



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: First Street Investments Limited Partnership

File: B-270894.2; B-270894.3

Date: August 15, 1996

Alex D. Tomaszczuk, Esq., and Devon E. Hewitt, Esq., Shaw Pittman Potts & Trowbridge, for the protester.

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DIGEST

Protest against award to higher-priced, higher technically rated offeror is denied where the solicitation evaluation scheme gave greater weight to technical merit than price, and the agency reasonably concluded that protester's lower price did not outweigh the technical advantages demonstrated in the awardee's higher-priced proposal.

DECISION

First Street Investments Limited Partnership protests the award of a contract to Arizona Public Service (Arizona) by the General Services Administration (GSA) under solicitation for offers (SFO) No. GS-09B-96089 for a lease of office and related space for the Bureau of Indian Affairs and the Bureau of Reclamation in the Phoenix, Arizona area. First Street alleges improprieties in the evaluation of competing offers and the award decision.

We deny the protest.

The SFO sought offers for a 10-year term, with 5 years firm, for approximately 60,546 rentable square feet yielding between a minimum of 54,492 to a maximum of 57,216 occupiable square feet.¹ The SFO required the space to be located "in a first class quality building of sound and substantial construction" and to have a potential

¹The SFO explained that "rentable space" is the area for which a tenant is charged rent, and may include a share of the building's common areas, such as lobbies and corridors, etc., while "occupiable space" includes only the portion of rentable space that is available for the tenant's personnel, equipment, and furnishings.

for efficient layout. It further specified that the space offered "should be located in a new or modern office building with facade of stone, marble, brick, stainless steel, aluminum or other permanent materials in good condition acceptable to the contracting officer Overall, the building should project a professional and aesthetically pleasing appearance including an attractive front and entrance way." Further, the SFO required that if the offered space was not in a new or modern office building, it should be in a building that by occupancy had undergone first class restoration or adaptive reuse for office space with modern conveniences. If the restoration work was underway or proposed, the offeror was required to submit with its offer architectural plans acceptable to the contracting officer. The SFO listed a number of architectural requirements, such as a requirement for windows in each exterior bay, which could be waived by the contracting officer.

The SFO provided that the lease contract would be awarded to the offeror whose proposal was determined to be most advantageous to the government, based on price and other factors in the solicitation. The SFO listed the following four evaluation factors and stated that these factors combined were significantly more important than price: building configuration, efficient layout, public parking; and building security.

Three firms, including First Street and Arizona, submitted initial offers. First Street offered space currently leased by GSA for the Bureau of Indian Affairs. On December 11 and 12, the agency conducted negotiations. On December 12, the contracting officer issued letters requesting the submission of best and final offers (BAFOs) by December 22 and transmitted an amendment. First Street states that the December 12 mailing it received contained only the amendment and the second page of the letter, which did not include the BAFO request. First Street states that it informed the agency on December 13 that it had not received a complete package and on December 19 it sent the agency a fax providing pricing information that had been requested during negotiations. Only Arizona submitted its BAFO by the December 22 BAFO deadline. On January 2, First Street contacted the contracting officer to ask when BAFOs would be requested and was told about the contents of the December 12 letter, which was then faxed to First Street. On January 4, First Street again contacted the agency, and it was agreed that the protester would be permitted to submit its BAFO by January 5. The protester submitted a BAFO in accordance with these instructions, without revising the technical portion of its offer. First Street's price revision was considered in the final evaluation. Arizona was selected for award based on its higher-priced, higher technically rated proposal.

First Street primarily challenges the evaluation of the technical proposals and the decision to select Arizona for award. Generally, the evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD

¶ 381. In reviewing an agency's technical evaluation, we will not reevaluate the proposals, but will examine the record of the evaluation to ensure that it was reasonable and in accord with stated evaluation criteria, and not in violation of procurement laws and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203.

First Street alleges that the evaluation was improper because every member of the source selection panel did not evaluate every part of each proposal, and because the source selection authority did not score proposals. The protester points out that the source selection plan (SSP) identifies the source selection authority as a member of the evaluation team, and concludes that the source selection authority therefore was required to evaluate and score each proposal for technical merit. Similarly, the protester concludes that because the SSP does not specifically provide that the evaluators are not responsible for scoring each evaluation factor, the SSP must require the source selection authority and other members to score each evaluation factor.

We disagree. We find no such requirements in the SSP and know of no basis to object to the agency's approach here, pursuant to which evaluation team members with differing skills or training scored those areas of the proposals related to their areas of expertise. In addition, even if the SSP did require the approach that First Street suggests, SSPs are merely internal agency instructions which do not vest outside parties with rights; agencies are only required to adhere to the evaluation scheme outlined in the solicitation. Antenna Prods. Corp., 69 Comp. Gen. 182 (1990), 90-1 CPD ¶ 82.

