Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: ACS Government Solutions Group, Inc.

File: B-282098; B-282098.2; B-282098.3

Date: June 2, 1999

Timothy B. Harris, Esq., for the protester.
Frances Cox Lively, 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.

DIGEST

1. Protest that agency improperly failed to evaluate offers consistent with instructions to offerors in solicitation for comprehensive loan servicing services is sustained where offerors were prohibited from proposing a solution that assumed that the agency would permit an electronic interface between the agency's and the successful offeror's data systems, and the record shows that the awardee's technical approach and price relied significantly on the existence of such an interface for performing the requirement.

2. Allegation that agency improperly evaluated the awardee's proposal under the prior experience evaluation factor is sustained where the solicitation contemplated the evaluation of corporate and key personnel experience separately, and the record contains no basis upon which the agency could reasonably have determined that the awardee's demonstrated corporate performance was, in accordance with the terms of the solicitation, the "same" as or "similar" to the solicitation requirements.

3. Allegation that discussions with protester were not meaningful is sustained where the record shows that the evaluators were concerned over the protester's pricing methodology and the source selection official shared that concern, but the protester was not afforded an opportunity during discussions to explain its pricing strategy.

DECISION

ACS Government Solutions Group, Inc. (ACS) protests the issuance of a task order to Deloitte & Touche (D&T) under request for proposals (RFP) No. R-DEN-00614, issued

by the Department of Housing and Urban Development (HUD) for comprehensive loan servicing services. ACS argues that HUD failed to adhere to the instructions to offerors; improperly evaluated the awardee's proposal; failed to conduct meaningful discussions with ACS and held improper discussions with the awardee; and based its selection on a flawed price/technical tradeoff analysis.

We sustain the protest.

Background

The RFP, issued on November 19, 1998, contemplated the issuance of a task order for a base period with up to three 1-year option years. RFP § B, ¶ 1.3, at B-1, B-2 and § E ¶ 1.3(f)(1). The contractor is to perform a full range of comprehensive servicing of HUD's Secretary-held single family mortgage portfolio. Id. § C-1, ¶ 1.1. The required services include initial loan set-up, servicing the loan, and accounting-related functions. Id. The RFP specifically limited proposals to those firms included on a General Services Administration Federal Supply Schedule (FSS), for Loan and Other Asset Servicing/Management services. Id. § E, ¶ 1.2.

The RFP provided for a two-phase procurement cycle. In the first phase, offerors were required to submit a statement of qualifications and past performance, which was to be reviewed by an evaluation panel to determine which firms would be invited to participate in the second phase of the procurement. Id. § E, ¶ 1.2(b). In the second phase, offerors were required to submit a written business proposal and provide an oral presentation for their technical and management proposals. Id. Upon completion of the oral presentations, a technical evaluation panel (TEP) was to conduct discussions and obtain clarifications from the offerors. The RFP stated that upon conclusion of all oral presentations, the TEP would perform a final technical evaluation of the presentations and offerors would be afforded an opportunity to submit written final proposal revisions (FPR) based upon the discussions. Id.

The RFP listed the following technical evaluation factors in descending order of importance (respective weights, which were not disclosed in the RFP, are shown in parentheses): quality control (50 points), plan of accomplishment (40 points), management capability (35 points), and prior experience (25 points), for a maximum possible score of 150 points. Id. § E, ¶ 1.7(a)(2); Contracting Officer's (CO) Statement, Mar. 30, 1999 at 3. Price was not to be numerically scored.[1] RFP § E, ¶ 1.8(a). The RFP stated that combined relative merit under the technical evaluation factors was to be considered more significant than price. Id. ¶ 1.8(a). HUD would

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[1]In addition to requiring a total price for start-up costs, for each of the base and option years, offerors were required to submit unit prices per month for servicing estimated quantities of loans and partial claims. RFP amend. 3, § B.

issue a task order to the responsible offeror whose offer conformed to the solicitation and was deemed more advantageous to the government. Id.

