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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Nevada Real Estate Services, Inc.

File: B-293105

Date: February 3, 2004

Michael P. Krein for the protester.

Carolyn P. Fiume, 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

Agency properly rejected protester's offer where, although protester claims it submitted a complete business proposal along with its technical proposal, record shows that submitted business proposal omitted substantial required information.

DECISION

Nevada Real Estate Services, Inc. (NRE) protests the rejection of its proposals 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 for single-family properties. HUD rejected NRE's proposals for failure to include complete business proposals.

We deny the protest.

The RFP, issued on August 6, 2003, contemplated the award of 24 fixed-price, indefinite-delivery, indefinite-quantity contracts for M&M services in 24 geographic areas, for a base year, with four 1-year options. Offerors could submit proposals for one or more geographic areas. Each geographic area falls under one of four regional Home Ownership Centers (HOC) based in Philadelphia, Atlanta, Denver, and Santa Ana, California. The Denver HOC is divided into six areas and the Santa Ana HOC is divided into five. NRE's protest concerns Area 1 of the Denver HOC, and Area 4 of the Santa Ana HOC.

Proposals were to include two separate volumes--a technical/management proposal describing the firm's organization and management, and a business proposal that

included Standard Form 33 (the solicitation cover sheet), completed representations and certifications, price evaluation worksheets and contract line item number (CLIN) price sheets, and past performance evaluation surveys. Award would be on a “best value” basis, with technical factors being significantly more important than price. Offerors were required to submit a hard copy and a CD-ROM copy of their proposals, and also were to upload an electronic copy to a specified website, by 4 p.m. on September 5. Proposals received after that time would be considered late and not be evaluated. If any of the three required submissions were untimely, the hard copy of the proposal would take precedence.¹

On September 5, NRE submitted proposals for two areas--Denver Area 1 and Santa Ana Area 4--through its agent, The Preferred Company. The Preferred Company hand-delivered to the agency, at 3:50 p.m., four boxes containing the hard copies and CD-ROM copies of NRE’s proposals (as well as the proposals of two other offerors), and uploaded an electronic copy of NRE’s Santa Ana proposal at 3:19 p.m., and its Denver proposal at 3:20 p.m. AR, Tab 1, Contracting Officer’s Statement, at 3.

On September 8, two contract specialists unpacked the hard copies of NRE’s proposals, and determined that neither contained a business proposal. A third contract specialist confirmed these determinations on September 22. Thereafter, on October 8, a contract specialist discovered that the uploaded versions of NRE’s business volumes did not include any prices on the CLIN price sheets, or any other pricing information. Id. at 4. The contracting officer again reviewed the hard copies and CD-ROM versions of NRE’s proposals, and confirmed that these versions also did not contain complete business proposals, and that neither version included any pricing information. Id. By letter dated October 16, HUD notified NRE that its proposals did not contain the required business proposal in the hard copy, CD-ROM, or uploaded versions, and that its proposals therefore would not be considered for award. Id.

The protester maintains that it did submit business proposals by the September 5 deadline, pointing to a signed receipt from HUD as evidence that its offer was acceptable. NRE further contends that references in the uploaded copies of its proposals--which HUD provided to our Office as part of its report--show that those copies are of a proposal belonging to a company named Lawyer’s Trust. Comments at 2. NRE has submitted to our Office “complete copies of [its] proposals both in hard copy and in CD-ROM format” that it alleges “were originally submitted to HUD

¹ The agency reports that, as it began the evaluation process, it determined that, while many offerors submitted timely, complete proposals in one format, they did not submit timely, complete proposals in all three required formats. Therefore, the agency determined to accept a proposal if at least one format of the proposal was complete and timely; a late submission in another format would be waived as a minor informality.

in a timely manner . . . ,” Id. at 1, and asserts that HUD should allow it “to re-enter the competition and be considered for award” Id. at 3.

