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DECISION

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

FILE: B-214011 **DATE:** May 29, 1984

MATTER OF: TRS Design & Consulting Services

DIGEST:

1. The requirement for meaningful discussions with all those in the competitive range does not mandate identical discussions with all offerors nor does it obligate the procuring office to discuss every aspect of proposals receiving less than the maximum score. Contracting agencies are not supposed to notify offerors concerning the relative standing of their price proposals.

2. New grounds of protest must independently satisfy the timeliness requirements of our Bid Protest Procedures. Where protester supplements its original timely protest with a new ground of protest more than 10 working days after the basis for it should have been known, the new ground is untimely and will not be considered on the merits.

3. Generally, when a request for proposals is silent concerning the relative weight of award factors, all factors are to be considered to have equal importance. Where, as here, however, cost is set off from all the other factors, some of which are relatively minor in importance, cost is considered to be of importance greater than that of the importance given to the other individual factors.

4. GAO does not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith by procurement officials or misapplication of definitive responsibility criteria.

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TRS Design & Consulting Services (TRS), on behalf of Rick J. Lewis (Lewis), protests the award to any party other than Lewis of a lease pursuant to General Services Administration (GSA) solicitation for offers No. GS-09B-83352, which solicited between 4,039 and 4,465 net usable square feet of office and related space and three parking spaces in Lakeport, California, to house the Social Security Administration (SSA), for a 5-year period with an option to extend the lease for an additional 5 years. Since 1980, the SSA has occupied 2,749 net usable square feet of office space of Lewis' property.

The protest is denied in part and dismissed in part.

Six offers were received. After reviewing all the offers, the realty specialist sent letters to all the offerors requesting that they submit or complete required forms and certifications, recheck mathematical calculations, initial and date each page of the solicitation and, where necessary, reconsider prices. According to the agency report, negotiations were conducted only through written correspondence--none were conducted orally with any offeror. A common cutoff date for receipt of revisions was established.

TRS's first contention is that "GSA held meaningful negotiations with one or more of the offerors but not with Mr. Lewis, thereby putting Mr. Lewis in an unequal and non-competitive position." Specifically, it is alleged that GSA's realty specialist placed weight on the option price in her discussions with the proposed awardee while she never advised Lewis that his option price was a weakness in his proposal. The protester further states that:

> "Mr. Lewis was never advised of any weaknesses or deficiencies in his offer, he certainly would have reduced his price or addressed that weakness in his best and final offer."

Finally, in response to the agency report, the protester argues that "all the alleged discussion/correspondence which transpired were not meaningful negotiation but rather meaningless clarification."

Federal Procurement Regulations (FPR), 41 C.F.R. § 1-3.805-1(a), require that oral or written discussions be held with all offerors in a competitive range, and we have recognized that this mandate can only be satisfied by discussions that are meaningful. Union Carbide Corporation, 55 Comp. Gen. 803 (1976), 76-1 CPD 134. We have specifically

rejected the notion, however, that agencies are obligated to afford all-encompassing negotiations. The content and extent of meaningful discussions in a given case are a matter of judgment primarily for determination by the agency involved and that determination is not subject to question by this Office unless it is clearly without a reasonable basis. Information Network Systems, B-208009, March 17, 1983, 83-1 CPD 272. Where a proposal is considered to be acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of the proposal receiving less than the maximum score. Planning Research Corporation, B-205161, February 5, 1982, 82-1 CPD 98. Additionally, contracting agencies are not required to notify an offeror that its costs are higher than those of other offerors unless the costs are so out of line with the government estimate as to make them deficient. FPR, 41 C.F.R. § 1-3.805-1(b); Prospective Computer Analysts, B-203095, September 20, 1982, 82-2 CPD 234.

The record indicates that Lewis' proposal was considered acceptable except that its unit cost proposed for electrical and telephone floor outlets appeared to be out of line. Lewis was asked to reconsider these costs. Another offeror, also proposing prices for electrical and telephone floor outlets that appeared out of line, was in identical fashion requested to reconsider these prices. Other offerors were requested to reconsider other add-on prices that appeared to be grossly out of line. No offeror, however, was instructed to reconsider its basic rental price offered, nor was any offeror instructed to resubmit its option price as alleged by TRS. Offerors were only instructed to reconsider those aspects of their proposals that were considered materially deficient.

We find that GSA conducted fair and meaningful discussions and that the content and extent of the discussions reasonably related to the deficiencies in the various offers. The fact that Lewis was instructed to reconsider only one area of its proposal (unit costs for electrical and telephone floor outlets) merely reflected the fact that its proposal was not considered deficient in other areas. We have recognized that while discussions, when conducted, must be held with all offerors in the competitive range, the same detailed discussions need not be held with all such offerors since the degree of deficiencies in acceptable proposals will vary. See Pope Maintenance Corporation, B-206143.3, September 9, 1982, 82-2 CPD 218. Since GSA gave all offerors in the competitive range a chance to revise their proposals and correct the deficiences within the proposals

by a common cutoff date, we conclude that negotiations were properly conducted. See Pope Maintenance Corporation, supra.

