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Decision

Matter of: C-III Asset Management, LLC

File: B-414498

Date: June 27, 2017

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DIGEST

Protest that solicitation for leased office space unduly restricts competition is denied where the agency demonstrates a reasonable basis for column spacing requirement.

DECISION

C-III Asset Management, LLC, of Irving, Texas, protests the terms of request for lease proposals (RLP) No. 5VA0532, issued by the General Services Administration (GSA), Public Building Service, to lease office space for a federal tenant agency. The protester contends that the RLP's specifications unduly restrict competition.

We deny the protest in part and dismiss it in part.

BACKGROUND

GSA is conducting this procurement on behalf of the Department of Homeland Security's Customs and Border Patrol (CBP) Office of Information Technology (CBP-OIT). The aim of the procurement is to provide leased office space for CBP-OIT personnel, currently located in 11 separate buildings throughout Northern Virginia under 12 leases, and to consolidate these requirements under a single lease for space in one building. Contracting Officer's Statement of Facts (COS), at 1-2. The current set of leases expire in December 2020. Id. at 1.

As part of this consolidation effort, CBP sought to reduce its current total office space usage from 629,680 square feet to a maximum of 526,000 rentable square feet. Id. This initial reduction was reflected in a prospectus approved by the U.S. House of

Representatives Committee on Transportation and Infrastructure. See Agency Report (AR), Tab 27, Prospectus PVA-01-WA17; see also AR, Tab 47, U.S. House of Representatives Committee Resolution. However, following this, CBP decided to implement a mobile workspace approach, allowing it to further reduce the total space needed to 501,000 rentable square feet--a 20 percent reduction from its current usage. COS at 1.

GSA and CBP discussed the tenant agency's needs throughout 2016. The process began when CBP submitted its responses to an initial "customer needs assessment" questionnaire from GSA. See AR, Tab 9, Customer Needs Assessment Questionnaire. This initial survey indicated that the agency intended to host approximately 3,600 employees, would require some 24/7 operations, and, in addition to typical office space features, would require the flexibility to include various laboratories and account for a changing mission over the intended 15-year term of the lease. Id. at 11, 14. CBP-OIT worked with GSA and a lease-services broker under contract to GSA to review and revise its requirements to create a lease solicitation that would both meet the agency's needs and not exceed the market's capabilities. COS at 2.

CBP-OIT, as the tenant agency, requested that any internal columns of a leased building be spaced no closer than 25 feet apart on center.¹ Id. at 3-4. The tenant agency noted to GSA that, along with reducing the rentable square footage, it would increase the number of personnel using the space during the course of the lease. Id. at 1; AR, Tab 4, Housing Plan. CBP-OIT also represented its desire for maximum flexibility in space usage to ensure the space could accommodate mission changes over the expected 15-year term of the lease. COS at 2. CBP-OIT, in its request for the minimum 25-foot column spacing, cited a standard developed by the Department of Homeland Security and union requirements that workspaces be at least 7 feet by 9 feet. COS at 3; AR, Tab 13, June 21, 2016 Email, at 3; AR, Tab 5, CBP Workstation Guidelines, at 2.

GSA advertised the requirement on the Federal Business Opportunities (FBO) website on October 13, 2016, seeking expressions of interest. COS at 5; AR, Tab 34, FBO Advertisement. The advertisement sought potential offerors interested in furnishing buildings with structural columns spaced no closer than every 25 feet on center. AR, Tab 34, FBO Advertisement, at 2. GSA reviewed the 20 expressions of interest received, including one regarding the buildings owned by C-III,² and conducted a tour of 19 potential sites. COS at 5. GSA's lease-services broker created a market survey

¹ The term "on center," when referring to such measurements, means the distance between two columns as measured from the center of each column.

² The expression of interest was filed by the buildings' prior owner.

report that concluded that at least 12 of the sites would likely be able to meet the requirements. See AR, Tab 41, Market Survey Report.³

On November 22, 2016, GSA sent the RLP to all entities that responded to the FBO advertisement. Memorandum of Law (MOL) at 11; AR, Tab 73, RLP Distribution List. The solicitation included the requirement that “[c]olumn spacing within the offered building(s) shall be predominantly 25’ x 25’ on center or greater.” AR, Tab 54, RLP Ex. B, Agency Special Requirements, Para. 8.

Prior to the March 23, 2017 deadline for submission of proposals, C-III filed this protest with our Office, challenging the terms of the RLP.

DISCUSSION

C-III protests the terms of the solicitation, arguing that the specified minimum column spacing is unduly restrictive of competition. C-III alleges that the 25-foot minimum spacing eliminates “an entire class of buildings” and that the agency could meet its needs with a less restrictive requirement. Protest at 7-8. The protester contends that the requirement is not linked to the agency’s efficiency or density requirements, and that those needs can be satisfied even when structural columns are more closely spaced. Protest at 7; Comments at 10-13. C-III maintains that the requirement is not supported by the record, and that GSA relied on a standard presented by the tenant agency without reviewing it. In this regard, the protester alleges that the agency relies only on post hoc studies and conclusory statements to support the requirement. Comments at 10.