Of the four firms invited to participate in the second phase of the procurement, three firms, including ACS and D&T, responded by the November 30, 1998 closing date. CO Statement at 3. Oral presentations were limited to 1 hour for each firm; discussions were held immediately following each oral presentation; and the TEP then convened to arrive at initial consensus ratings. The agency then requested FPRs, and the TEP reevaluated proposals based on the FPRs, with the following final consensus results for the protester and the awardee:

Firm	Score	Risk	Total Price
D&T	146	Low	$36,634,084.20
ACS	141	Low	20,183,094.32

Agency Report (AR), exh. 50, Memorandum from the CO to the Source Selection Official (SSO) at 2nd and 3rd unnumbered pages (Dec. 31, 1998).

Based on the results of the evaluation, the TEP recommended to the CO that D&T be issued the order as the firm offering the best overall value to the government. AR, exh. 51, Memorandum from TEP to CO at 5 (Jan. 4, 1999).[2] That recommendation was then forwarded to the SSO for a final decision. The SSO accepted the TEP's recommendation, concluding that D&T offered a higher level of experience, technical ability and additional benefits to HUD, especially in the areas of tax and due diligence services, which justified paying a premium for D&T's proposal. AR, exh. 56, Memorandum from the SSO to the CO at 3rd unnumbered page (Jan. 19, 1999). By letter dated February 10, HUD informed ACS that the task order had been issued to D&T. This protest to our Office followed a written debriefing.[3]

Protester's Contentions

ACS primarily argues that in issuing the order to D&T, HUD improperly disregarded the solicitation's instructions that offerors were required to use HUD's loan servicing software system, referred to in the record as "Strategy," and because, in further

[2]During the course of these proceedings, the agency discovered that there are two slightly different versions of this document in the record, both dated January 4 and signed by the TEP Chairperson. Our comparison of these two documents, however, reveals no material differences that affect the TEP's recommendation or our analysis of the issues presented in this protest.

[3]Pursuant to Federal Acquisition Regulation (FAR) § 33.104(c)(2)(i) and (ii), the head of the contracting activity authorized D&T to continue performance of the contract notwithstanding the protest.

disregard of HUD's instructions to offerors, D&T's approach assumed that HUD would permit an electronic interface between Strategy and D&T's data systems.

ACS also argues that HUD improperly evaluated D&T's proposal under the prior experience factor. In this connection, ACS maintains that the evaluators improperly awarded D&T's proposal a nearly perfect score in this area despite the fact that neither D&T nor its teaming partner demonstrated corporate experience in performing loan servicing that was the "same" as or "similar" to the solicitation requirements.

The protester also argues that HUD conducted improper discussions with D&T and failed to conduct meaningful discussions with ACS, and that the agency's price/technical tradeoff decision was flawed.

Discussion

Instructions to Offerors

ACS's primary ground of protest is that HUD provided specific instructions to offerors which were designed to permit the agency to evaluate proposals on an equal basis, and that in accepting D&T's proposal, HUD improperly disregarded those instructions. Specifically, ACS contends that the solicitation required offerors to use HUD's software system, Strategy, which HUD was developing specifically for this loan portfolio. In addition, ACS argues that HUD instructed offerors not to propose the use of an electronic interface between their system and Strategy, and to reserve proposing additional services and capabilities until after award. According to ACS, D&T disregarded the agency's specific instructions that offerors were to use HUD's Strategy system and proposed an electronic interface between its data systems and HUD.

HUD takes the position that this is a "performance-based" solicitation, where the RFP explained HUD's objectives and left it up to the offerors to determine how to accomplish the tasks. Memorandum of Law, Mar. 30, 1999, at 16-17. The agency states that while offerors were instructed to use HUD's Strategy system, they were not prohibited from proposing their own data system to augment Strategy; they could not, however, use their own data system in place of Strategy. The agency states that offerors were also instructed that their computer system could not interface with HUD's system. Id. at 19-21. HUD maintains that, consistent with the instructions to offerors, D&T proposed its own system to augment Strategy, and that D&T's approach does not assume an electronic interface between Strategy and D&T's systems.

