



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: Acquest Uniland LLC

File: B-280518

Date: October 13, 1998

Derek J. Mohr, Esq., and Victor C. Silverstein, Esq., Lippes, Silverstein, Mathias & Wexler, for the protester.

Michael L. Martinez, Esq., and Paul G. Lane, Esq., Thompson, Hine & Flory, an intervenor.

Jerry Ann Foster, Esq., and Lee Crook, 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

1. Where protester disagrees with the agency's evaluation of proposals, but the record does not show that the agency's determinations lack a reasonable basis or are otherwise improper, protest allegations that the procuring agency improperly evaluated proposals are denied.
2. In a negotiated, best value procurement for office and related space, an agency may select a higher-rated, higher-priced proposal for award, where the agency reasonably determines in accordance with the stated evaluation factors that the technical merit of the higher-rated proposal outweighs the price advantage of the lower-rated proposal.

DECISION

Acquest Uniland LLC protests the award of a lease to The Penrose Corporation under solicitation for offers (SFO) No. SLA 97005, issued by the General Services Administration for office and related space to house the Federal Bureau of Investigation (FBI) offices in New Orleans, Louisiana. Acquest alleges various improprieties regarding the evaluation of proposals, and challenges the selection of Penrose's higher technically rated, higher evaluated price offer for award.

We deny the protest.

The SFO, issued on October 1, 1997 and as amended, contemplated the award of a design-build-lease for an initial term of 20 years, with two 10-year options. The solicitation sought offers for the design and construction of a new building and parking facilities and provided detailed specifications for architectural, mechanical, electrical, plumbing, utilities and maintenance requirements. SFO §§ 4-7 at 24-42. In addition, the SFO listed several minimum and unique requirements including, a 100-foot setback of the building from a vehicle resistant barrier, and a total of 165 secured, inside parking spaces. SFO Amend. No. 3, § 1.3(a), (b) at 1. The solicitation specified an occupancy date of June 1, 1999.¹ SFO §§ 1.1, 1.5, 1.6 at 5.

Initial project team information would be reviewed by the agency on a "go/no go" basis to determine if the firms' submittals meet the stated minimum requirements of the SFO. Only those firms whose submittal was given a "go" would be invited to submit offers. SFO § 1.5 at 5, § 2.2.1 at 9. Award would be made to the responsible offeror whose proposal, conforming to the solicitation, was judged most advantageous to the government, price and other award factors considered. SFO Form 3516 § 10 at 5. The prospectus funding for this project was listed in the solicitation as \$1,890,000.² SFO Amend. No. 3, § 1.3(f) at 2.

Proposals would be evaluated on the basis of three weighted technical factors: (1) schematic design/quality of building [DELETED]; (2) project team experience and qualifications [DELETED]; and (3) management plan [DELETED]. The first factor consisted of the following five equally weighted subfactors: (a) architecture; (b) structural systems; (c) mechanical; (d) electrical systems; and (e) quality of construction. The second factor consisted of three equally weighted subfactors: (a) key personnel qualifications; (b) past performance; and (c) design excellence. SFO §§ 2.2.2, 2.2.3, 2.2.4 at 10-12. The combined weight of the technical factors was more important than evaluated prices, but evaluated prices would become more important as proposals became more equal in technical merit. SFO § 2.2 at 9. Price was to be evaluated on the basis of the total annual rent per square foot (SF) over the life of the anticipated lease expressed as a net present value. SFO § 1.11 at 6-7.

GSA received initial project team submittals from 13 firms; of these, offers were requested from seven firms, including Acquest and Penrose. The contracting officer, who served as the source selection official, forwarded the offers received to the agency's source selection evaluation board for evaluation. Oral presentations

¹The lease on the space currently occupied by the FBI expires on July 31, 1999.

²The prospectus funding level is the annual rental offered less operating expenses and estimated real estate property taxes.

and written discussions were held with each offeror during the week of April 20.³ During discussions, Acquest was informed of numerous deficiencies in its proposal and the protester was asked, for example, the following:

Please address/clarify the following in your revised offer: proposed rendering of your submittal building does not match your proposed site plan/building outline; visitor parking could be reduced to approximately 20 to 30 spaces; concerns over pedestrian traffic into main entrance with vehicles, possible congestion; and separation not necessary for Automotive/Radio Maintenance Facility and garage.