The protest is without merit. First, since NRE submitted its proposals through an intermediary, it is not in a position to represent that it furnished the agency with a complete copy of its proposals.² NRE has not provided a statement from The Preferred Company explaining its position regarding the contents of the delivered proposals. In any case, our review is concerned with what the agency received by the closing time, not what allegedly was submitted. The agency has provided statements from two contract specialists attesting that they unpacked NRE’s hard copy proposals from boxes and found that the proposals included no business volumes, including no section K certifications and representations, no price worksheets, and no CLIN price sheets. At the time the contract specialists unpacked the proposals, each noted the missing volume on the HUD log sheet. AR, Tabs 3 and 4, Contract Specialists’ Statements, at 2. The agency also submitted a statement from another contract specialist attesting that she, too, examined NRE’s hard copy proposals and found no business volumes and also that, while NRE’s uploaded electronic proposals had an icon for a business volume, when opened, the volume did not include completed CLIN price sheets or completed price evaluation worksheets, or any other pricing information. AR, Tab 2, Contract Specialist’s Statement, at 3-4.

We have examined the original NRE hard copy, CD-ROM, and uploaded versions of the proposals furnished by the agency; our review confirms that the proposals were incomplete. Specifically, NRE’s hard copy versions contained no business proposals at all, and while its uploaded and CD-ROM versions included some relevant pages of the business proposals—including, for example, section K, the CLIN pricing sheet, and past performance surveys—none of these documents was completed; that is, none of the blank spaces are completed in section K, and no prices are provided on either the evaluation worksheets or the CLIN price sheets. For example, for CLIN 0001, property management fee, the uploaded proposal text reads, “Nevada Real Estate Services proposes a fixed fee of \$ per HUD-owned property for a Property

² The protester’s reliance on the signed receipt—which it argues shows that the agency acknowledged receipt of complete proposals—is similarly misplaced. The agency explains that the receipt was issued only to acknowledge receipt of the proposal package, not to indicate that the proposals received were complete. AR, Tab 1, Contracting Officer’s Statement, at 3. The government has no obligation to advise offerors of whether their proposals have arrived, and its failure to do so, or to provide accurate information about whether a proposal is complete as received, does not provide grounds for requiring an agency to consider a late proposal. Selrico Servs., Inc., B-259709.2, May 1, 1995, 95-1 CPD ¶ 224 at 2; see The Stauback Co., B-276486, May 19, 1997, 97-1 CPD ¶ 190 at 4.

Management fee.” AR, Tab 14, NRE’s Uploaded Proposal for Denver Area 1, at 2-2. Additionally, no past performance reference information—including, for example, the reference’s name, the contract number, start and completion date, or contract value—is provided on the past performance surveys.

The agency’s uploaded version of the Denver Area 1 technical volume does begin, as NRE asserts, with pages that reference another company, Lawyer’s Trust. However, there are specific references to NRE in several sections in that version. For example, the uploaded version includes five 3-page past performance surveys. Each one references “Lawyer’s Trust Title” as the name of the offeror on the first page of the survey, yet provides a Rating Guidelines Chart on page 3 that repeatedly references NRE. It is not clear how the uploaded version came to include what appear to be portions of another firm’s proposal (although, as noted above, NRE’s proposal was submitted by an intermediary that also submitted proposals for other offerors, which may have led to the mixup). However, we think it is clear that the uploaded version—as with the hard copy and CD-ROM versions—did not include NRE’s pricing and other information required by the RFP.

The protester suggests that the agency must have lost or misplaced its proposal. However, this speculation is belied by the fact that the agency received versions of NRE’s proposals that were not only missing pages (or, in the case of the hard copies, the entire business proposal), but which also included pages that specifically referenced NRE and were missing pricing and other information; the agency could not have lost or misplaced the pricing information that was omitted from the pricing sheets included with the proposals. Thus, we conclude that all versions of the two proposals failed to include complete business proposals with pricing and other material information. The agency therefore reasonably rejected the proposals. In this regard, rejection of a proposal is proper where the initial proposal is so deficient that, in essence, no meaningful proposal was submitted; to allow the omissions to be cured after the time set for receipt of initial proposals would be inconsistent with the clause governing late proposals. Marine Hydraulics Int’l, Inc., B-240034, Oct. 17, 1990, 90-2 CPD ¶ 308 at 2.

The protest is denied.

Anthony H. Gamboa
General Counsel