It is thus undisputed that offerors were expected to use HUD's Strategy system, and were further instructed not to assume that HUD would permit an electronic interface between Strategy and their own system. The issue presented for our resolution,

therefore, is whether in issuing the order to D&T, HUD disregarded these instructions and effectively waived the requirement that offerors use Strategy, or relaxed the prohibition against assuming an electronic interface between HUD's system and D&T's systems.

In response to phase I of the competition, D&T provided a statement of its qualifications and past performance in which the firm explained that it would be teaming with The Clayton Group, Inc. to perform the required services. AR, exh. 4, D&T's Nov. 30, 1998 response to RFP, at 4. In this connection, D&T explained that it would use its experience to develop and manage a comprehensive quality control program tailored to the solicitation's requirements, while personnel from its teaming partner would perform all other servicing and asset sale support functions. Id. Regarding Clayton's loan servicing capabilities, D&T's response stated as follows:

> Clayton's performing loan servicing and administration units operate from a [DELETED], which is electronically wrapped by ARSENAL, an industry-leading, proprietary, default management operating system.

Id.

In its business proposal, under a section entitled "Equipment," D&T describes its proposed systems as follows:

> Systems - The Deloitte/Clayton Team utilizes a [DELETED] servicing platform for Loan Administration functions. The system is year 2000 compliant and fully capable of accepting the 12,673 loans contemplated under this contract. As required by HUD, Deloitte/Clayton is prepared to utilize the new Strategy loan servicing system. However, we strongly recommend an interface that would allow Strategy and [DELETED] to run concurrently. This interface will significantly reduce the unit cost of servicing each loan, by automating critical servicing functions including escrow analysis, collection letters and reporting. Our pricing is based on this system interface. The per-unit price will increase if servicing functions that are normally automated have to be performed manually.
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> [DELETED] is electronically wrapped by ARSENAL, an industry leading, proprietary, default management operating system. ARSENAL . . . is one tool in the Clayton Technologies suite . . . that utilized together, provide unequaled loan analysis, management and reporting capabilities.

AR, exh. 12, D&T Business Proposal, Dec. 11, 1998, at 5 (emphasis added).

Under a section entitled "ROUTINE SERVICING," D&T's proposal further explained that "[DELETED] has the built-in capabilities to track escrow, complete escrow analysis and [produce] year-end statements." Id. at 8. D&T's proposal further states that "[i]t is our intent, with the approval of the GTR and the GTM to build a bridge between our servicing system, our default system and Strategy, to enable HUD to receive both their own reports and take advantage of the robust reporting capabilities of our proprietary software." Id. Under a section entitled "REPORTING," the proposal explains the various reporting capabilities and benefits to HUD, and specifically states that "ARSENAL will seamlessly interface with the HUD systems." Id. at 23. D&T further explained during discussions that if [DELETED] cannot be electronically linked with HUD's Strategy system, the value of ARSENAL to HUD would decrease dramatically. AR, exh. 15, Video Recording of D&T's Discussions.

The agency's argument that D&T's approach did not involve an electronic interface is further undermined by the following exchange between HUD's Director of Denver Field Contracting Operations (DDFCO) and D&T during oral discussions:

> DDFCO: I still have one question on the interface that you have that you're going to need--it's not . . . I don't know how much of that is integral to your proposal but we don't know yet whether there actually can be an interface at our headquarters which will allow an interface to a HUD system to be developed. . . . So, I don't know how critical that is to your proposal.
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> . . . . .
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> D&T: And I think the challenge that you're giving me that I want to make sure I measure ourselves against is we may have priced this to be overly efficient on the assumption that we could do an electronic bridge. So I think we need to make sure that what happens to our pricing if we can't, because I think we've been operating on the assumption that that's imminently do-able and it may be a bad assumption.

