

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218668 **DATE:** August 14, 1985
MATTER OF: TRS Design & Consulting Services

DIGEST:

1. Negotiations properly may be reopened after submission of best and final offers where the contracting agency has a valid reason for doing so.
2. Agency properly may extend the original best and final closing date and set a new closing date to rectify error in advice to one of two offerors which misled the offeror into failure to submit a timely best and final offer.
3. Procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals, and GAO will not disturb agency conclusions based on an on-site inspection where not clearly shown to be arbitrary.
4. In a procurement for the lease of office space, the zoning of an offeror's building is an aspect of the offeror's responsibility (ability to perform), and evidence of proper zoning thus may be submitted to the contracting officer at any time prior to award.
5. The agency's methods used in developing a janitorial service cost estimate to be added to offered building lease prices, as well as the conclusions reached in evaluating offerors' proposed costs, are entitled to great weight and GAO will not second-guess an agency's cost determination unless clearly shown to be unreasonable.

TRS Design & Consulting Services (TRS), on behalf of Mr. and Mrs. William C. Beedle, protests the proposed award of a contract to University Business Center Associates (University) under solicitation No. GS-09B-38425, issued by the General Services Administration (GSA) for the lease of

office space with off-street parking, and the lease of warehouse space. TRS contends that the procurement procedures followed and the evaluation process were deficient. We deny the protest.

Background

GSA solicited seven potential offerors after surveying the market of potential sites to house the Department of Agriculture's Soil Conservation Service for 10 years. The agency received four offers at the solicitation closing date. Discussions then were held with the offerors and best and final offers were requested from all four. Only three offerors, including the protester and University, submitted best and final offers. In evaluating the best and final lease prices of the three remaining offerors, GSA discovered that it had failed to request unit prices on the solicitation requirements for sound-conditioned office subdividing partitions and for free-standing partitions. Also, two of the offerors had not provided a separate overtime rate for a computer room required to operate on a 24-hour basis. Because GSA determined that negotiation of these prices was necessary, the agency reopened discussions and requested a second round of best and final offers. Shortly after negotiations were reopened, one offeror withdrew its proposal, leaving the protester and University as the only offerors.

Based on the evaluation of the second best and final offers, both the protester and University were found to be acceptable and relatively equal in terms of the solicitation's evaluation factors. University was recommended for award at this juncture because it had the lowest priced offer. Apparently by inadvertence on GSA's part, however, both offers were permitted to expire before the award could be made. In response to GSA's request for an extension, University proposed changes in the terms of its offer. As GSA also discovered that it needed to clarify with the protester and University the calculation of the escalation of operating costs, GSA again reopened negotiations and requested a third round of best and final offers.

GSA received the protester's third best and final offer prior to the closing date for its receipt. University informed GSA that it intended to hand deliver its third best and final offer to assure timely receipt, but was advised by GSA 1 day before the closing date that

as long as the offer was sent by certified mail at any time prior to the closing date, it would not be considered a late offer even if it arrived at GSA after the closing date. GSA realized after the closing date that its advice to University was not in accord with the solicitation's late proposal clause, which provided for acceptance of proposals received after the closing date only where sent by certified mail at least 5 days before the specified date. GSA thus sent mailgrams to the protester and University setting a new date for receipt of third best and final offers.

University's third best and final, which was dated prior to the expiration of the initial date set for receipt of such offers, was received by GSA via certified mail prior to the new closing date. Following the evaluation of the third best and final offers submitted by the protester and University, GSA found that both offers remained equally acceptable and, since University's proposed price remained low, made award to University.

Reopening of Discussions

TRS argues that GSA did not have sufficient justification to reopen negotiations at any time after the receipt of initial best and final offers and therefore improperly prolonged the procurement process to the benefit of University. We have held that reopening a competition and requesting more than one best and final offer generally is appropriate where a valid reason exists for the action. Youth Development Associates, B-216801, Feb. 1, 1985, 85-1 C.P.D. ¶ 126. We find that GSA's requests for three best and final offers was unobjectionable under this standard.

The second round was justified based on GSA's discovery that the RFP had neglected to request unit prices related to the sound-conditioned office partitions; two offerors had failed to provide a separate overtime rate for the required 24-hour operation of the computer room; and the apparent low offeror had offered an amount of square footage of office space different than the square footage shown on a drawing in its proposal. Under the circumstances, we think GSA validly concluded that it had inadequate data to conduct an adequate evaluation of the offerors' proposed lease prices, and that reopening discussions was in the best interests of the government. Kisco Company, Inc., B-216646, Jan. 18, 1985, 85-1 C.P.D. ¶ 56.

