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Decision

Matter of: LCPP, LLC
File: B-413513.2
Date: March 10, 2017

Robert C. MacKichan, Jr., Esq., Gordon Griffin, Esq., and Mary Beth Bosco, Esq., Holland & Knight, LLP, for the protester.
Harold W. Askins III, Esq., Department of Veterans Affairs, for the agency.
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of request for lease proposals' price provisions is denied where the protester has not demonstrated that the provisions violate applicable procurement laws and regulations and the provisions are otherwise unobjectionable.

DECISION

LCPP, LLC, of Gainesville, Florida, protests the terms of request for lease proposals (RLP) No. VA248-16-R-0633, issued by the Department of Veterans Affairs (VA) for leased administrative office space in Lake City, Florida. LCPP, the incumbent lessor, argues that the RLP's fixed tenant improvement allowance undermines the competitive process and is prejudicial to offerors who could accomplish the tenant improvements for less than the mandated amount. LCPP also asserts that the agency failed to include a present value price evaluation in the solicitation.

We deny the protest.

BACKGROUND

On June 3, 2016, the VA issued the RLP for the lease of 9,000 net usable square feet (NUSF) of administrative/office space in Lake City, Florida. RLP at 4. The RLP contemplated the award of a 10-year lease on a best-value tradeoff basis based upon the agency's evaluation of the following four factors: technical (quality of location and quality of building/layout design); technical risk; past performance; and price. Id. at 4, 17. The solicitation advised that the non-price factors, when combined, were significantly more important than price. Id. at 17.

At issue in this protest are certain RLP price provisions addressing the tenant improvement allowance (TIA) and the present value price evaluation. With respect to the TIA, amendment eight to the RLP described tenant improvements (TIs) as “the finishes and fixtures that typically take [s]pace from the shell condition to a finished, usable condition,” and provided the offerors with a fixed TIA of \$115.45 per NUSF. RLP amend. No. 8, at 3. Offerors were to include the fixed TIA as a component of the proposed rental rate. Id.

With respect to the price evaluation, the solicitation required offerors to submit various pricing information in forms included as attachments to the RLP. RLP at 12. The lessor’s annual cost statement form requested such information as the offeror’s annual cost of services and utilities (cleaning/janitorial service, heating, electrical, plumbing, air conditioning, elevators, and other miscellaneous costs), as well as, the annual cost of ownership (real estate taxes, insurance, building maintenance and reserves, lease commission, and management). RLP amend. No. 6, at 101-2. The proposal to lease space form requested such information as the initial term shell rate, the initial term operating costs, and the total NUSF rate per year. Id. at 103-4.

The solicitation stated that the agency would evaluate offerors’ prices by analyzing the individual elements of the proposed rent such as the base rental rate, operating cost rate, and shell rate submitted by each offeror and compare them against the NUSF. RLP amend. No. 8, at 5. The RLP also provided that the TIA would be used in calculating pricing scenarios over the 10-year period in order to compare the total lease rental rates. Id. The amendment additionally provided various examples to demonstrate how the agency’s price evaluation would arrive at the total price for purposes of evaluation by applying the TIA to the base rent, operating costs, escalation, and buildout costs. Id. at 3-5.

LCPP filed this protest with our Office on December 9, prior to the due date for receipt of lease proposals.

DISCUSSION

LCPP challenges the terms of RLP amendment eight. LCPP generally asserts that the solicitation’s pricing provisions will not permit the VA to determine which proposal offers the lowest price. The protester contends that the use of a fixed TIA is prejudicial to the incumbent and does not permit a proper analysis of offerors’ TI costs prior to award. The protester also asserts that the agency failed to include a present value price evaluation provision in the solicitation. We have fully considered all of LCPP’s allegations and find that they do not provide a basis on which to sustain the protest.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. While it is up to the agency to decide upon the appropriate

method for the evaluation of cost or price in a given procurement, the agency must use an evaluation methodology that provides a reasonable basis for evaluating or comparing the relative costs of proposals. See Prosperity Metro Plaza of VA, LLC, B-411547, B-411548, Aug. 21, 2015, 2015 CPD ¶ 263 at 3; TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 23. As explained below, based upon our review of the record and the relevant statutes and regulations, we find the solicitation's pricing provisions unobjectionable.

Tenant Improvement Allowance

LCPP contends that the fixed TIA is unreasonable and prejudicial to offerors who could accomplish the TIs for less than the mandated amount. The protester also asserts that inclusion of a fixed TIA will prohibit the VA from meeting the General Services Administration Acquisition Regulation (GSAR) requirement to analyze individual elements of the offer's rent.¹ See GSAR § 570.306(b).² In response, the agency argues that the use of the fixed TIA will facilitate competition and permit a comparison of the offered rental rates. The VA contends that the use of a fixed TIA is reasonable and consistent with the GSAR requirements. We find no reason to question the agency's use of the fixed TIA.