HUD's Post-Hearing Comments, May 6, 1999, attach. 3, transcript of portions of Dec. 15, 1998 discussions with D&T, at 2.

The record is thus clear that based on HUD's review of D&T's proposal, as shown by the exchange during oral discussions quoted above, HUD understood that D&T proposed an electronic interface between its data systems and HUD's Strategy. Further, D&T made it clear both in its proposal and during discussions that its pricing assumed that the agency would permit

an electronic interface between the agency's and D&T's system. HUD's assertion, therefore, that there is "no electronic connection shown between [D&T's] system and HUD's Strategy system," HUD's Post-Hearing Comments, May 6, 1999, at 12, not only disregards the facts in the record, but is inconsistent with D&T's own explanation that its systems will "seamlessly" interface with HUD's system, and that its pricing was based on the existence of that electronic interface.

It is a fundamental principle of government procurement that offerors must be provided with a common basis for the preparation of their proposals. Meridian Management Corp.; Consolidated Eng'g Servs., Inc., B-271557 et al., July 29, 1996, 96-2 CPD ¶ 64 at 5. Thus, award must be based on the requirements stated in the solicitation, and offerors notified of the government's changed or relaxed requirements. Id. We will sustain a protest where an agency, without issuing a written amendment, fails to notify all offerors of its changed requirements or relaxes an RFP specification to the protester's possible prejudice (e.g., where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements). Container Prods. Corp., B-255883, Apr. 13, 1994, 94-1 CPD ¶ 255 at 4.

The record shows that HUD wanted to ensure that the offerors used Strategy, and made this clear during the preproposal conference. Further, while offerors could propose to use their own data systems, they were specifically instructed not to assume that HUD would permit an electronic interface between their own systems and Strategy. Based on our review of the entire record, including D&T's statement of qualifications and experience submitted during phase I of the competition, its business proposal, and the transcript of the video recording of its discussions, we conclude that by issuing D&T the order, HUD essentially waived the instructions given offerors concerning the interface, and improperly accepted a proposal which relied significantly on the existence of that interface. Although D&T's proposal states that the firm is prepared to use HUD's Strategy system, it is clear that the firm's entire approach to loan servicing and reporting significantly relies on, and assumes, the existence of an electronic interface between HUD's Strategy system and Clayton's servicing software to perform the contract. Indeed, the awardee specifically stated that D&T's pricing is based on such an assumption; that, without the interface, the value of D&T's ARSENAL system to HUD would decrease dramatically; and that, without the interface, D&T's price would increase because critical servicing functions that are normally automated (e.g., escrow analysis, collection letters, and reporting) will have to be performed manually. The agency's action prejudiced the protester because ACS was not notified of the waiver and its approach was premised on using HUD's Strategy system and its own data system concurrently, without assuming an electronic interface between its own systems and Strategy. Given the significant

difference between the vendors' prices--and in light of the fact that without an interface, D&T's total price is likely to increase--and the closeness of the final technical scores, we think that there is a reasonable possibility that ACS was prejudiced by the agency's waiver of the stated instructions. Accordingly, we sustain this aspect of the protest.

Evaluation of D&T's Prior Experience

ACS argues that HUD improperly evaluated D&T's proposal under the prior experience evaluation factor. Specifically, ACS contends that HUD unreasonably rewarded D&T for having corporate experience "the same as or substantially similar to" that required by the solicitation, which D&T did not demonstrate in its proposal.

The agency takes the position that this evaluation factor did not require that corporate experience and key personnel be separately evaluated. As such, the agency contends that the evaluation of D&T's proposal was reasonable because the evaluators considered the experience of its key personnel to satisfy the criterion.