The third round of best and final offers was initiated after the offers had expired. After the inadvertent expiration of the offers, University wanted to propose some changes to its proposal. Both offerors were then afforded an equal opportunity to modify their proposals. In the circumstances, the call for a third round of best and final offers was justified. See Mayden & Mayden, B-213872.3, Mar. 11, 1985, 85-1 C.P.D. ¶ 290

The fact that GSA set a second closing date for the third round solely because it did not want to reject University's third best and final offer as late also was not improper. We have specifically recognized that where the contracting agency fails to furnish an offeror information necessary to submit a timely best and final offer, and is in a position to correct the oversight prior to award, it should do so. See ABC Food Service, Inc., B-181978, Dec. 17, 1974, 74-2 C.P.D. ¶ 359 (failure to notify offeror of best and final closing date, which prevented offeror from submitting offer, should be rectified by reopening negotiations). Here, the record indicates it was GSA's misinformation to University which led it to miss the original closing date for the third round and, based on the above standard, we think GSA acted properly in extending the closing date to rectify its error.

Acceptability of University's Proposal

TRS contends that University's initial proposal should have been rejected because University's property was not suitably zoned as required by the solicitation until nearly 2 months after University submitted its first best and final offer. TRS alleges that University's property is located in an industrial zone and that University did not obtain a zoning variance for office use before submitting a proposal. This alleged deficiency would not have been a proper basis for rejecting University's proposal.

We have held that zoning is an aspect of an offeror's responsibility even where the solicitation couches the zoning requirement in terms of responsiveness or acceptability. William A. Stiles, Jr.; Piazza Construction, Inc., B-215922; B-215922.2, Dec. 12, 1984, 84-2 C.P.D. ¶ 658. Evidence of proper zoning, therefore, need not be submitted until prior to award. No award yet has been made in the procurement, and TRS admits that University has obtained proper zoning.

TRS also claims that University's building violates the solicitation requirement that the property to be leased be recognized as a modern office. According to TRS, University's building is a tilt-up concrete building designed specifically for industrial use, and is located in an industrial area. TRS also alleges that the entire rear wall of the building contains panels that can be knocked out to accommodate roll-up garage doors, which further shows that it is not a modern office building. In addition, TRS asserts that University's building fails to comply with the solicitation requirement that there be a minimum of 30 offstreet parking spaces.

The evaluation of the technical aspects of proposals is primarily the responsibility of the contracting agency, not our Office, since the agency must bear the burden of any difficulties resulting from a defective evaluation. Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 585 (1984), 84-2 C.P.D. ¶ 317. In light of this, we repeatedly have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals, and that their evaluation will not be disturbed unless clearly shown to be arbitrary or in violation of the procurement laws and regulations. Vibra-Tech Engineers Inc., B-209541.2, May 23, 1983, 83-1 C.P.D. ¶ 550. We find that TRS has not established that GSA's evaluation of the building offered by University was unreasonable or otherwise improper.

University's building was constructed recently and, although located in an industrial area, has been zoned for office use. Given these facts, we think GSA reasonably concluded that University offered a modern office building as required. We fail to see how the fact that the building may contain panels in the rear which can be knocked out for industrial use precludes the building from being considered a modern office with the panels in place.

GSA states that University's offer provided for 45 parking spaces in response to the RFP requirement for 30 off-street spaces. TRS maintains that 21 of those 45 spaces, in fact, cannot be provided because they are located in a driveway along the rear wall of University's building, thus making the driveway unusable for traffic and creating a fire hazard. TRS also alleges that most of the other 24 spaces cannot be used by large cars because in order to meet the minimum number of parking spaces required

by local building codes, University had to make almost 55 percent of its spaces for compact cars.

TRS provided us with photographs of the rear of University's building to support its parking space claim. It appears from these photographs that the driveway is not blocked by the parking spaces, and can, at the very least, accommodate one-way traffic. Further, even if TRS is correct that the use of a few of these 21 spaces would violate local fire codes because they block rear exit doors, it appears to us that the remaining spaces still would be usable. TRS intimates that there is a prohibition against parking vehicles "right up against a building," but offers no further specifics on the matter. TRS's photographs do show the existence of some spaces for compact cars, but since the RFP did not specify any dimensions for the spaces or specify what size car the spaces had to accommodate, this point is irrelevant.