Please read and submit all that is required by paragraph 2.2.4, Management Plan, of referenced SFO with your revised offer. Paragraph 2.2.4, Management Plan, is a weighted factor (DELETED) and will be used in evaluating offers.

Letter from GSA to Acquest (Apr. 30, 1998).

Revised proposals were received by May 13 and oral presentations were held the week of May 18. In requesting best and final offers (BAFO), GSA advised Acquest that:

Due to the multiple changes in your offer over the discussion period, the Government requests three copies of your complete, best and final offer to include all necessary information from section 2 of the SFO. This will clarify all changes to your proposal for rating purposes. No previous documentation shall be considered for award.

Letter from GSA to Acquest (May 29, 1998) (emphasis added).

BAFOs were received by June 5. Acquest's proposed annual rental for the initial lease term was \$2,198,376, and \$816,020 for the option term, while Penrose's offer was \$2,408,339 and \$1,855,714.75, respectively. The individual evaluators completed their scoring of BAFOs and prepared a consensus technical evaluation report. With respect to price, the agency performed a net present value analysis of the offers

³During oral presentations each offeror was given the opportunity to present its written technical proposal to the agency officials and each offeror received feedback on those areas in its proposals that needed to be clarified. Oral presentations were not a scored evaluation factor.

received.⁴ The consensus evaluation results for the protester's and awardee's BAFOs were as follows:

Factors	Acquest	Penrose
1. Schematic Design		
a. Architecture	[DELETED]	[DELETED]
b. Structural Systems	[DELETED]	[DELETED]
c. Mechanical Systems	[DELETED]	[DELETED]
d. Electrical Systems	[DELETED]	[DELETED]
e. Quality of Constr.	[DELETED]	[DELETED]
2. Project Team Experience & Qual.		
a. Key Personnel Qual.	[DELETED]	[DELETED]
b. Past Performance	[DELETED]	[DELETED]
c. Design Excellence	[DELETED]	[DELETED]
3. Management Plan	[DELETED]	[DELETED]
TOTAL WEIGHTED TECH. SCORE (max. 10 points)	[DELETED]	[DELETED]
PRICE	\$8.80	\$9.85⁵

Acquest's consensus evaluation scores reflected the evaluators' judgment that the firm's BAFO contained weaknesses under the most important evaluation factor, schematic design/quality of building. For example, Acquest's BAFO did not include any information under the quality of construction subfactor (with a weighted value of [DELETED]) and was therefore assigned a score of [DELETED]. In contrast, the

⁴Acquest alleges that the procurement process was fundamentally flawed because four of the seven evaluated prices exceeded the \$1.89 million prospectus level which GSA had authority to accept. We do not understand how this shows any flaw in the procurement. In any event, we fail to see how this circumstance prejudiced the protester since the awardee submitted an offer below the prospectus level.

⁵In a supplemental agency report, GSA states that it had incorrectly calculated Penrose's price per SF as \$9.29; the correct price is \$9.85.

evaluators assigned Penrose's BAFO a consensus score of [DELETED] under this subfactor. After reviewing the evaluation results, the contracting officer, who served as the source selection officer, determined that Penrose's higher evaluated price proposal was technically superior to the proposal submitted by the protester based on the firm's higher technical scores under all the technical factors, whose combined weight was more important than evaluated prices. Accordingly, the contracting officer determined that Penrose's technically superior proposal was most advantageous to the government and that this technical superiority justified the payment of an evaluated price premium to Penrose. Award was made to that firm on June 26. Contracting Officer's Statement of Fact and Position, Aug. 4, 1998 at 6. Subsequent to a debriefing by the agency, Acquest filed this protest.

Acquest protests the evaluation of proposals and the decision to select Penrose's higher-priced proposal for award on numerous bases. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation factors. Peterson Constr. Co., B-256841, Aug. 3, 1994, 94-2 CPD ¶ 55 at 3. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. Id. From our review of the written record, including the proposal submissions and the parties' protest arguments, we conclude that the agency's evaluation of proposals and the selection decision were reasonable. We discuss some of Acquest's principal arguments below.

Acquest challenges the accuracy and materiality of virtually all the weaknesses identified in its proposal. Specifically, the protester alleges that in downgrading its proposal in at least 13 areas the evaluators either did not read its proposal submission or simply overlooked the salient areas in its proposal as evidenced by the evaluators' "patently incorrect statements" in the evaluation worksheets. We disagree, since the protester's allegations are not supported by the record.