Moreover, the record supports the conclusion that Arizona's proposal, and the space it offered, were superior to First Street's proposal and the space it offered. First Street's proposal earned its lowest scores under the first two evaluation factors listed in the SFO. Under the first factor, building configuration, the SFO stated that the highest scores would be awarded for the following:

- "(a) Square or rectangular buildings with a center core configuration to allow for large open space layout of systems furniture and minimize required exiting.
- "(b) Buildings with required fire exiting that allows the maximum open areas with minimum structural intrusions into the space.
- "(c) Buildings with 18,000 available occupiable square feet or greater per floor.
- "(d) Contiguous space."

In the evaluation, proposals could be given a maximum of 60 points for this factor; First Street's proposal received 42 points, and Arizona's received 55 points.

Under the second factor, efficient layout, the SFO provided that the highest scores would be awarded as follows:

"(a) Buildings with wide and regular column space (29' on center or greater) to allow for a systems furniture layout with minimum in wasted floor space.

"(b) Buildings with center core to window wall dimensions of 50' or greater.

"(c) Buildings without narrow or irregular space configurations, intrusions into the open space or other unusual building features.

"(d) Optimum layout based on the test fit provided by offeror."

Proposals could receive a maximum of 40 points for this factor; First Street's proposal received 27, and Arizona's received 34.

First Street offered space on four separate floors with approximately 15,000 square feet available on each floor. Each of the floors includes an area under all of the windows on the exterior walls that is unusable floor space but is considered "occupiable square footage" as measured by GSA's standards and therefore is included in the calculation of the lease price. One side of the building has no windows, and another side provides no access to windows because the elevators and restrooms are all located along that wall. The evaluation record describes the building configuration offered by First Street as "limiting, given the exiting, but not entirely unworkable." It identifies as a problem irregular columns with narrow spaces left for workstations, noting that in some areas the columns would be in the middle of workstations. The test fit revealed inefficiencies and inflexible areas. For example, the protester's building did not offer the type of center core configuration appropriate to a large open space layout; did not offer minimal structural intrusions into the space; and did not offer at least 18,000 square feet per floor. Also, the protester did not offer space with the potential for an efficient layout with widely spaced columns or otherwise unobstructed areas.

On the other hand, the evaluators found that the building in which Arizona proposed space has windows on all sides, nine foot ceilings throughout, and no columns and few other obstructions hindering the layout of the space. The space offered is on two and one-half floors and the agency explains that it is most efficient to locate an agency on as few floors as possible. The evaluators found no meaningful deficiencies in the space offered by Arizona and First Street has not challenged the evaluation of Arizona's proposal. Thus, on this record we have no basis to disagree with the conclusion that Arizona's proposal was technically superior to the protester's.

First Street also argues that the technical evaluation was flawed because the agency considered the "class" or aesthetic appeal of the buildings being offered, which the

protester characterizes as the improper application of an unstated evaluation criterion. As evidence of the improper consideration of the "class" of the buildings, First Street notes that the SSP used by the evaluators provided for the assignment of additional "price" points to proposals based on whether the offered buildings were class "A," "B," or "C." In addition, the protester states that during a negotiation session an agency official noted that the firm's offered building was a class "C" building and after award the contracting officer commented on the "class" of Arizona's building.

We find no merit to this allegation. As discussed above, the record shows that First Street's technical score was justified by considerations related to the building configuration and layout potential—in other words, considerations consistent with the evaluation scheme established in the SFO. In addition, the agency reports that the provisions of the SSP concerning building class were not implemented in the evaluation. Also, there is no evidence that building class was considered in the scoring of the proposals.² In any event, we point out that the SFO included certain minimum requirements in the statement of work—concerning overall appearance and quality of the building exterior—that GSA was required to take into consideration in order to determine whether offered space met its minimum needs. The record shows that in order to meet the requirements of the SFO, the building First Street offered would need extensive renovations or repairs, including the installation of new windows, replacing the heating, ventilation and air conditioning system, and overhauling the plumbing system. The protester's proposal included no plans for such work, as required by the SFO. Although First Street's proposal was kept in the competitive range, it appears from the record that First Street's building did not meet certain requirements.³

First Street also argues that the award decision was flawed because price was not given sufficient weight. In selecting an awardee, price/technical tradeoffs may be made subject only to the test of rationality and consistency with the established

²The record shows that, notwithstanding the SSP, prices were not scored so there was no opportunity to add "price" points based on building class.

³The record shows that during a recent inspection by GSA, First Street's building was found to be in "sub-standard condition," and generally was considered to present an "unacceptable working environment" requiring a renovation of the space. Further detail also is provided showing reports of ceiling tiles that are broken, stained or missing; carpet that was badly worn, stained and visibly dirty; stained or dirty walls; tile floors that were dirty; restroom fixtures in poor and unsightly condition; unacceptable electrical and communication distribution systems, in addition to the building's failure to meet the SFO's requirement for windows in all of the office bays.

evaluation factors. Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430. An award to an offeror with a higher technically scored proposal and a higher price is unobjectionable, so long as the result is consistent with the evaluation criteria and the agency has determined that the technical difference is sufficiently significant to outweigh the price difference. Calspan Corp., B-258441, Jan. 19, 1995, 95-1 CPD ¶ 28. Even where a source selection official did not specifically discuss the price/technical tradeoff, we will not object to the tradeoff if it is clearly supported by the record. Maytag Aircraft Corp., *supra*.

