



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: 1301 New York Avenue Associates

File: B-274676.2; B-274676.3

Date: January 8, 1997

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Richard J. Conway, Esq., and Karen Lau, Esq., Dickstein Shapiro Morin & Oshinsky, for Square 140 Associates, an intervenor.
Barry D. Segal, Esq., and Jeffrey M. Hysen, Esq., General Services Administration, for the agency.
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated the protester's best and final offer for the lease of office space is denied where the record shows that the agency's evaluation of the protester's rental rate that included required tenant alterations was reasonable notwithstanding the protester's expectation that its lower rate which excluded these alterations would be used for evaluation purposes.

DECISION

1301 New York Avenue Associates Limited Partnership protests the award of a contract to Square 140 Associates under solicitation for offers (SFO) No. 96-012, issued by the General Services Administration (GSA) for the lease of approximately 167,000 to 177,000 occupiable square feet (osf)¹ of office and related space in Washington, D.C. for use by the Department of Agriculture's Economic Research Service (ERS). The protester argues that the evaluation of its offer and that of the awardee was unreasonable in several specific areas.

We deny the protests.

¹"Occupiable space" is defined by the SFO to include only the portion of rentable space that is available for the tenant's personnel, equipment, and furnishings.

The amended SFO solicited offers for a 5-year base period with a 5-year renewal option and a 10-year firm lease term. Among other things, the SFO stated that award would be made to the lowest-priced offeror whose proposed space conforms to the requirements of the SFO. It also stated that price evaluation would be based on the "net present value" of the annual rent per osf and explained how that figure would be calculated for price evaluation purposes. In this regard, paragraph 1.9 of the SFO entitled, "Price Evaluation (Present Value)" reads, in pertinent part:

"Evaluation of offers will be on the basis of the total annual present value per occupiable square foot including any option periods and concessions. The Government will make independent present value price evaluations on the five year firm term with five year option **and** the ten year firm term. The government reserves the right to make an award based upon either term." (Emphasis in original.)

"The Government will make present value price evaluation by reducing the prices offered to a total annual present value price per **occupiable** square foot, as follows:

- (D) In the event the government competes an expiring lease for the possibility of relocation, the cost per **occupiable** square foot for relocation expenses shall be added to the total price per **occupiable** square foot of all offers with the exception of the offer submitted for the existing leased facility. Such relocation costs may include but are not limited to physical move costs, telecommunication costs, alterations cost and the estimated cost of agency disruption. The sum of the total present value price per **occupiable** square foot and the relocation cost per **occupiable** square will be the basis for price evaluation in determining if the Government shall relocate." (Emphasis in original).

Offers were received from nine firms in response to the SFO. 1301 New York Avenue, the incumbent lessor, offered the existing building which it has leased to GSA for 11 years on an "as is" basis, while Square 140 offered a building located at 1800 M Street in Northwest Washington, D.C. During discussions, each offeror was advised that the tenant agency's needs included kitchenettes (the SFO was silent on this feature). The protester was specifically advised of this requirement as well as others that would require modifications to the existing occupied space.

Best and final offers (BAFOs) were received by June 21. In its BAFO, 1301 New York Avenue submitted two rates: a base rental of [deleted], which did not include the required tenant alterations and [deleted] which did include the alterations which the protester identified in its cover letter as:

"1. The entire premises will be painted.

"2. All tenant space (not to include the public space) will receive new carpet.

"3. 1301 New York Avenue Associates will assume responsibility for the repair and maintenance of all above building standard items to include but not be limited to the air handling unit located in the garage servicing the computer room, air conditioning for the LAN units and the lift for the mail room.

"4. 1301 New York Avenue Associates will install seven kitchenette units. . . ."

In evaluating BAFOs, the contracting officer considered 1301 New York Avenue's pricing of [deleted] since this was the only rental rate under which the protester proposed to provide the tenant alterations GSA had identified as necessary for continued occupancy of that space. 1301 New York Avenue's evaluated BAFO was priced at [deleted] (i.e., net present value per osf) for a 5-year base with a 5-year renewal option; Square 140's evaluated BAFO price was \$20.36 for the same lease term. After completing its review of BAFOs, the contracting officer decided to award a 5-year base with a 5-year renewal option lease to Square 140 whose offer was the lowest priced and met the requirements of the tenant agency. Award was made to Square 140 on September 12. The protester, debriefed by the agency on September 26, filed this protest with our Office on September 30. We have been advised by the agency of its determination that it is in the government's best interest to continue performance of the contract.