The SFO provided that proposals should include information which addresses each of the technical factors identified in the solicitation with sufficient detail. SFO § 2.2.2 at 10. More specifically, the solicitation, at § 2.2.2(b) at 10, required that an offeror's narrative submission describe, for example, its proposed structural systems in the following manner:

- (1) Loadings - Discuss the live floor loads for each programmed space type. A schedule may be provided if considered appropriate.
- (2) Foundations - Define the proposed foundation systems supporting preliminary soils data. Define the below grade framing systems. Discuss provisions for handling groundwater.

(3) Gravity Load Framing System - Discuss the framing systems proposed for the facility. Address type of construction materials, typical system depth, typical bay dimensions, floor deflections, periods of vibration, and fire resistance.

The evaluation record shows that the evaluators downgraded the protester's proposal under the structural systems subfactor, because Acquest's proposal contained no "mention [of] specific load capacities, beam or girder sizes, lateral loads, deflections, vibrations, foundations." Consensus Evaluation Statement (Acquest) at 4. Although Acquest's proposal contains information regarding, for example, the typical live and dead loads for this building, the proposed foundation design system, its proposed normal weight slab and typical bay dimensions, it does not indicate the type of structural system being proposed. Acquest BAFO, June 4, 1998, §§ 2.2.2.B.1, 2.2.2.B.2, 2.2.2.B.3. In this regard, Acquest's proposal simply indicates that "[w]hile both structural steel and cast-in-place concrete will be investigated before a final decision on a structural system is made, [Acquest] expect[s] a cast-in-place, post-tensioned framing system to be the likely choice." Acquest BAFO, June 4, 1998, § 2.2.2.B.3, entitled, "Gravity Load Framing System." Since the protester failed to specifically identify whether a cast-in-place system or a structural steel system would be used for this building, there was nothing unreasonable in the evaluators' conclusion that this failure to identify a structural system was a weakness in Acquest's proposal and justified the downgrading of the protester's proposal under this subfactor.

Similarly, Acquest's allegation that its proposal was impermissibly downgraded under the management plan factor ignores the fact that its proposal omitted information required under this evaluation factor. Under the management plan factor, offerors were required to address areas such as cost control, schedule control, coordination of team members, communication with the owner, project scheduling, organizational structure, and the manner in which the offeror would facilitate the accomplishment of project requirements. SFO § 2.2.4 at 12. Acquest provided an organizational chart and construction schedule in its BAFO but its management plan narrative did not address areas such as how it would manage the construction, how it would manage costs and quality control issues, and failed to identify the individual who would handle communications with GSA. Thus, the evaluators determined that Acquest had not provided an adequate management plan for this project beyond the organizational chart and construction schedule. While Acquest challenges these evaluation conclusions, the evaluation documentation shows that the evaluators reviewed Acquest's BAFO and concluded that its proposal either lacked specificity or omitted information required by the solicitation. Since under the terms of the SFO the protester was responsible for providing a detailed proposal which addressed all of the evaluation factors, the protester must bear the

consequence for its failure to submit an adequately written proposal and proposal revisions. Caldwell Consulting Assocs., B-242767, B-242767.2, June 5, 1991, 91-1 CPD ¶ 530 at 6. We think the evaluators reasonably could view Acquest's proposal as weak and, consistent with the terms of the SFO, downgrade Acquest's BAFO where the protester failed to include all required information in its proposal.

Next, although Acquest asserts that GSA failed to conduct meaningful discussions, agencies are not obligated to afford all-encompassing discussions or discuss every element of a competitive range proposal; agencies are only required to lead offerors into the areas of their proposals considered deficient. Docusort, Inc., B-254852, Jan. 25, 1994, 94-1 CPD ¶ 38 at 4-5. According to the protester, GSA should have informed the firm that its "submission was being severely downgraded for non-technical reasons such as a lack of spit and polish in certain written descriptions." Protester's Comments, Aug. 19, 1998, ¶ 4 at 8-9.

