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Decision

Matter of: Prosperity Metro Plaza of Virginia, LLC

File: B-411547; B-411548

Date: August 21, 2015

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DIGEST

Protest that the solicitation's evaluation criteria lack a rational basis is denied where the record shows that the agency's rationale for selecting particular evaluation methodology was reasonable.

DECISION

Prosperity Metro Plaza of Virginia, LLC, of Merrifield, Virginia, protests the terms of requests for lease proposals (RLP) No. 2VA0740 and 3VA0614, issued by the General Services Administration (GSA) for leased space in the Washington, D.C. metropolitan area. Prosperity argues that the evaluation criteria in both RLPs lack a rational basis, and that the agency has failed to properly define its requirements.¹

We deny the protests.

¹ While the two RLPs sought proposals to satisfy different leased-space requirements, the challenges in both protests are identical. Consequently, the protests have been consolidated for purposes of this decision.

BACKGROUND

The RLPs, issued on April 22, 2015, sought proposals to satisfy two of the GSA's leased-space requirements in the Washington, D.C. metropolitan area for contemplated lease terms of 10 years, each with one five-year renewal option. RLPs at 1. Award of a lease under each RLP was to be made to the responsible offeror whose offer conforms to the requirements of the RLP and the lease documents, and is the lowest-priced, technically-acceptable offer submitted. Id. at 15.

At issue in these protests are the provisions in each RLP addressing tenant improvement and security improvement requirements, as well as the criteria utilized by the agency for evaluating these requirements in its award decisions.

With respect to the tenant improvement requirements, the RLPs state the following:

Although certain Tenant Improvement (TI) requirements information is provided with this RLP and will be incorporated into the Lease, the TIs to be delivered by the Lessor will be based on the final design to be developed after award of the Lease, which reflects the Agency's full requirements. The Lessor shall design and build the TIs and will be compensated for TI costs, together with design and project management fees to be set under the Lease. Although the TI requirements will not be developed fully until after award, Offerors shall provide the allowance stated in the Tenant Improvement paragraph of the Lease.

RLPs at 3. Both RLPs provided for a TI allowance (TIA) rate of \$46.74 per "ABOA" square foot (SF).² Both RLPs also provided for a building specific amortized capital (BSAC) amount of \$35.00 per ABOA SF for security improvements. Id. Ultimately, these amounts were to be included as components of the rental rate proposed by each offeror. GSA Form L201C, at 1.³

According to the proposed lease language utilized by GSA, the decision whether or not to use the TIA or BSAC was to be at the government's sole discretion. Id. at 3-4. Should the government choose not to use the entirety of these allowances, it could return the amounts to the lessor, in exchange for a commensurate reduction

² The term ABOA is an acronym for American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) Office Area. RLPs at 1.

³ Under the GSA's standard lease agreement rent was to include the following components: shell rent, tenant improvement rent, operating costs, BSAC and parking. Id.

in rent. Id. Conversely, if the government was anticipated to expend more than the allowances, it could reduce its requirements, pay lump sum for the overage, or negotiate an increase in the rent. Id.

Prosperity is the owner of property currently leased by GSA's tenant agency, and is offering the same property to meet GSA's requirements contemplated by the RLPs. Protests at 2. According to Prosperity, as it is the incumbent lessor, it anticipates the TIA and BSAC amounts stated by the agency in the standard lease to "greatly exceed" the actual costs it would face to satisfy the tenant agency's requirements if it were to stay in its currently fully improved space. Id. at 6.

DISCUSSION

Prosperity argues that the agency's evaluation criteria lack a rational basis because they fail to account for cost savings associated with remaining in the protester's buildings. Protests at 6. The protester asserts that the flaw in the agency's methodology for calculating present value is that it "does not include the option of subtracting the value of the TIA from an offeror's present value evaluation, should it exceed the tenant agency's requirements, which would most certainly be the case for the incumbent lessor, or otherwise crediting the incumbent lessor . . . for existing improvements." Id. As such, Prosperity argues that the RLPs do not provide a sufficient basis for determining whether one offeror's proposal is more or less costly to the government because they fail to consider the actual cost to meet the agency's tenant and security improvement requirements. Protests at 7. Our review of the record gives us no basis to question the agency's evaluation criteria.

Agencies are required to consider the cost to the government in evaluating competitive proposals. Health Servs. Int'l, Inc.; Apex Envtl., Inc., B-247433, B-247433.2, June 5, 1992, 92-1 CPD ¶ 493 at 3-4. While it is up to the agency to decide upon an appropriate and reasonable method for proposal evaluation, it may not use an evaluation method that produces a misleading result. Id. at 4. The method chosen must include some reasonable basis for evaluating or comparing the relative costs of proposals, so as to establish whether one offeror's proposal would be more or less costly than another's. SmithKline Beecham Corp., B-283939, Jan. 27, 2000, 2000 CPD ¶ 19 at 4-5. Moreover, while as a general rule, agencies are not required to structure acquisitions in order to neutralize the competitive advantage of an incumbent, agencies may nonetheless use an evaluation method that attempts to foster competition by increasing the feasibility of a proposal being submitted by non-incumbent offerors. See Int'l Computaprint Corp., B-207466, Nov. 15, 1982, 82-2 CPD ¶ 440 at 3.

GSA responds that the RLPs are not defective and provide all information needed to make informed offers. Contracting Officer's Statement at 2. The agency explains that it chose this procurement method because the specific requirements were not known at the time the RLPs were issued, the actual costs of tenant improvements

are not known exactly until after award, and may even continue to change after award because the tenant agency has the right to change its build-out after award. Contracting Officer's Statement at 3-4; Supp. Contracting Officer's Statement at 1-2. The agency also argues that requiring offerors to use the provided allowances relieves the government of having to inspect and value specific existing improvements in each offered location and having to develop individual construction cost estimates based on individual building characteristics at multiple offered locations. Contracting Officer's Statement at 3-4.

Finally, the agency argues that it structured the lease so as to promote competition. Legal Memorandum at 4; Supp. Contracting Officer's Statement at 5. In this regard, the agency explains that incumbent landlords enjoy a significant advantage in competing for follow-on leases due to existing improvements obtained through government investment. As a result of this advantage, the agency explains, "it is a challenge to obtain competition in this sort of procurement, and the incumbent, when it calculates the rental rate it will offer for a follow-on lease, naturally factors the advantages of incumbency into its offer, so that the value of the government's investment in the incumbent space is used by the incumbent to demand higher rent than might otherwise [be] the case." Legal Memorandum at 4. According to the agency, structuring the lease as it has here encourages participation by non-incumbent offerors, and encourages the incumbent to offer rental rates closer to market rates. Id. at 4-5.

Our review of the record and the agency's rationale for utilizing allowances rather than requiring offerors to price proposals based on actual tenant improvement requirements, gives us no basis to question the agency's evaluation methodology. In this regard, we are provided no basis to question the agency's assertion that it utilized the specified allowances in part because the specific requirements were not known at the time the RLPs were issued. However, even if the requirements were known with certainty we find GSA's evaluation methodology to be unobjectionable as we conclude that GSA has structured the subject solicitation in a manner that attempts to promote, rather than stymie, competition. While the agency's chosen method for leveling the playing field has the effect of reducing or eliminating Prosperity's incumbent advantage, we find that unobjectionable in view of GSA's broader objective of fostering competition, which is consistent with the overarching mandate of the Competition in Contracting Act to obtain full and open competition for the government's requirements. See New Mexico State University, B-409566, June 16, 2014, 2014 CPD ¶ 228 at 4.

The protests are denied.

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General Counsel