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 Prosperity Metro Plaza of VA, LLC, supra at 3-4 (An agency's broader objective of fostering competition by fixing the TIA is consistent with the overarching mandate of the Competition in Contracting Act to obtain full and open competition for government requirements.).

Here, the VA states that it chose to incorporate a fixed TIA to facilitate competition and to provide a standard amount for the comparison of proposed rental rates. See Agency Report (AR) at 2; Contracting Officer (CO) Statement at 1. Although the protester contends that it may be able to provide a TI amount that is less than the TIA, the agency has provided a reasonable basis for evaluating the relative price of proposals, and the protester's disagreement with the agency's solicitation approach,

¹ VA direct leases must follow the General Services Administration (GSA) regulations as established by the GSAR. VA Directive 7815 (Jan. 20, 2012), at 5.

² Section 570.306(b) of the GSAR requires an agency to "[e]valuate prices and document the lease file to demonstrate that the proposed contract price is fair and reasonable. The contracting officer must review the elements of the offeror's proposed rent to analyze whether the individual elements are realistic and reflect the offeror's clear understanding of the work to be performed." GSAR § 570.306(b).

without more, does not render the agency's judgment unreasonable. While the incumbent asserts that it would be disadvantaged by this approach, we have previously addressed, and denied, such arguments. See Prosperity Metro Plaza of Va., LLC, supra at 4 (Protest asserting that use of a fixed TIA will not provide a sufficient basis for determining whether one offeror's proposal is more or less costly to the government, and not permit the agency to consider the actual cost to meet the agency's TI requirements, is denied where the use of a TIA promoted competition). Accordingly, we find no basis to question the agency's inclusion of the TIA.

We also find no support for the protester's assertions that the RLP precludes the VA from determining which offeror truly offers the lowest-price, for purposes of the best value tradeoff, and violates the GSAR requirements.

The RLP fixed the TIA at \$115.45 for the build-out of the space in accordance with the government approved design intent drawings. RLP amend. No. 8, at 3. The solicitation also provided that an offeror's TIs shall include the administrative costs, general contractor fees, subcontractor profit and overhead costs, project management fee, design costs, and other associated project fees necessary to prepare construction documents and to complete the TIs. Id. The solicitation advised offerors that the agency's price evaluation would analyze the individual cost elements of the proposed rent, such as the base rental rate, operating cost rate, and shell rate, and compare them against the NUSF. Id. at 5. The solicitation also provided that the fixed TIA would be used to calculate several pricing scenarios over the 10-year period to compare the total lease rental rates over the 10-year term, to include buildout costs, of the offerors submitted. Id.

As provided in the RLP, the lease contracting officer will analyze the individual elements of the total rent proposed. The use of a fixed TIA does not impede the lease contracting officer's analysis of this information nor does it prevent the agency from determining which offeror provides the lowest price. In this regard, the TIA is but one aspect of the overall rental rate. See 1120 Vermont Avenue Associates, LLP; 1125 15th Street, LLC, B-413019, Aug. 1, 2016, 2016 CPD ¶ 191 at 11-12 (Protest challenging the agency's use of a fixed TIA is denied where the fixed TIA did not preclude the agency from determining which offeror proposed the lowest price or violate GSAR pricing provisions.). For these reasons, we find no basis to conclude that the solicitation's use of a fixed TIA violates the GSAR or is otherwise improper.

Present Value Price Evaluation

LCPP argues that the agency was required to include a present value price evaluation provision in the solicitation. In support of its argument, LCPP cites to the GSA's global RLP template, which includes a present value price evaluation provision, and the GSA's internal guidelines, which mandate the use of the global

RLP template for real property leases. GSA Global RLP Template at ¶ 4.05; GSA's Lease Acquisition Circular 2015-06 at 1-3. The protester contends that without a present value price evaluation provision the agency will not know the true cost of the proposals.

As an initial matter, the global RLP template and GSA guidance contain only internal agency policy, rather than mandatory procurement regulations. Accordingly, LCPP's assertion that the VA was required to adhere to the present value price evaluation provisions in GSA's global RLP template or GSA guidelines, is not subject to our review.³ See 901 North Fifth Street, LLC, B-404997, B-404997.2, July 22, 2011, 2011 CPD ¶ 152 at 8-9; MediaNow, Inc., B-405067, June 28, 2011, 2011 CPD ¶ 133 at 3 n.2. In this regard, the protester has not demonstrated that the VA violated a procurement law or regulation. Moreover, even if the VA was required to use the global RLP template, the protester has not shown why it would be improper for the VA to modify certain provisions of the template to best suit its needs.

