements in newspapers, but does not explain the process to be used for selecting from among identified candidates. DIY Proposal at 111. The proposal also states generally that the majority of DIY's new successful subcontractors (again, presumably including LLBs), would be found through referral from other subcontractors with which it has long-standing relationships, and that the new subcontractors would be required to submit a completed application and agreement, including, among other things, proof of liability insurance, proof of

workers' compensation insurance, federal tax identification number and client and business references. *Id.* at 132. In this regard, DIY included in its proposal a "sample list of some contractors in this contract area," *id.* at 124, but did not identify which, if any, of these firms could serve as LLBs, which firms DIY might use as LLBs, or how DIY would select LLBs from this list. Indeed, DIY specifically identified [deleted] subcontractor, located in [deleted] Maryland, that would serve as a broker. The agency therefore reasonably concluded that the proposal did not include all of the required information concerning LLBs.

As for QC, while DIY is correct that the solicitation did not require a final QC plan until after award, the RFP did require a preliminary QC plan that was to describe how each offeror would initiate corrective action when problems were identified. RFP at 267. The pages cited by the protester explain only that DIY's QC department would be independent and would report directly to the contract manager, and that all departments, contractors, subcontractors and operations would be subject to QC procedures. The proposal also included information regarding the types and frequency of property and file inspections. DIY Proposal at 22, 23, 26. However, none of the organization charts in the proposal included a QC department and, while the proposal made some reference to corrective action regarding continued mistakes on appraisals by the same appraisers, *id.* at 27, the proposal did not discuss QC in terms of all of the performance standards listed in the PWS. We conclude that the evaluation under this factor was unobjectionable.

KEY PERSONNEL

Under the key personnel factor, proposals were to include an organization chart/plan identifying the number and responsibilities of key personnel and clearly supporting the requirements of the PWS. RFP at 278. HUD found that DIY's six organization charts were confusing and did not reflect all positions identified in the text of the proposal. The agency also found that, while DIY identified key personnel and provided résumés and commitment letters, some key personnel were proposed for positions that did not match their competencies. DIY takes issues with the evaluation, asserting that it provided all required information.

While the charts set forth in DIY's proposal under "Proposed Key Personnel" (proposal pages 75 through 80) give position titles, none of them spells out responsibilities or, where appropriate, provides staffing levels. The proposal does include, under "Management Capability/Management Plan" (proposal pages 38 through 44), position descriptions that substantially reflect the organization charts and staffing levels in the text. However, the proposal elsewhere identifies positions, such as QC manager (proposal page 20) and in-house inspectors (proposal page 29), that are not reflected on the organization charts, as the agency found in its evaluation. The record similarly confirms the agency's further finding that the experience of some proposed key personnel did not appear to be relevant to their proposed positions/tasks. For example, the proposed marketing manager's recent

experience was as the lead asset manager. DIY Proposal at 84. We conclude that the agency's evaluation in this area was reasonable.

SUBCONTRACT MANAGEMENT

The RFP advised offerors that their proposals should: (1) describe the extent to which the firm intends to use subcontractors to perform the required tasks, including an estimate of the percentage of work that would be performed by subcontract labor; (2) identify actual and proposed subcontractors with résumés or brief corporate biographies or identify the method that would be used to select them; (3) demonstrate the firm's ability to ensure its compliance with federal requirements; and (4) demonstrate the ability to successfully manage multiple subcontractors, providing services far from the firm's primary place of business. RFP at 278.

The agency found DIY's proposal inadequate because, while it listed and provided commitment letters for five subcontractors (pages 113 through 123) and résumés for four of the firms, it did not describe how DIY would select additional subcontractors, how many subcontractors it anticipated using, or what percentage of the required work would be performed by the subcontractors. Although DIY points out that it "provided a list of approximately sixty six (66) additional subcontractors," Protest at 5, that list (proposal page 125) appears simply to identify subcontractors in the contract area; nothing in the proposal specified which of the 66 subcontractors DIY might utilize. Additionally, as noted above, the proposal provided only general information regarding its methodology for selecting subcontractors. While DIY states in this regard that it "went into extreme detail on qualifications, policy, and procedures," *id.*, it does not point to any specific areas of its proposal to support this claim.

In sum, HUD found that DIY's proposal was disorganized and contained insufficient detail to demonstrate that DIY fully understood the requirements. AR, Tab 4, Initial TEP Report, at 192-193, 203, 206. While DIY disagrees with the agency's conclusions, it does not in any meaningful way rebut them, and has not otherwise shown that the evaluation was unreasonable. Under these circumstances, we have no reason to object to the agency's evaluation. Since the evaluation is unobjectionable, and DIY's standing relative to the other offerors therefore remains the same as when the agency made its competitive range determination, we have no reason to question the agency's excluding DIY's proposal from the competitive range. Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 7.

AWARD CHALLENGE

DIY protests that the award was improper because HomeSource has no experience with M & M contracts and was improperly coached by the agency regarding its pricing. DIY also questions a disparity in the price of the contract as reported in various agency documents and on its web site, and asserts that HUD improperly

increased the contract price. Since we have concluded that DIY's proposal was properly excluded from the competitive range, however, and other offerors were included in the competitive range, DIY would not be in line for award even if we found its arguments meritorious; DIY therefore is not an interested party for purposes of challenging the award. 4 C.F.R. § 21.0(a) (2004); Wahkontah Servs. Inc., supra.

The protest is denied.

Anthony H. Gamboa
General Counsel