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

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## Decision

**Matter of:** Lakeside Escrow & Title Agency, Inc.

**File:** B-310331.3

**Date:** January 7, 2008

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Department of Housing and Urban Development, for the agency.  
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GAO, participated in the preparation of the decision.

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### DIGEST

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

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### DECISION

Lakeside Escrow & Title Agency, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. R-CHI-00895, issued by the Department of Housing and Urban Development (HUD) for real estate closing services in the state of Michigan. Lakeside contends that the agency's technical evaluation of its proposal was improper.

We deny the protest.

### BACKGROUND

HUD, through the Federal Housing Administration (FHA), administers the Single Family Mortgage Insurance Program, which helps low- and moderate-income individuals and families achieve homeownership. Upon the default and foreclosure of an FHA-insured loan, the mortgage lender files a claim for insurance benefits and, in exchange for payment of the claim, the lender conveys the foreclosed property to HUD. The agency, by means of a management and marketing contractor, then manages and sells a sizable inventory of single family homes. In order to complete these sales, HUD requires closing agent contractors to perform all necessary closing activities on its behalf. The solicitation here involves HUD's procurement of real

estate closing services for single family properties owned by the agency located throughout Michigan. RFP § B.2, B.3.

The RFP, issued on February 7, 2007 as a small-business set-aside, contemplated the award of one or more fixed-price, indefinite-delivery/indefinite-quantity contracts for a base year together with three 1-year options. The RFP identified four evaluation factors: technical and management approach; prior experience; past performance; and price.<sup>1</sup> The solicitation also stated that the three technical factors were of equal importance and, when combined, were significantly more important than price. Award was to be made to the responsible offeror whose proposal was determined to be the “best value” to the government all factors considered. Id. §§ M.1, M.4.

The RFP contained detailed instructions regarding the submission of proposals.<sup>2</sup> Specifically, the technical approach submission was required to demonstrate the offeror’s ability to carry out and manage the work to be performed and to ensure the quality of performance. The technical proposal was also to be clear, concise, and sufficiently detailed so as to substantiate the validity of an offeror’s stated claims. Further, the RFP stated that proposals should not simply rephrase or restate the performance work statement requirements, but rather, must provide convincing rationales showing how the offeror intended to meet the requirements. Offerors were also instructed to assume that HUD had no prior knowledge of their facilities and/or experience, and that the agency’s evaluation would be based on the information included within the proposals. Id. § L.8. Additionally, the RFP stated that HUD intended to evaluate proposals and make award without conducting discussions; the agency, however, also reserved the right to conduct discussions if later determined by the contracting officer to be necessary. Id. § L.2.

Twenty-two offerors, including Lakeside, submitted proposals by the March 7 closing date. An agency technical evaluation panel (TEP) evaluated offerors’ proposals as to

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<sup>1</sup> The RFP also established the agency’s evaluation rating scheme. Specifically, with regard to the technical and management approach factor, proposals were to be rated as either “Excellent,” “Good,” “Fair,” “Poor,” or “Unsatisfactory,” while offerors’ prior experience was to be evaluated as either “Excellent,” “Good,” “Fair,” or “Poor,” and past performance was to be evaluated as either “Excellent,” “Good,” “Fair,” “Unknown,” or “Poor.” The solicitation also included definitions for each adjectival rating. Id. § M.2.

<sup>2</sup> The RFP required each proposal to consist of two parts--a technical and management approach proposal, and a business proposal. The technical proposal was in turn to be structured as follows: 1) technical and management plan; 2) staffing plan; 3) quality control plan; 4) prior experience; and 5) past performance. The solicitation also set forth a detailed narrative of the various criteria that offerors were to expressly address in each section of their technical proposals. Id. § L.8.

the technical factors. As set forth above, the RFP established the agency's method of evaluation for each technical factor. The TEP also developed an overall rating for each offeror's technical proposal, using the following adjectival ratings and definitions:

Acceptable	The proposal contains no deficiencies or significant weaknesses. The evaluator is confident that the offeror can successfully perform the contract.
Unacceptable, but capable of being made acceptable	The offer contains enough deficiencies and/or significant weaknesses to question the offeror's ability to successfully perform the contract. However, the evaluator believes the offeror may be able to remedy enough of the deficiencies and weaknesses through discussions to make the offer acceptable.
Unacceptable	The deficiencies and weaknesses are great and/or numerous enough that any attempt to remedy them through discussions with the offeror would be equivalent to allowing the offeror to substantially rewrite its proposal.

Agency Report (AR), Tab 6, TEP Guide, at 6-7, 12; Tab 10, Competitive Range Determination, at 1.

The TEP's evaluation of the six highest-rated proposals and Lakeside's were as follows:

<b>Offeror</b>	<b>Technical/Mgmt Approach</b>	<b>Prior Experience</b>	<b>Past Performance</b>	<b>Overall</b>
1	Good	Excellent	Excellent	Acceptable
2	Fair	Good	Excellent	Acceptable
3	Excellent	Fair	Good	Acceptable
4	Good	Fair	Fair	Capable
5	Fair	Fair	Fair	Capable
6	Fair	Fair	Fair	Capable
* * * * *				
Lakeside (11)	Poor	Fair	Fair	Unacceptable

Id., Tab 9, TEP Report, at 1-20, 68-71; Tab 10, Competitive Range Determination, at 2-3.