Under the FSS program, agencies are not required to request proposals or to conduct a competition before using their business judgment in determining whether ordering supplies or services from an FSS vendor represents the best value and meets the agency's needs at the lowest overall cost. FAR §§ 8.401, 8.404(a); Amdahl Corp., B-281255, Dec. 28, 1998, 98-2 CPD ¶ 161 at 3. Where, as here, an agency conducts a competition, however, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. Information Sys. Tech. Corp., B-280013.2, Aug. 6, 1998, 98-2 CPD ¶ 36 at 3; COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. We have reviewed the individual evaluators' worksheets, the TEP's consensus evaluation reports, and the award recommendation memorandum, and find that the evaluation of D&T's proposal under the prior experience factor was unreasonable.

The RFP explains the purpose of the contemplated contract, in part, as follows:

> The purpose of this contract is to engage a loan servicing organization to perform a full range of comprehensive servicing of the Department's Secretary-held Single Family mortgage portfolio. These services will range from the initial loan set-up, to the servicing of the loan, to the accounting related functions (perform disbursement data review and entry functions, print and mail checks, accounts receivable and payable, and financial adjustments), to the satisfaction of the mortgage or to ensure completion of legal actions, if appropriate.

> In addition, the contractor shall also be responsible for servicing the Department's Loss Mitigation Partial Claims Mortgages and their legal instruments.

RFP § C-1, ¶ 1.1.

The RFP estimated that the successful contractor would provide comprehensive servicing for more than 12,000 Secretary-held single family mortgages, and more than 1,000 partial claim subordinate mortgages. Id. § C, Technical Exh. 2. The CO states that the majority of the mortgages currently in the loan servicing portfolio are considered delinquent. CO's Statement, Mar. 30, 1999, at 1.

In order to evaluate the offerors' prior experience, firms were required to provide "evidence of [their] corporate and staff experience in servicing a large portfolio of delinquent loans" during the 5 years immediately preceding the solicitation. RFP § E, ¶ 1.7(a)(2)(iv).[4] In addition to the information required by the RFP, by letter dated November 19, 1998, HUD requested the following specific information from each offeror:

> Provide evidence of your corporate and staff experience in performing work and providing deliverables the same as, or substantially the same as the primary services required [by the RFP] during the five (5) years immediately preceding this solicitation. This includes any key personnel, subcontractors, partnerships, etc. necessary to perform the primary services required.
>
> Provide a list of all clients including Federal, state and local governments and commercial customers for whom you performed the same or similar services as those required during the five (5) years immediately prior to this solicitation which includes the following: Name of the contracting office, contract number, total contract value,

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[4]Testimony at the hearing shows that at least two members of the TEP did not consider the 5 years to be a "minimum requirement," Hearing Transcript (Tr). at 56, 156, while the TEP Chairperson testified that offerors were required to have a minimum of 5 years experience immediately prior to the solicitation in servicing a large portfolio of delinquent loans. Tr. at 224. It thus appears that the 5 year requirement for servicing loans was not consistently applied by the evaluators. The record further shows that, in its report to the CO, the TEP concluded that ACS "meets the 5 year minimum requirement of for loan servicing . . . ." AR, exh. 51, Memorandum from the Chairperson, TEP, to the CO at 3 (Jan. 4, 1999). However, the TEP report makes no similar assessment with respect to D&T.

> contracting officer name and telephone number, program manager name and telephone and list of major subcontractors.
>
> Provide evidence of your successful performance of work—including meeting delivery dates and schedules the same as or substantially similar to that required during the five (5) years immediately preceding this solicitation.

AR, exh. 2, HUD letters to offerors, Nov. 19, 1998, at 1.