The protester also has not demonstrated that the VA would be unable to properly evaluate price without conducting a present value price evaluation. The purpose of a present value analysis is to compare unequal rent streams among offerors to determine the lowest offer. GSA Desk Leasing Guide at 2.5-4. The agency states that the lease contracting officer chose not to incorporate the present value price evaluation provision into the solicitation because a present value analysis "would provide no benefit in evaluating price." CO Statement at 2. In this regard, the lease contracting officer explains that a present value analysis is "only beneficial if there are complex pricing situations in the offers and if the lease includes a period of free rent, or that the rental amount is not level over the entire term of the lease, renewal options are offered at different rents or if the cost of items not covered in the rent are to be paid over a different period of time." *Id.* The agency determined that a present value analysis would not be beneficial here because these types of pricing situations are not usually seen in response to RLPs of this nature.⁴ AR at 3-4; CO Statement at 2. The protester's disagreement with the agency's assessment does not provide a basis to sustain the protest.

³ Our jurisdiction, as established by the Competition in Contracting Act of 1984, 31 U.S.C. § 3553, is limited to addressing protests alleging a violation of procurement statute or regulation. See Systems Research & Applications Corp., B-407224.3, Dec. 17, 2012, 2012 CPD ¶ 352 at 9.

⁴ The lease contracting officer also provides that [DELETED]. AR at 3-4; CO Statement at 2. [DELETED].

LCPP also argues that the agency was required to include the price of replication and relocation to a new facility in its evaluation of the offerors' rental prices.⁵ The protester contends that GSAR § 570-402 requires a cost/benefit analysis to be performed by the agency regarding the cost of relocating compared to awarding a lease to the incumbent lessor at the present location. In response, the lease contracting officer states that the VA was not required to include such amounts because the VA determined that the cost of remaining in the same leased space or moving to a new leased space were not significant and essentially the same. Supp. CO Statement at 1; Agency Supp. Report at 1. The lease contracting officer also states that replication costs (e.g. installing conduit or communication wiring) are included in the TIA. Supp. CO Statement at 1.

Again, we find that the solicitation's pricing terms unobjectionable. As an initial matter, the regulation relied upon by LCPP is not applicable here. The cited GSAR provision allows the agency to negotiate a succeeding lease⁶, rather than to compete a new lease, where the agency has identified potential acceptable locations, but a cost-benefit analysis indicates that award to an offeror other than the present lessor will result in substantial relocation costs or duplication of costs to the government, and the government cannot expect to recover such costs through competition. GSAR § 570-402. The provision is applicable to the agency's initial determination of whether to negotiate a succeeding lease for continued occupancy of space in a building, or to compete the requirement; it is not applicable to the evaluation of lease proposals received in response to a solicitation issued on a competitive basis. HG Properties A, L.P., B-284170, et al., Mar. 3, 2000, 2000 CPD ¶ 36 at 9-10. While the protester asserts that it is a logical extension to require a cost/benefit analysis, to include relocation cost, in the evaluation of competitive proposals, we will not read a requirement into a regulation that extends beyond the plain text. See Edmond Scientific Co., B-410179, B-410179.2, Nov. 12, 2014, 2014 CPD ¶ 336 at 8 n.9 (Where the language of a regulation is plain on its face, and its meaning is clear, there is no reason to move beyond the plain meaning of the text.).

Furthermore, with respect to the protester's general assertion that relocation and replication costs are required to be considered by the agency in its price evaluation

⁵ The protester asserts that these costs would have been captured as part of the global RLP template present value price evaluation analysis.

⁶ A succeeding lease is a lease whose effective date immediately follows the expiration date of an existing lease for space in the same building. GSAR § 570.102. To pursue a succeeding lease, the leasing specialist must investigate the availability of alternative locations; then, if alternative locations are found, the leasing specialist must demonstrate the cost advantages of staying in place through a cost-benefit analysis. GSA Desk Leasing Guide at 5-3.; GSAR § 570-402.

to determine the best value, we find the agency's determination to exclude such costs from the price evaluation to be reasonable.

Here, the contracting officer stated that she did not include the relocation costs as part of the solicitation's price evaluation scheme because she determined that the cost of moving within the incumbent location or moving to a new location is essentially the same. We have no basis to question the agency's assertion. See HG Properties A, L.P., B-280652, Nov. 2, 1998, 98-2 CPD ¶ 104 at 6-7. Notwithstanding the protester's contention that the contracting officer's determination in this regard is undocumented, the protester has not demonstrated that the contracting officer's determination is erroneous. In this regard, other than expressing its disagreement, the protester has not provided any evidence that contradicts the contracting officer's statement or provided any information to show that updates to the current building will require any less of a moving expense (such as moves to accommodate renovation) than moving to a new space.

The protest is denied.

Susan A. Poling
General Counsel