The crux of the protest is that GSA's evaluation of its BAFO and that of the awardee's was flawed. Specifically, 1301 New York Avenue alleges that GSA failed to utilize a tenant alterations allowance contained in the amended SFO to evaluate the present value of Square 140's rental rate. In addition, the protester asserts that GSA acted unreasonably because its evaluation of 1301 New York Avenue's BAFO was improperly based on the higher BAFO rental rate (that included the costs for the required tenant alterations) which the protester believed would only be utilized by GSA in subsequent negotiations if 1301 New York Avenue was selected for award. The protester also challenges the agency's estimate of relocation expenses as arbitrary and unreasonable and alleges that the agency waived a 3-year termination option requirement for the awardee. However, the protester concedes

that its BAFO would be low only if GSA both improperly used the protester's higher rental rate in evaluating its BAFO and did not apply the correct tenant alterations allowance factor to the awardee's price.²

We have no basis to question the agency's evaluation of the protester's BAFO using the rental rate of [deleted] which represents the cost for its offered space to satisfy the current needs of the tenant agency.³ As the record shows, the protester was asked during discussions to include in its rental rate the costs for certain alterations required to bring the offered space in line with ERS' current needs and which other offerors were also required to meet.⁴ While the protester asserts that it expected GSA to use its lower BAFO rate of [deleted] for evaluation purposes and would use the higher rate only as a basis to negotiate the cost of the required alterations after award of the lease, the protester has not shown, nor is there any evidence, that this expectation was reasonable. In fact, it is entirely inconsistent with the SFO evaluation scheme which envisioned evaluated rental rates that included the cost of any alterations to satisfy tenant needs. In short, we find nothing in the record, including the hearing testimony, which shows that the agency acted improperly in evaluating 1301 New York Avenue's rental rate of [deleted].

²In addition to the issues above, the protester has also alleged, in a supplemental protest filing, that Square 140 breached a restrictive covenant in another lease agreement between Square 140 and one of its tenants in the 1800 M Street building which prevents GSA from occupying the space at 1800 M Street. In response to this allegation, GSA and Square 140 both seek to have this issue dismissed asserting that the issue is a matter of contract administration and is the subject of litigation before a court of competent jurisdiction. We agree that, to the extent this matter affects this subject lease, it relates to contract performance which is a matter of contract administration not for review by our Office. Bid Protest Regulations, § 21.5(a), 61 Fed. Reg. 39039, 39042 (1996) (to be codified at 4 C.F.R. § 21.5(a)).

³A hearing was conducted for the purpose of receiving testimony from GSA's contracting officer, realty specialist, and a representative of 1301 New York Avenue. See Bid Protest Regulations, § 21.7, 61 Fed. Reg. 39039, 39042 (1996) (to be codified at 4 C.F.R. § 21.7)).

⁴Any challenge to the agency's request to price the cost for these tenant alterations which the protester describes as "above standard tenant alterations," is now untimely. Since the request was made during discussions with 1301 New York Avenue, challenges to this requirement had to be filed prior to the time set for receipt of BAFOs. Bid Protest Regulations, § 21.2(a)(1), 61 Fed. Reg. 39039, 39040 (1996) (to be codified at 4 C.F.R. § 21.2(a)(1)).

As stated, the protester concedes that if GSA correctly used the higher rental rate contained in its BAFO, it is not low under any circumstances no matter how we resolve the remaining protest issues. Therefore, since we conclude that GSA properly considered the protester's BAFO rate of [deleted], we need not consider whether GSA's application of the tenant alterations allowance factor to the awardee's price was proper or whether GSA's estimate of relocation expenses was reasonable.⁵ See Alascom, Inc., B-227074 et al., Aug. 10, 1987, 87-2 CPD ¶ 144.

The protests are denied.

Comptroller General
of the United States

⁵The protester also maintains that Square 140's offer failed to include a required 3-year termination option. This allegation is simply incorrect. Although Attachment 2 of the SFO does include language in block 10 that reads, in pertinent part, "[lease] firm with termination is for a five year firm term, but with the government having the right to terminate the lease any time after 36 months . . ." the SFO, when read as a whole and in a manner that gives effect to all its provisions, simply does not require offerors to submit a rental rate for a lease with a 3-year termination option. Indeed, as quoted above, in paragraph 1.9 of the SFO, GSA advised offerors that it intended to perform a price evaluation only on the basis of a "five year firm term with five year option and the ten year firm term" and specifically reserved the right to make award "based upon either term." That being so, we find the protester's contention that the agency improperly awarded the lease to Square 140 without the right of termination option is premised on an unreasonable reading of the SFO.