Based on our review of TRS's photographic evidence, therefore, we cannot find that GSA unreasonably evaluated University's building and parking facilities as acceptable.

Application of Evaluation Criteria

TRS contends that in selecting University for award, GSA improperly applied the solicitation's evaluation criteria regarding the proximity of eating facilities, public parking, and public transportation to the buildings.

GSA personnel inspected the areas where the two properties are located for purposes of the evaluation and found that neither property was within three blocks of eating facilities or public transportation, and that both properties were within three blocks of ample public parking. Consequently, GSA determined that the two proposed buildings were essentially equal in terms of the quality of their location. TRS claims GSA's conclusions are erroneous, alleging that there in fact are two bus stops and one full service dining facility within three blocks of its property. TRS further alleges that public parking facilities near its property are superior to the public parking facilities near University's property.

We will not dispute GSA's findings, which were based on an actual site inspection, on the basis of the protester's unsupported assertions. Such assertions, without some evidentiary support are not sufficient to satisfy the protester's burden of establishing that the agency's evaluation clearly is unreasonable. Sunbelt Industries, Inc., B-214414.2, Jan. 29, 1985, 85-1 C.P.D. ¶ 113.

GSA specifically found in its inspection that the eating facility which TRS alleges to be within three blocks of its property was approximately one mile from the property, and that neither offeror's property is within three blocks of public transportation. GSA has furnished us with the applicable city of Davis, California, bus schedules in support of this latter finding, and TRS has not indicated that these schedules show two bus stops within three blocks of its building. We similarly find no probative evidence indicating that the protester's public parking facilities are superior to University's. In fact, since the RFP set forth no criteria for rating the quality of the available public parking, the alleged superiority of TRS's public parking is irrelevant.

We thus have no basis for disturbing GSA's determination that the two proposals were essentially equal regarding these factors.

Cost Evaluation

TRS argues that in evaluating its proposed lease price, GSA inaccurately estimated the cost of janitorial services for its building to be more than twice as high as that normally paid for such services. TRS asserts that it would have been the low offeror had GSA correctly estimated the cost for janitorial services.

Paragraph 31 of the solicitation provided, in relevant part, that the cost of any items specified in the solicitation that were not included in the offered rental price would be added in for evaluation purposes. The solicitation also set forth an extensive schedule of janitorial services required by the government in connection with the lease. GSA states that, in response to the third request for best and final offers, TRS changed its offer from one which had provided for full services along with the lease to one which excluded janitorial services. Consequently, for price evaluation purposes, TRS's price offer was

increased by a yearly cost of \$1.70 per net usable square foot (n.u.s.f.), the estimated cost for janitorial services. TRS's final evaluated yearly cost was \$0.50 per n.u.s.f. more than University's evaluated cost.

The procuring agency's judgment as to the methods used in estimating costs and the conclusions reached in evaluating an offeror's proposed costs are entitled to great weight by our Office since the procuring agencies are in the best position to determine realism of costs. Dynatrend, Inc., B-192038, Jan. 3, 1979, 79-1 C.P.D. ¶ 4. We will not second-guess an agency's cost determination unless it is not supported by a reasonable basis. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325.

GSA developed, and has submitted, a detailed estimate from which it derived the \$1.70 figure for TRS's building, and TRS has not specified in what respect it believes this estimate is inaccurate. While TRS claims that the government usually pays only \$0.74 per n.u.s.f. for janitorial services for its buildings and cites several recent contracts where this amount has been paid, TRS provides no information as to the nature and extent of these janitorial service contracts. In the absence of any indication that the janitorial services for these contracts are substantially similar to the janitorial services described by the solicitation, we have no basis to conclude that GSA's estimated cost for janitorial services on TRS's building was too high.

Since the protester has not established that GSA's technical or cost evaluations were unreasonable, and since the technical proposals were judged essentially equal, the selection of University's offer based on low evaluated cost was proper. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 C.P.D. ¶ 71.

Finally, TRS objects that GSA discussed certain solicitation items with University which it did not discuss with TRS. An agency is not required, however, to hold identical discussions with all offerors since the degree of weaknesses or deficiencies, if any, in the proposals obviously will vary. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 C.P.D. ¶ 607. Indeed, discussion of the same areas of each offeror's proposal is highly unlikely in view of the uniqueness of proposals. We

find nothing to suggest that the differences in the discussions with the two offerors here were attributable to considerations other than the inherent differences in the proposals.

The protest is denied.

for Seymour Efron
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General Counsel