Here, the solicitation and the agency's request for information quoted above clearly indicated that HUD considered a firm's experience to be different from its employees' individual experience. The RFP specifically requested offerors to provide evidence of their corporate and staff experience in servicing a large portfolio of delinquent loans. RFP § E, ¶ 1.7(a)(2)(iv). Offerors were also instructed to provide evidence of their corporate and staff experience pertinent to performing work the same as, or substantially similar to, the primary services required by the RFP during the past 5 years. Although the RFP stated that both corporate and personnel experience were to be evaluated under the prior experience factor, given the reference in the RFP to corporate and staff experience, id., and the type of information HUD specifically requested in its November 19 letter, we conclude that, contrary to the agency's position, under this evaluation factor, the RFP clearly contemplated a separate evaluation of corporate and key personnel experience.[5]

Our review of the record, including testimony at the hearing, shows that the TEP's conclusion was based almost entirely on its evaluation of D&T's proposed key personnel, and that the TEP did not conduct a separate evaluation of the firm's corporate experience. The TEP awarded D&T's proposal 23 out of 25 points under the prior experience factor. AR, exh. 46, TEP Final Consensus Score Sheet, at 6th unnumbered page. The TEP found that as a company, including its key personnel, D&T "has been performing the primary services required under this contract for a large portfolio of delinquent loans for a significant portion of the five years immediately preceding the solicitation." Id. The TEP further noted that D&T had demonstrated

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[5]In further support of our conclusion, we note that in the individual evaluator score sheets and the consensus score sheets, in order for a proposal to earn a "high" score (17-25 points) under the prior experience evaluation factor, the offeror had to clearly demonstrate that both as a company and its key personnel had been performing the primary services required under the RFP for a significant portion of the 5 years immediately preceding the solicitation. If the offeror was lacking either in corporate or key personnel experience, the proposal could earn only a "medium" score (8-16 points). AR, exhibits 28, 29, at 6th unnumbered page.

"extensive experience servicing large portfolios of delinquent loans both in the private and public sector," id., and concluded that D&T "has clearly demonstrated extensive ability in delinquent loan servicing both in the public and private sector." Id. at 7th unnumbered page. We have reviewed the evaluation record, including the individual evaluators' score sheets, D&T's proposal, and the video recording of D&T's oral presentation, and conclude that the TEP's conclusions are not supported by the record. Below we discuss some examples of the projects the TEP relied on in its evaluation in support of our conclusion.

In its proposal, D&T described a project in support of the Government National Mortgage Association (Ginnie Mae). According to the proposal, D&T "was awarded a multi-year task order contract to support Ginnie Mae's Office of Finance in evaluating, developing and implementing information and risk management systems." AR, exh. 4, at 29. The proposal further explains that D&T was "awarded several tasks to address the operational procedures and information systems of Ginnie Mae's Office of Asset Management." Id. One TEP member, who awarded D&T's proposal the maximum number of points available in this area, testified that while this particular experience is in developing a desk guide for loan servicing, it is not loan servicing. Tr. 68, 69. With respect to D&T's corporate experience generally, one evaluator testified that D&T has experience in performing loan servicing reviews, which is different from actually performing loan servicing. Tr. at 65, 66. This evaluator simply could not point to any project where D&T had demonstrated in its proposal having extensive experience in performing loan servicing on large delinquent portfolios in the private sector. Tr. 73, 74. Further, this evaluator could not point to anything in the record to show that D&T had experience in direct loan servicing in either the private or public sector because, according to the witness, D&T does not service loans. Tr. 68-70. Another evaluator who awarded D&T's proposal 17 points in this area also testified that D&T, as a company, does not have any experience servicing a large portfolio. Tr. 166. In our view, the corporate experience D&T described in its proposal, particularly its work with Ginnie Mae, clearly did not demonstrate that the firm had provided comprehensive servicing of a large portfolio of delinquent single family mortgages as contemplated by HUD's solicitation.