Based on our review of the record, we find that GSA conducted appropriate and meaningful discussions with Acquest during successive rounds of oral and written discussions. For instance, in its April 30 discussion letter to Acquest, GSA advised the protester that its revised offer should include a management plan which addressed "all that is required by paragraph 2.2.4, Management Plan, of the referenced SFO." In addition, the protester was reminded that the management plan evaluation factor was valued at [DELETED] of the available technical points. Letter from GSA to Acquest (Apr. 30, 1998). The record shows that even though Acquest was specifically asked to provide a full discussion of its management plan, once in writing and twice during oral negotiations, it failed to do so. Contracting Officer's Statement of Fact and Position, Aug. 14, 1998 at 13. The record further shows that in preparing its BAFO, Acquest sought further clarifications regarding the contracting officer's "request that we resubmit Section 2 requirements, does that include Sub-section 2.2.1 Minimum Requirements." Letter from Acquest to GSA (June 1, 1998). The contracting officer responded to this and other specific questions by telephone; nonetheless, as discussed previously, the protester's BAFO lacked the technical details or omitted information required by the SFO. Contracting Officer's Statement of Fact and Position, Aug. 4, 1998 at 10. Given the factual record before us, we find it unreasonable for the protester to assert that GSA was required to seek further clarifications when Acquest furnished less than the specific information required by the SFO. Rather than being downgraded for a lack of "spit and polish," the protester's proposal was downgraded for failing to meet SFO requirements, notwithstanding the agency's questions and comments during discussions. We find that the discussions were adequate; the agency is not required to "spoonfeed" an offeror as to each and every area in its proposal that must be revised or otherwise addressed. ITT Fed. Servs. Corp., B-250096, Jan. 5, 1993, 93-1 CPD ¶ 6 at 6.

Finally, Acquest argues that the award decision was flawed because price was not given sufficient weight. Where, as here, the SFO does not provide for award on the

basis of the lowest-priced, technically acceptable offer, an agency has the discretion to make award to an offeror with a higher technical score and a higher price where it reasonably determines that the price premium is justified considering the technical superiority of the awardee's offer and the result is consistent with the evaluation factors. LSS Leasing Corp., B-259551, Apr. 3, 1995, 95-1 CPD ¶ 179 at 4-5.

The record here supports the agency's price/technical tradeoff. First, Acquest's proposal received a consensus score of [DELETED] technical points and offered a price of \$8.80 per SF;⁶ Penrose's technical score was [DELETED] points, and its price was \$9.85. As discussed above, we have no basis to question Penrose's technical superiority as reflected in the scoring. Moreover, beyond the scores assigned to the proposals and the prices offered, the record shows that the contracting officer, based on the evaluation record, reasonably concluded that the Penrose developer/team was more qualified and technically proficient, and the quality of the building proposed exceeded the quality of the building proposed by Acquest. Contracting Officer's Supplemental Statement of Fact and Position, Aug. 27, 1998 at 8. Having considered the technical scores assigned to the two proposals and the advantages and disadvantages of the proposed building offered by the two firms, the contracting officer considered the superiority of Penrose's proposal to be worth the additional cost of awarding to that firm. Contracting Officer's Statement of Fact and Position, Aug. 4, 1998 at 6, 14; Contracting Officer's Supplemental Statement of Fact and Position, Aug. 27, 1998 at 8. Moreover, the contracting officer states that contrary to the protester's claim, the evaluators did consider the proposed upgrades and amenities offered by Acquest and Penrose. Although these enhancements were not scored, the evaluators concluded that the

⁶Acquest maintains that the agency's present value calculations was based on an incorrect methodology, resulting in an upward adjustment of its price per SF from \$8.30 to \$8.80. However, our review of section 1.11 of the SFO, which sets forth the methodology for performing the present value analysis, indicates that under that stated methodology, GSA's calculation of Acquest's price as \$8.80 per SF was correct.

upgrades and amenities offered by Penrose were significantly superior to those offered by the protester. Contracting Officer's Supplemental Statement of Fact and Position, Aug. 27, 1998 at 8. Under these circumstances, we have no basis to question that determination.

The protest is denied.⁷

Comptroller General
of the United States

⁷In its initial protest, Acquest argued that the agency erroneously concluded that Penrose's proposed contractor had the requisite experience called for in the SFO. The agency report responded to these allegations, and the protester's comments failed to address the agency's response. As a result, we consider this issue abandoned and will not address it. LSS Leasing Corp., *supra*, at 4 n.6.