The record here reasonably supports the agency's price/technical tradeoff. First Street's proposal received a technical score of 99 points and offered a price of \$12.95 per square foot. Arizona's technical score was 119 points, and its price was \$18.40. Moreover, beyond the scores assigned to the proposals and the prices offered, the agency reports that leasing First Street's building would potentially have an impact on the operations efficiency of the tenant agencies and could be expected to result in difficult-to-estimate future costs resulting from the inflexible layout of the space. The agency concluded, for example, that the irregular and narrow column spacing would require system furniture to be reconfigured and workstations to be specially designed or customized to accommodate the structural intrusions in the space. Because the protester's building presents difficulties for space planning for system furniture, the agency calculates that its minimal square footage requirement would be higher for this type of inflexible layout than it would be in a building with large open spaces, such as the one offered by Arizona.

In addition, because First Street's building has a smaller area available on each floor, the agency would not be able to locate its tenants' larger divisions on single floors; space requirements for certain equipment, such as copy machines, storage and file rooms, would have to be provided on each floor, increasing the total space required. Thus, in making its price/technical tradeoff, the agency explains that it did not simply compare prices and technical scores, but took potential hidden costs into account. Having considered the technical scores assigned to the two proposals and the advantages and disadvantages of the space offered by the two firms, the agency explains that it considered the superiority of Arizona's proposal to be worth the additional cost of awarding to that firm. We have no basis to question that determination.⁴

⁴First Street argues that the selection decision was flawed because, consistent with the solicitation, the comparison of its price and Arizona's price should have been based on the entire 10-year potential term of the lease, rather than on the 5-year firm period. While the protester is correct that the SFO called for the evaluation and selection to be based on consideration of the full 10-year potential lease term, First Street's argument ignores the fact that neither firm's unit price varied over the

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First Street also alleges that GSA prevented First Street from competing under this procurement on a full and fair basis. The protester bases this allegation on a number of events which it believes show a pattern of behavior intended to exclude First Street from the competition. In this respect, First Street alleges that it was misled about the time frame concerning the request for (and submission deadline for) BAFOs, and that the agency unfairly required the firm to submit its BAFO in 24 hours after First Street sought information concerning the deadline. The agency's account of the events alleged by First Street differs; the agency alleges, for example, that the protester offered to submit its BAFO within 24 hours. We need not resolve this conflict. The simple fact remains that First Street was not prevented from competing for the award; its BAFO was fully considered.⁵

Finally, First Street alleges that the agency improperly engaged in post-BAFO discussions with Arizona. First Street alleges that since the requirement for rentable square feet listed in the lease contract (60,246 square feet) was lower than the amount listed in Arizona's BAFO (63,126), the agency must have held discussions with Arizona to effect this change. The protester also speculates that the decrease in rentable square footage would result in a reduction in the occupiable square footage below the minimum required by the SFO and argues its own offer might have received a higher technical score if it had been evaluated under the "changed" requirement.

In response, the agency states that it held no post-BAFO discussions. Subsequent to the submission of BAFOs, the Bureau of Indian Affairs reduced its request for space, based on a reduction in its needs. However, because the new space requirement did not differ significantly from the requirement specified in the SFO, the contracting officer did not amend the solicitation but simply presented Arizona with a lease contract for 60,246 square feet, which Arizona accepted.

While generally the government must issue a written amendment to notify all offerors of changed requirements in order to afford them an opportunity to respond to the revised requirements, see Diversified Computer Consultants, B-230313; B-230313.2, July 5, 1988, 88-2 CPD ¶ 5, we will only sustain a protest of the agency's failure to issue a written amendment notifying offerors of a change in requirements

⁴(...continued)

10-year term and thus the price delta would be the same percentage no matter how long the term of the lease.

⁵First Street does not argue that it would have offered a different space or would otherwise have revised the aspects of its offer that earned its low technical score if it had been given additional time to prepare its BAFO.

where this change affected the selection decision or was otherwise prejudicial to the protester. FKW Inc. Sys.; ColeJon Mechanical Corp., B-235989; B-235989.2, Oct. 23, 1989, 89-2 CPD ¶ 370. Here, the SFO described the required space as approximately 60,546 rentable square feet, yielding between 54,492 and 57,216 occupiable square feet. The lease contract shows 60,246 rentable square feet—which is consistent with the "approximately 60,546" square feet required by the SFO—and in fact provided 55,116 occupiable square feet. This occupiable square footage is within the range specified in the SFO. In these circumstances, we fail to see how the modification constituted a "change" that required amending the solicitation, and we find no support for the suggestion that the protester was prejudiced by this modification.

The protest is denied.

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