D&T also relied on work performed by its teaming partner, The Clayton Group, and included six projects to satisfy the corporate experience requirement. D&T described the first project, with [DELETED] Bank, as related to delinquency problems with various consumer loan portfolios secured by auto leases and loans, unsecured line of credit portfolios, and mortgage portfolios. The period of performance for this contract was from January to April 1998. AR, exh. 4, D&T's proposal, Nov. 30, 1998, at 38. Although the proposal states that this portfolio consisted of 40,000 loans and references "mortgages," there is nothing in the record to indicate how many loans within this portfolio were

single family mortgages. Tr. 79, 80. Further, it is clear that the contract was primarily for the collection of delinquent auto loans and leases. Specifically, D&T's proposal states that The Clayton Group was retained to resolve an "unacceptably high delinquency rate in [DELETED] automobile loan and lease portfolio." AR, exh. 4, D&T's proposal, Nov. 30, 1998, at 32, 40. Resolving delinquent auto loans and leases, however, is not the same as servicing single family mortgages. For instance, one evaluator testified at the hearing that servicing mortgages is much more complex than servicing auto loans, in that servicing a delinquent first mortgage loan requires "much more intensive labor" and generally involves relatively complex functions (e.g., escrows, paying taxes), which are not usually involved in servicing auto loans. Tr. 59-60. In our view, this contract to resolve delinquent auto loans and leases, clearly does not demonstrate corporate experience the "same as or similar to" providing comprehensive servicing to more than 12,000 delinquent single family mortgages as contemplated by HUD's solicitation.

The Clayton Group describes another project, with [DELETED], as "servicing transfer" of a non-performing loan portfolio. AR, exh. 4, D&T's proposal, Nov. 30, 1998, at 33. Based on the information in D&T's proposal, one evaluator testified that this entire portfolio consisted of approximately 200 to 250 loans. Tr. 77, 78. According to D&T's proposal, this portfolio initially consisted of non-performing loans secured by real estate and some unsecured loans. D&T states in its proposal that [DELETED] employed Clayton to initialize customer contact and counsel the borrowers regarding their loan status to resolve delinquencies. AR, exh. 4, D&T's proposal, Nov. 30, 1998, at 41. This relatively small contract, however, does not appear to involve services that are the "same" as or "similar" to the full range of comprehensive loan servicing contemplated by HUD's solicitation.

Consistent with our conclusion that the contracts cited in D&T's proposal fail to show the required corporate experience, the agency's evaluation record similarly lacks any support to show that D&T's corporate experience is relevant to the contemplated contract. For example, one evaluator, who awarded D&T's proposal a perfect score of 25 points in this area, generally noted D&T's experience of approximately 25 years; that reference checks were excellent; and that D&T had provided an "extensive organizational chart demonstrating knowledge of servicing." AR, exh. 29, Individual Score Sheet, at 6th unnumbered page. However, except for those cursory comments, that document contains no description or discussion of how D&T's experience is relevant to or is the same as or substantially similar to the work contemplated under HUD's solicitation, especially since the record shows that the firm does not perform loan servicing. Likewise, in its recommendation, with which the SSO concurred, the TEP specifically noted that D&T had demonstrated "extensive experience conducting full servicing of seriously delinquent loan portfolios in the public and private sector," and cited as examples [DELETED]." AR, Tab 50, Memorandum from the CO to the SSO at 7 (Dec. 31, 1998). Our review of D&T's proposal reveals no description of a

[DELETED][6] contract, however, and, as discussed above, The Clayton Group's [DELETED] contract involved collection of delinquent auto loans and leases, which, in our view, is not "the same as or similar to" providing comprehensive servicing to a large portfolio of single family mortgages as contemplated by HUD's solicitation.

Agencies are required to document their selection decisions so as to show the relative differences among proposals, their weaknesses and risks, and the basis and reasons for the selection decision. FAR §§ 15.305(a), 15.308; Department of the Army--Recon., B-240647.2, Feb. 26, 1991, 91-1 CPD ¶ 211 at 2. Where there is inadequate supporting rationale in the record for the source selection decision, we cannot conclude that the agency had a reasonable basis for its decision. See American President Lines, Ltd., B-236834.3, July 20, 1990, 90-2 CPD ¶ 53 at 6. Based on our review, we think that the TEP's conclusion that D&T demonstrated "extensive experience" in providing the full range of loan servicing to a large portfolio of delinquent mortgage loans is not supported by the record. Accordingly, we think that the evaluation of D&T's proposal under the prior experience factor was flawed, and we sustain this aspect of ACS's protest as well.

