J4W Lunter

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

FILE: B-218668.2 **DATE:** October 2, 1985

MATTER OF: TRS Design & Consulting Services--Reconsideration

DIGEST:

1. Where misinformation from agency leads one of two offerors remaining in the competition to miss the original closing date for best and final offers, and the agency is in a position to correct the effect of the misinformation prior to award by reopening discussions with both offerors and setting a new closing date, there is nothing improper in an agency doing so in lieu of rejecting the offer as late, leaving a single offeror in the competition.

2. Protester's reconsideration arguments--questioning the agency's determination that neither the protester's nor the awardee's offered buildings were within three blocks of public transportation and eating facilities, and thus were essentially equal in this regard for evaluation purposes--are without merit where map offered by protester as evidence does not show that the protester's building offered for lease is any closer to eating facilities and transportation than the awardee's building.

3. Reconsideration argument that the agency improperly evaluated the offerors' prices using a deleted solicitation clause covering the use of option year lease prices is without merit where record shows agency did not use option prices in evaluation.

TRS Design & Consulting Services (TRS) requests reconsideration of our decision, TRS Design & Consulting Services, B-218668, Aug. 14, 1985, 85-2 C.P.D ¶ ____, in which we denied TRS's protest of 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 and warehouse space. We affirm our decision.

033420

TRS contended in its original protest that GSA's requests for successive rounds of best and final offers, and the evaluation process, were deficient. We held that it was proper for the government twice to reopen discussions after best and final offers (BAFO) had been received, and we also found proper the agency's extension of the third BAFO closing date after misleading University into missing the original deadline. With regard to the evaluation of the offers, we found that GSA reasonably had evaluated the buildings offered by TRS and University as essentially equal and, thus, properly had selected University's offer based on its low evaluated cost.

TRS now contends that we erroneously concluded that GSA acted properly in setting a second closing date for the receipt of third best and final offers so that GSA could accept University's otherwise late offer. TRS also contends that we erred in concluding that GSA reasonably had determined that TRS's building was not within three blocks of public transportation or eating facilities and, thus, was essentially equal to University's building for evaluation purposes. TRS further asserts that, contrary to the statement in our prior decision, GSA did not evaluate the offerors' final prices under paragraph 31 of the solicitation, but instead improperly evaluated them under paragraph 32, which had been deleted by amendment prior to the submission of initial proposals.

Second Closing Date for Third Best and Final Offers

TRS claims that the only purpose of GSA's reopening of discussions and setting a second date for the receipt of third BAFO's was to enable the agency to accept University's late BAFO, circumventing the solicitation's late proposal clause. In this respect, GSA orally advised University that its offer would not be considered late if sent by certified mail any time prior to the closing date, even though the late proposal rules require that an offer sent by certified mail be sent 5 days before the closing date in order to be considered timely if received after the closing date. TRS emphasizes that the solicitation's late proposal clause clearly set forth the procedure for the timely submission of offers and the consequences of submitting a late offer. TRS further emphasizes that the clause specifically stated that

all instructions from the contracting officer must be in writing and oral instructions were not binding on the offerors.

TRS, in complaining about our failure to object to GSA's action, misses the point of our decision on this issue. It is our position, expressed generally in our decision in ABC Food Services, Inc., B-181978, Dec. 17, 1974, 74-2 C.P.D. ¶ 359, the case cited in our decision on TRS's protest, that where two offerors are competing for an award and the agency's actions cause one of the offerors to miss the deadline for submitting a BAFO, the agency thereafter may correct its error by establishing a new BAFO deadline. The result in TRS's protest is consistent with both the equitable considerations underlying our ABC decision (the case involved a failure to notify an offeror of the BAFO closing date, which prevented the firm from submitting an offer and which we concluded should be rectified by reopening negotiations), and our view expressed in Freund Precision, Inc., B-199364, B-200303, Oct. 20, 1980, 80-2 C.P.D. ¶ 300, that extending the deadline for BAFO's--even if at the request of a certain offeror--is unobjectionable where the extension is intended to enhance competition. GSA's reopening of discussions certainly enhanced competition since TRS would have been the only remaining offeror had the closing date not been extended. We find no language in the late proposal clause, other regulations, or our prior decisions that would prohibit the establishing of a new closing date under these circumstances.

Availability of Public Transportation and Eating Facilities

TRS asserts that our decision ignored the fact that it had rebutted GSA's determination that there were no eating facilities or public transportation available within three blocks of its building. TRS contends that it thus was entitled to an advantage over University based on this evaluation factor, which provided for an evaluation preference for proximity (three blocks) to transportation and restaurants. TRS points out that in support of its protest, it submitted a zoning map of the city of Davis, California, which indicated the location of the two offered properties and their proximity to public transportation and eating

facilities. According to TRS, bus schedules submitted by GSA show, when read in conjunction with TRS's map, that there are two bus stops and a restaurant within three blocks of TRS's property. In addition, TRS asserts that GSA improperly evaluated both the availability of public transportation and the availability of eating facilities in terms of mileage, rather than the number of blocks from an offeror's building, as required by the solicitation.

TRS's arguments do not warrant disturbing our determination that GSA reasonably rated the two proposals as essentially equal. The three-block evaluation factor was a means of according an evaluation advantage to any offered property convenient to eating facilities and public transportation. Obviously, if it happened that all offered properties satisfied this convenience factor, no offeror would have an evaluation advantage over another offeror. GSA found this to be the case here.

GSA's report stated that there is a bus stop at Pole Line Road and Fifth Street, less than 1/2 mile from University's property. The closest bus stop to TRS's building--at Road 103 and Cowell Street--reportedly is 1/2 mile away. TRS's map does not show otherwise. Since the stops are approximately the same distance from the properties, neither offeror was entitled to an evaluation advantage over the other, whether the measurement is made in inches, feet, blocks or miles.

GSA's report also stated that the eating facility nearest TRS's property--People's Choice Restaurant--is approximately 1 mile away. At the same time, GSA's measurement by auto indicated that there was a delicatessen, bakery, restaurant and pizza parlor 1/2 mile from University's property; another pizza parlor and a fast food outlet within 0.7 miles; and numerous other restaurants about 1 mile away. TRS's map does not show otherwise. In view of GSA's measurements, it was reasonable and proper not to accord TRS an evaluation advantage under the three-block convenience factor.

Cost Evaluation

TRS contends that we improperly assumed in our prior decision that GSA evaluated the price offers in accordance

with the proper evaluation provision, paragraph 31, which contemplated evaluation of only the 10-year initial lease term and not the 5 option years. In support of this contention, TRS points out that GSA's report contains several references to the offers being evaluated in accordance with the deleted paragraph 32, which had provided for evaluation of the options, and that GSA stated that one of the reasons third best and final offers were requested was the need for clarification regarding how the offerors should calculate operating cost escalation during the solicitation's optional renewal periods.

We have reviewed the evaluation documents, and it is clear that GSA based the cost evaluation solely on the prices offered for the initial 10-year lease term as provided in paragraph 31 of the RFP. The fact that GSA specifically requested operating cost data for the option periods does not imply otherwise. This information apparently was intended merely to insure that a definite option renewal price would be established in the event of its future exercise. This was not improper. See Varian Associates, Inc., B-208281, February 16, 1983, 83-1 C.P.D. ¶ 160.

Our decision is affirmed.

Harry R. Van Cleve
General Counsel