The TEP identified numerous weaknesses and deficiencies in Lakeside's proposal as to technical and management approach. Specifically, the evaluators found that while Lakeside's proposal included a work flow chart and an accompanying narrative reflecting general familiarity with the real estate closing process, the proposal failed to provide specifics as to how the offeror would start up and conduct its operations

in Michigan.<sup>3</sup> The TEP also found that while the RFP required offerors to disclose the office locations for all key personnel, Lakeside's staffing plan was ambiguous and never explicitly stated that any key personnel from its Cleveland headquarters office would actually work in Michigan.<sup>4</sup> The TEP also observed that Lakeside's proposal contained no methodology for determining the number of closers needed to perform contract closings. Specifically, the offeror utilized no calculus to determine the number of closers required based on a number of the hours per closing, travel time, distances between closings, and/or closing volume, but simply proposed four closers without providing their current or prospective work locations.<sup>5</sup> The evaluators concluded that because of Lakeside's failure to identify the employees that would be at each office site and the other ambiguities and omissions about how contract work would be performed, there was considerable doubt that Lakeside would provide timely and convenient service to HUD purchasers throughout Michigan. Id. at 69-71.

As to the prior experience factor, the TEP found that Lakeside's proposal had provided the required information regarding its HUD real estate closing services contract for Ohio, but did not provide all required information for its real estate closing service contracts with the agency in other states and regions. The TEP also noted that while Lakeside's proposal stated that the offeror intended to employ the

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<sup>3</sup> The TEP cited, for example, that Lakeside's work flow narrative did not explain how interactions, communications, and logistics would be handled between its three proposed satellite offices and its proposed main office in Michigan, or between the offeror's main office in Michigan and its corporate headquarters in Cleveland, Ohio. Id., Tab 9, TEP Report, at 69.

<sup>4</sup> The TEP found that Lakeside's proposal had omitted the addresses from the resumes for all key personnel except for its corporate president, thereby making it impossible for the evaluators to clearly determine where these individuals were located, where they worked, and where they may be working after contract award. Id. at 70. The resumes that Lakeside provided for many of its key personnel also did not include current employment. The TEP also noted that while Lakeside's staffing plan provided that all corporate headquarters personnel would work 100 percent of their time on the Michigan contract, Lakeside did not explain the apparent multiple use of these personnel resources on other existing HUD real estate closing service contracts (five), as well as other noncontract work. Under these circumstances, the TEP concluded that it could not rely on Lakeside's representation that all of its corporate personnel would in fact work 100 percent on the contract here. Id.

<sup>5</sup> The TEP also found that, on a collective basis, Lakeside's proposed staff lacked closing experience (i.e., only the resume of one of Lakeside's four proposed closers evidenced closing experience). Id. at 70-71.

services of closing agent company LCS, the offeror failed to include the required information regarding the prior experience of LCS in its proposal. Id. at 68.

With regard to Lakeside's past performance, the TEP found that the references regarding the offeror's performance on HUD real estate closing service contracts in North Carolina, South Carolina, Florida, and Illinois consistently rated the offeror's performance as "good." These contracts, however, were smaller in size (i.e., volume) than that anticipated by the RFP here. By contrast, Lakeside's reference for real estate closing services with HUD in Ohio--the offeror's single prior effort similar in size to the requirements here--noted serious performance issues.<sup>6</sup> While also considering that Lakeside had responded to and addressed some of these concerns, the TEP still deemed the performance deficiencies to be serious ones, especially as they had occurred late in the contract (the fourth year, as opposed to the initial ramp-up period) and involved a contract similar in size to RFP here. Id. at 68-69.

The contracting officer subsequently decided that discussions with offerors were necessary, and established a competitive range consisting of the three most-highly-rated proposals. The agency eliminated Lakeside's proposal from the competitive range based on its determination that the firm's proposal had numerous significant weaknesses, omissions, and ambiguities that together constituted a major deficiency in the offeror's technical and management approach, resulting in a substantial risk to the offeror's ability to successfully meet the agency's requirements. Id., Tab 9, TEP Report, at 71, Tab 10; Competitive Range Determination, at 2-3. This protest followed.