In response, GSA argues that the 25-foot or greater column spacing requirement is justified because it is reasonably necessary to meet the needs of the tenant agency. GSA explains that the requirement is directly related to CBP-OIT’s need for greater efficiency, based on the agency’s planned increase in personnel with a simultaneous reduction in rentable square footage. MOL at 19. GSA also maintains that the minimum column spacing requirement would provide CBP-OIT with the necessary flexibility to adjust to a changing mission throughout the life of the lease by more easily allowing for varied configurations. Id. at 19-20. The contracting officer stated that, while GSA prefers not to prescribe building specifications, it previously recommended 30 foot on center spacing, as that is the current industry standard. COS at 6, n.5. Finally, GSA notes that the requirement is also based on CBP-OIT’s need to provide workstations that are compliant with its labor union agreements that specify a minimum 7-foot by 9-

³ None of the sites reviewed in this report, apart from the protester’s offering, were found not to meet the column spacing requirement. Other possible reasons for being unlikely to meet the lease requirements included a lack of parking, locations too far from commuter rail stations, and sites located within a flood plain. AR, Tab 41, Market Survey Report, at 2, 22.

foot workstation for non-teleworking employees. COS at 5-6; AR, Tab 50, Email from GSA.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. Parcel 49C Ltd. P'ship., B-412552 et al., Mar. 23, 2016, 2016 CPD ¶ 95 at 11. In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy its legitimate needs. 41 U.S.C. §§ 3306(a)(1)(A), (a)(2); 1120 Vermont Ave. Assocs., LLP; 1125 15th St., LLC, B-413019, Aug. 1, 2016, 2016 CPD ¶ 191 at 5. Where a protester challenges a specification as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet the agency's needs. Parcel 49C Ltd. P'ship., supra. The adequacy of the agency's justification is ascertained by examining whether the agency's explanation is reasonable; that is, whether the explanation can withstand logical scrutiny. Id. Moreover, the fact that a requirement may be burdensome or even impossible for a particular lessor to meet does not make it objectionable if the requirement properly reflects the agency's needs. 1120 Vermont Ave. Assocs., LLP; 1125 15th St., LLC, supra, at 7.

The protester's arguments here are unpersuasive or fail to substantially refute GSA's assertions. For example, the protester presented the results of a test-fit study with its proposal, as required by the RLP. Comments at 10-13. Through this the protester sought to demonstrate that it could achieve a higher number of workstations and could, therefore, accommodate more personnel using a building with a column spacing measuring less than 25 feet on center. Id. C-III presents the assumptions on which this test-fit study was based, specifically noting that the majority of the workspaces would be 6-foot squares, rather than the 7-by-9-foot spaces that the tenant agency will need to use. C-III argues that it should not have been required to fit the 7-by-9-foot workstations, since, according to C-III, the RLP did not mention this. Comments at 11, n. 4. C-III presents no legal basis for its assertion that the solicitation was required to specify this detail, and we know of none. GSA, aware of its client's minimum needs, was required to provide enough information to allow offerors to compete on an equal basis--i.e., specify the dimensions offerors needed to meet in the rental space being offered--but was not required to disclose in the RLP the basis for those dimensions (or, more specifically, here, to explain what needs formed the basis for the required minimum column spacing).⁴ GSA states that it wrote this specification to balance the workstations needed, both now and in the future, with the realities of the union negotiations with its tenant agency.

In sum, we find the agency has demonstrated that the RLP's column spacing requirement is reasonably necessary to meet the agency's needs and is not unduly

⁴ We have reviewed the protester's various other arguments in this regard and find that none provides a basis to sustain the protest.

restrictive of competition. The fact that C-III disagrees with the judgments made by GSA and CBP-OIT regarding the tenant agency's needs and how to meet them does not establish that the requirement as drafted in the RLP is unreasonable.⁵

With its protest, C-III included an architect's drawings of the buildings C-III offered in response to the RLP, which show column spacing of less than 25 feet on center. The protester recognizes that these buildings cannot meet this requirement. Protest at 7; Attachment 3; AR, Tab 39, Expression of Interest, at 6. Under our Bid Protest Regulations, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a). Because we have concluded, above, that the column spacing requirement is reasonably necessary to meet the agency's minimum needs, and because C-III acknowledges that its building's columns are more closely spaced than permitted by the RLP, C-III is not an interested party to maintain the additional protest grounds it has raised. C-III lacks the requisite legal interest in this regard because, even were we to sustain its protest on another basis, C-III would not be able to offer a compliant building for lease and would therefore be ineligible for award. See DAI, Inc., B-408625, B-408625.2, Nov. 6, 2013, 2013 CPD ¶ 259 at 5. Accordingly, C-III's additional protest ground relating to the required minimum number of parking spaces is dismissed.

The protest is denied and dismissed in part.

Susan A. Poling
General Counsel

⁵ Further, as the market research reveals that of the 20 sites identified, C-III's location was the only one that did not meet the column spacing requirement, there is no indication that this requirement was improperly or unduly restrictive of competition. See AR, Tab 41, Market Survey Report, at 2, 22.