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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** The Hines-Ike Company

**File:** B-270693

**Date:** March 15, 1996

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Donald L. Beran, Esq., for the protester.

Dorothy Crow-Willard, Esq., Department of Housing and Urban Development, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Agency's determination that protester's initial proposal was technically unacceptable and outside the competitive range was reasonable where the proposal would require major revisions in order to become acceptable.
  2. Protester whose proposal was properly found technically unacceptable and excluded from the competitive range is not an interested party to challenge the award where there is another technically acceptable proposal within the competitive range, since the protester would not be in line for award if its protest were sustained.
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## DECISION

The Hines-Ike Company (HI) protests the exclusion of its proposal from the competitive range, and the subsequent award of a contract to North American Title Company, under request for proposals (RFP) No. 4-95-045, issued by the Department of Housing and Urban Development (HUD) for real estate closing services. The protester contends that HUD's decision to exclude HI's proposal was unreasonable, and that the award to North American at a higher price than HI proposed was improper.

We deny the protest.

The RFP sought proposals for a fixed-price, indefinite quantity contract for a base period of performance, with up to four 1-year option periods. For each contract period, an offeror was required to submit a fixed unit price per closing. Offerors were required to submit proposals in two parts—part I was to consist of the technical/management proposal; part II was the business (price) proposal. Section L of the RFP instructed offerors to address three separate sections under

part I of their proposals: (1) technical and management ability; (2) experience; and (3) conflicting or multiple use of contractor resources. Each section was further subdivided into several subsections. The RFP specifically instructed offerors on the type of evidence and documentation required to be submitted with the proposal in support of each subsection requirement.

Section M of the RFP explained that technical proposals would be point-scored, and set out the evaluation factors with their corresponding point values. The RFP stated that the technical/management area was more important than price (which was not point-scored), and that the government might award a contract to an offeror submitting other than the lowest-priced proposal. Award was to be made to the offeror whose proposal was most advantageous to the government.

Three firms, including the protester, responded to the RFP. A technical evaluation panel (TEP) evaluated proposals in accordance with the evaluation scheme announced in the solicitation. Of the maximum number of points available (145), North American and a second offeror's proposal earned 123 points each following the initial evaluation; both proposals were found technically acceptable. The protester's proposal received a total of 53 points, and was found technically unacceptable. Based on the results of the initial evaluation, the contracting officer eliminated HI's proposal from further consideration. The agency then conducted discussions with the two offerors whose proposals remained in the competitive range; requested best and final offers (BAFO) from those two firms; and reevaluated proposals based on BAFOs. The agency determined that North American submitted the proposal most advantageous to the government and awarded the contract to that firm. This protest to our Office followed a debriefing by the agency.

The protester contends that the exclusion of its proposal from the competitive range was based on a flawed evaluation. HI also contends that the agency should have discussed the TEP's initial findings with the firm.

An offeror must submit an initial proposal that is adequately written and that affirmatively establishes its merits or run the risk of having the proposal rejected as technically unacceptable. Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. Offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range for discussion purposes. W.N. Hunter & Assocs.; Cajar Defense Support Co., B-237259; B-237259.2, Jan. 12, 1990, 90-1 CPD ¶ 52. In reviewing whether a proposal was properly rejected as technically unacceptable for informational deficiencies, we examine the record to determine, among other things, whether the RFP called for detailed information and the nature of the informational deficiencies, for example, whether they tended to show that the offeror did not understand what it would be required to do under the contract. BioClean Medical Sys., Inc., B-239906, Aug. 17, 1990, 90-2 CPD ¶ 142; DRT Assocs., Inc., B-237070, Jan. 11, 1990, 90-1 CPD ¶ 47.

We will not reevaluate a proposal but, rather, will consider whether the agency's evaluation was reasonable and consistent with the evaluation scheme in the RFP. Communications Int'l, Inc., 69 Comp. Gen. 553 (1990), 90-2 CPD ¶ 3. In this case, we have reviewed the evaluators' worksheets and the TEP's narrative explanation and find that the agency reasonably concluded that the protester's initial proposal was technically unacceptable.