The protester, in its March 21, 1984, response to the agency report raises the issue that material changes were made to the solicitation requirements without communication of such to Lewis. First, TRS alleges that option prices were evaluated for award in conflict with solicitation clause No. 28, which states in part "to determine the lowest offer only price for the initial term will be considered." It appears that TRS has overlooked solicitation clause No. 150, which deletes clause No. 28 and in relevant substitute part states "For purposes of price evaluation, the initial and renewal option(s) will be reduced to one composite annual square foot rate . . . ." (Emphasis added.) TRS also argues that clause 4 of the solicitation required occupancy by January 1, 1984, and that this requirement "obviously has been changed." New grounds of protest must independently satisfy the timeliness requirements of our Bid Protest Procedures, 4 C.F.R. part 21 (1983). Where, as here, protester should have been aware on January 2, 1984, that the January 1 occupancy date was no longer in effect, its protest in that regard, filed on March 21, 1984, with its response to the agency report, is untimely and will not be considered on the merits because it was not filed within 10 working days of when the basis was known. See 4 C.F.R. § 21.2(b)(2) (1983); Tracor Marine, Inc., B-207285, June 6, 1983, 83-1 CPD 604.

The protester's next protest basis concerns the evaluation of offers. Citing Dikewood Services Company, 56 Comp. Gen. 188 (1976) 76-2 CPD 520, the protester argues that since the solicitation was silent concerning the relative weights given to the listed award factors, it is reasonable to assume that they are all of equal value. The protester states that Lewis had to get a higher evaluation than the proposed awardee on three of the criteria (most efficient layout, earliest available delivery date, and lowest moving costs); that rental cost would be the only criterion on which the proposed awardee could get a higher evaluation; and that under all other evaluation criteria, Lewis should have received at least an equal evaluation score as the proposed awardee. TRS argues, therefore, that Lewis should have received a more favorable overall evaluation than the proposed awardee.

While we agree that the solicitation is inartfully drawn in that it does not explicitly state the relative weights given to the award factors and that this should be corrected for future procurements, we cannot agree with TRS's position that GSA was required to evaluate the element of rental cost on an equal basis with each of the other 11 technical criteria. At the beginning of the solicitation's section entitled "award factors," it states:

> "the following award factors will be considered in addition to rental: handicapped accessibility; efficiency of layout and compatibility with the government's intended use; quality; safety; historic preference; availability of public transportation; parking; availability of local eating facilities; ground floor space; delivery date; energy efficient lighting; moving costs; other award factors."

We believe that the solicitation, when viewed as a whole, requires that evaluated rental cost should be given greater weight and consideration than any of the other individual technical evaluation factors. This is the case because: (1) rental cost is segregated from the remainder of the award factors; (2) clause 150 of the IFB requires that the annualized cost of moving expenses be calculated into the annual square foot rental rate, thereby making moving expenses merely a subfactor of rental cost; (3) a number of pages of the solicitation are devoted to describing how rental costs are to be calculated and evaluated; and (4) a conclusion to the contrary would lead to unreasonable results. In this regard, none of the technical award factors were mandatory requirements for award purposes. Rather, qualitative differences between offers were assessed under each factor. In fact, under the historic preference factor, no offeror qualified.

While we conclude that the agency's evaluation of offers was in accord with the criteria listed in the solicitation, we note that our in camera review of GSA's price negotiation memorandum indicates that even if rental cost was weighted no more heavily than the individual noncost factors, Lewis' offer would still not be the best evaluated offer. Although Lewis is correct in the belief that its delivery date was the best offered, another offeror was evaluated as having a better layout and a lower evaluated per foot rental cost (including the cost of moving) and a rating equal to that of Lewis' on the remaining factors other than delivery date. We conclude that Lewis was not prejudiced by the evaluation.

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In the original protest submission, it was stated that Lewis believes that GSA failed to adequately determine the responsibility of the property owner who Lewis suspected to be the proposed awardee. In its response to the agency report, which states that the "suspected awardee" did not even submit an offer, the protester argues that "[i]rrespective of the identity of the proposed awardee . . . it is our contention that GSA failed to adequately determine the responsibility of the proposed awardee . . . .." It is clear that the protester's argument is purely speculative and not for consideration because the protester does not know who the proposed awardee is and, therefore, could not possibly have a basis for this contention. In any event, absent a showing of possible fraud or bad faith by procurement officials or misapplication of definitive responsibility criteria, our Office does not review an affirmative determination of responsibility. Mid-South Ambulance Corporation, B-214078, January 30, 1984, 84-1 CPD 133.

The protest is denied in part and dismissed in part.

for Milton J. Socolar
Comptroller General
of the United States

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