## DISCUSSION

Where, as here, a protest challenges an agency's evaluation and exclusion of a proposal from the competitive range, we first review the propriety of the agency's evaluation of the proposal, and then turn to the agency's competitive range determination. Government Telecomms., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 4; Americom Gov't Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4. In reviewing such protests, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accordance with the terms of the solicitation and applicable procurement statutes and regulations. Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. An offeror's mere disagreement

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<sup>6</sup> Specifically, Lakeside's Ohio reference reported continuous customer complaints due to the firm's failure to return telephone calls, a lack of professionalism, arrogance by the closing agent's staff, bills and checks missing from files, filing late extension requests, deed recordation receipts missing from the files, lateness in the electronic wiring of sales proceeds, and lateness in delivering closing packages. Id. at 69.

with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

As explained in detail below, based upon our review of the record, HUD's evaluation of Lakeside's proposal and the subsequent exclusion of Lakeside's proposal from the competitive range were reasonable and consistent with the solicitation. The record reflects that Lakeside's technical proposal was downgraded in large part because the information provided lacked sufficient detail for the agency to determine that Lakeside would be able to successfully comply with the RFP's requirements. Although we do not here specifically address all of the protester's arguments about the evaluation of its proposal, we have fully considered all of them and find that they afford no basis to question the agency's evaluation.

With regard to HUD's evaluation of its proposal under the technical and management approach factor, the protester contends that, contrary to the TEP's findings, the proposal clearly described how the firm would be able to handle the increase in work (i.e., closing services for Michigan) without increasing its staff. Lakeside contends, for example, that its proposal stated that all of the individuals listed would perform the Michigan work and that they were committed to the contract. The protester also asserts that, given the technology and networking software described in Lakeside's proposal, it is quite simple to perform any needed closing service tasks from Ohio or the local Michigan offices. Further, Lakeside argues, because it is a fully-licensed "National Producer" able to do work in all 50 states, the company possessed the ability to "move into any [new] State and be up and running as a fully functioning title company within no time at all." Comments at 5-6.

Notwithstanding the offeror's view that its proposal had adequately addressed the technical and management approach factor, Lakeside does not dispute the TEP's finding that its headquarters personnel would not in fact be working 100 percent of their time on the Michigan contract,<sup>7</sup> or that its proposal failed to disclose the intended office locations of its key personnel. Lakeside also does not dispute the TEP's findings that its proposal provided no methodology for determining the number of closers needed, that the proposal did not explain how interactions, communications, and logistics would be handled between its various offices, or that Lakeside's proposed staff lacked closing experience. Rather, Lakeside essentially argues that the TEP's judgment that there existed considerable doubt about the firm's ability to meet the PWS requirements was unreasonable. We find the protester's challenge to the agency's evaluation here amounts to mere disagreement with the agency's judgment and, thus, does not establish that the evaluation was

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<sup>7</sup> In fact, the protester acknowledges that while the individuals listed in its proposal were "committed to the contract," Comments at 5, they would not be spending 100 percent of their time performing the Michigan contract, as its proposal represented.

unreasonable. JAVIS Automation & Eng'g, Inc., B-293235.6, Apr. 29, 2004, 2004 CPD ¶ 95 at 5.

Lakeside also argues that the TEP's evaluation of its proposal under the prior experience factor was improper. Specifically, the protester asserts that the agency evaluators believed that Lakeside had no experience in Michigan, although its proposal made explicit that the firm was currently closing properties and issuing policies in Michigan. Comments at 4-5. Lakeside's assertion here, however, is based on the statements of an individual evaluator, and the record shows that these statements were not carried forward into the agency's consensus evaluation report. See AR, Tab 9, TEP Report, at 68. Since it was the TEP final report upon which the contracting officer relied in making his competitive range determination, Lakeside's objections to the statements of an individual evaluator provide us with no basis to question the competitive range determination.<sup>8</sup> See Instrument Control Serv., Inc., B-285776, Sept. 6, 2000, 2000 CPD ¶ 186 at 3 n.6.

Given our determination that the agency's evaluation of Lakeside's proposal was reasonable and consistent with the solicitation, and in view of the agency's conclusion that the proposal was unacceptable as a result of the weaknesses and deficiencies identified in the evaluation, we find that it likewise was reasonable for the agency to conclude that Lakeside's proposal had no reasonable chance for award

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<sup>8</sup> Lakeside also argues that the agency's technical evaluation was improper because, among other things, Lakeside was the incumbent HUD closing services contractor for other states and regions, and its proposal had been found technically acceptable and included in the competitive range when HUD had previously sought real estate closing services for Michigan in four separate areas. The protester also contends that HUD improperly failed to conduct discussions and inform it of the proposal deficiencies prior to making a competitive range determination. Protest at 5-8. The agency specifically addressed all these issues in its report to our Office, discussing, for example, why Lakeside's status as an incumbent contractor in other areas was not relevant to the evaluation of its proposal here, and the fact that there exists no requirement that an agency conduct discussions with offerors prior to making a competitive range determination. AR at 3-6. The protester's comments offered no substantive rebuttal of the agency's position, but merely restated verbatim the same arguments set forth in its original protest. See Comments at 7-9. Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that fails to substantively rebut the agency's position, we deem the initially-raised arguments abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4; L-3 Commc'ns Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 4.

and to exclude Lakeside's proposal from the competitive range. See TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 5; Network Sys. Solutions, Inc., B-249733, Dec. 14, 1992, 92-2 CPD ¶ 410 at 4.

The protest is denied.

Gary L. Kepplinger  
General Counsel