Section L of the RFP specifically required offerors to provide evidence demonstrating their abilities in each of several areas that were to be point-scored under the announced evaluation scheme. The RFP's instructions on proposal preparation and organization paralleled the evaluation factors announced under section M. Offerors were instructed to respond to each of the evaluation areas with specific evidence demonstrating their abilities. For example, under the technical/management area, an offeror was required to submit evidence and relevant documentation demonstrating the ability to prepare deeds and other closing documentation on single-family properties. Offerors were also required to submit evidence demonstrating the ability to perform several tasks such as reviewing title information on single-family homes; handling and safeguarding large sums of money; staffing capabilities, including resumes detailing qualifications and relevant experience; and the timely processing of closings. The RFP further required offerors to submit a list of current projects recently completed and relevant to the contemplated contract. Section H of the RFP, as amended, also required the contractor to maintain a staffed office within the geographic region covered by the contract.

The record shows that the TEP identified several informational deficiencies in HI's technical proposal, leading the evaluators to conclude that HI had not demonstrated its capability to successfully perform the contract in several of the evaluation areas. As a result, the protester's proposal was severely downgraded under all evaluation factors, resulting in a total score of 53 points out of the 145 points available in the evaluation. For example, the TEP found that HI had failed to submit sufficient evidence demonstrating its experience in closing sales of single-family or real estate owned (REO) properties, and had not submitted any evidence of having concluded any closings in three of the four counties covered by the RFP. By contrast, North American submitted evidence of approximately 375 closings under a recent HUD contract within all areas covered by the RFP, and involving both single-family homes and REO properties.

The TEP found that HI had failed to submit evidence of adequately trained staff or of having a fully-equipped office within the areas to be served as required by the RFP. The evaluators further found that, contrary to the specific RFP requirements for detailed resumes for key personnel, the resumes HI submitted for its key staff lacked detail, making it impossible for the TEP to evaluate whether HI's proposed staff had any relevant experience in conducting either single-family or REO closings.

In addition to the informational deficiencies with HI's proposal, the TEP was concerned about HI's proposed plan for internal controls for safeguarding large sums of HUD funds. In this regard, the TEP concluded that HI's proposed approach for handling the transfer of funds after closing was inconsistent with the solicitation's prescribed procedures. The TEP concluded that HI's proposed approach introduced an unacceptable level of risk of loss and abuse not contemplated by the RFP.

Based on our review of the record, we think that the contracting officer reasonably concluded that HI failed to follow the RFP's detailed instructions and that the documentation that the protester did provide was insufficient to conclude that HI had demonstrated the firm's ability to successfully perform the contract. Although in its comments on the agency report the protester lists a series of general objections to the evaluation, HI has not presented any argument or evidence showing that the evaluation of its initial proposal was unreasonable or inconsistent with the evaluation factors announced in the RFP. While HI disagrees with the TEP's conclusions, that disagreement does not prove the TEP's evaluation unreasonable. Calspan Corp., B-258441, Jan. 19, 1995, 95-1 CPD ¶ 28. Accordingly, we have no basis to question the contracting officer's conclusion that HI's proposal was technically unacceptable as submitted. Under these circumstances, the agency was not required to include HI's proposal in the competitive range for discussion purposes.<sup>1</sup> See Engineering & Computation, Inc., B-258728, Jan. 31, 1995, 95-1 CPD ¶ 155.

With respect to HI's challenge to the award to North American, under our Bid Protest Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. See Section 21.0(a), 60 Fed. Reg. 40,737, 40,739 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.0(a)). Since HUD

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<sup>1</sup>HI also argues that it has submitted similar proposals to the agency in the past and that HUD has never rejected its proposal as technically unacceptable. Each procurement action, however, is a separate transaction and the action taken in one procurement is not relevant to the propriety of the action taken under another procurement. Komatsu Dresser Co., B-251944, May 5, 1993, 93-1 CPD ¶ 369.

reasonably found HI's proposal technically unacceptable and properly excluded the proposal from the competitive range, and since another offeror's acceptable proposal was placed in the competitive range, HI is not an interested party to challenge the award to North American. See Dick Young Prods. Ltd., B-246837, Apr. 1, 1992, 92-1 CPD ¶ 336.

The protest is denied.

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of the United States