Discussions

ACS argues that the agency did not conduct meaningful discussions with the firm. In support of its argument, ACS points out that in its report to the CO, the TEP expressed concern that between the base and option years, ACS's proposal reflected an increase in price per account serviced, and that ACS had not adequately explained this increase. ACS maintains that since its price was of material concern to the TEP in its recommendation, and was also a concern expressed by the SSO, HUD should have given the firm an opportunity to address this during discussions.

The FAR requires that contracting officers discuss with each offeror being considered for award "significant weaknesses, deficiencies, and other aspects of its proposal . . . that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award." FAR § 15.306(d)(3). The statutory and regulatory requirement for discussions with all competitive range offerors (41 U.S.C. § 253b(d)(1)(A) (1994); FAR

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[6]We note that during its oral presentation, a D&T senior partner briefly mentioned D&T's experience with "large contracts," citing [DELETED] as an example. Except for naming that company, however, D&T did not explain the nature of the [DELETED] contract or provide any details that could reasonably support the TEP's conclusion that D&T had demonstrated "extensive experience conducting full servicing of seriously delinquent loan portfolios in the public and private sector." In fact, the record shows that D&T does not perform loan servicing.

§ 15.306(d)(1)) means that such discussions must be meaningful, equitable, and not misleading. Du and Assocs., Inc., B-280283.3, Dec. 22, 1998, 98-2 CPD ¶ 156 at 7. Discussions cannot be meaningful unless they lead an offeror into those weaknesses, excesses or deficiencies of its proposal that must be addressed in order for it to have a reasonable chance of being selected for award. Eldyne, Inc., B-250158 et al., Jan. 14, 1993, 93-1 CPD ¶ 430 at 6, recon. denied, Department of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422.

Here, the record shows that in its recommendation to the CO, the TEP expressed concern that ACS's proposal reflected a "large increase between the price per account from ACS for the first year versus the following option years." AR, exh. 51, Memorandum from the Chairperson, TEP, to the CO at 6 (Jan. 4, 1999). The TEP further stated that ACS had not adequately explained this increase, and that it assumed that ACS was "counting on getting the award with [its] lower bid and then HUD would have a note sale and [ACS] would actually make a large amount of money." Id. In other words, the TEP believed that ACS's price was an attempt at "buying into" the contract and assumed that HUD would conduct a note sale during the option years, thus resulting in an unreasonable increase in price per account serviced. The record further shows that the SSO concurred with this assessment and also expressed this concern in his selection decision. AR, exh. 56, Memorandum from the SSO to the CO at 3rd unnumbered page (Jan. 19, 1999). While the record is not clear as to what impact ACS's pricing methodology had on the TEP's recommendation or on the SSO's selection decision, it is clear that, at a minimum, it was of sufficient concern for the evaluators to raise it in the TEP's report to the CO, and that the SSO agreed with the TEP's view that ACS had not adequately explained its pricing strategy. Despite this stated concern, however, there is no evidence in the record that HUD raised this issue during its discussions with ACS. We therefore agree with ACS that discussions with the firm regarding its price were not meaningful.[7]

Recommendation

We recommend that the agency reopen discussions with ACS and D&T, and request FPRs from these two firms, including business proposals. Since it is clear from the record that the agency has not changed its position that offerors are prohibited from proposing to use an electronic interface, the proposals should be evaluated accordingly. During discussions, HUD should afford ACS

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[7]Because our recommendation that the agency reopen discussions and request another round of FPRs renders the remaining protest issues academic, we need not address them here.

an opportunity to explain its pricing methodology. We also recommend that the agency reevaluate D&T's proposal under the prior experience evaluation factor in accordance with this decision. If upon reevaluation, the agency determines that D&T's proposal does not represent the best value to the government, HUD should terminate the order issued to D&T and issue the order to ACS. We also recommend that ACS be reimbursed its costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1999). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General
of the United States