



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chaffins Realty Company, Inc.

File: B-247910

Date: July 8, 1992

Charles S. Christy, Esq., Christy and Lemire, for the protester.

Michael F. King, Department of Agriculture, for the agency. Richard P. Burkard, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against award to other than the low-priced offeror is denied where record shows that solicitation provided that award would be based on price and other factors listed in the solicitation and where agency reasonably evaluated proposal in accordance with those stated factors.

DECISION

Chaffins Realty Company, Inc. protests the award of a lease to MCCM Services, Inc. under solicitation for offers No. SCS-03-MA-92, issued by the Department of Agriculture for office space to house the Agricultural Stabilization and Conservation Service and the Soil Conservation Service. The protester objects to the agency's decision to award the lease to MCCM for space at the Holden Walk-in Center since that firm offered a higher price than the protester. Chaffins contends that it was unaware of other criteria to be used to evaluate proposals and concludes that its offer should have been considered the most advantageous to the government.

We deny the protest.

The solicitation provided that the lease would be awarded to the firm whose offer is considered to be most advantageous to the government, price and other factors considered. While the solicitation stated that price would be the most important consideration, it provided that the following factors would also be considered: (1) Moving Cost; (2) Safety; (3) Layout, Compatibility, and Local Plans; (4) Environment; (5) Parking; and (6) Ground Floor Space.

The agency received three offers in response to the solicitation. The protester offered space which is currently occupied by the agency. It offered the lowest price. After the offers were submitted, the contracting officer visited each of the properties and subsequently requested and received best and final offers from each firm. The protester's price remained low, while the awardee's price was the highest of the three offers.

The agency concluded from its evaluation of the factors concerning the quality of the proposed space that the Holden Center was far superior to Chaffins' building. While the protester's building offered the agency a savings in moving costs, the agency found significant weaknesses in the space under all of the other evaluation factors. Notwithstanding Chaffins' low price, the agency determined that MCCM submitted the most advantageous offer and awarded the lease to that firm for the Holden Center. The agency advised Chaffins, by letter dated March 2, 1992, that it had not been selected because of considerations relating to safety, layout/compatibility, environment, parking accessibility, and location. This protest followed.

Chaffins protests the agency's decision to award to a higher-priced firm and asserts that the considerations noted in the March 2 letter had never been brought to its attention. The protester also questions the agency's conclusion that the awardee's property was more highly rated under the nonprice factors listed in the solicitation. We disagree with the protester and for the reasons set forth below have no legal basis upon which to object to the agency's choice.

In a negotiated procurement, such as this, there is no requirement that award be made on the basis of low price unless the solicitation so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Here, the solicitation did not provide that the lease would be awarded to the offeror which offered the low-priced, acceptable space. Rather, the solicitation specified other factors, such as the safety of the location and its environment, which would also be considered. Thus, the protester clearly should have known that these factors would be considered in the selection decision and the agency properly considered all the factors listed in the solicitation in reaching its decision.¹

¹To the extent that Chaffins asserts that it was not given an opportunity to address these considerations during the procurement, the record does not support the protester's position. The agency pointed out deficiencies or weaknesses
(continued...)

After reviewing the agency's evaluation documents supporting the award decision, the protester disputes certain agency findings which were used as the basis to downgrade its proposal under the listed evaluation factors.

The evaluation of proposals is primarily within the discretion of the procuring agency, not our Office; the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden resulting from a defective evaluation. Consequently, we will not make an independent determination of the merits of offers; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. Buffalo Central Terminal, Ltd., B-241210, Jan. 29, 1991, 91-1 CPD ¶ 82. The fact that the protester disagrees with the agency's judgment does not render the evaluation unreasonable.

The protester primarily objects to agency findings which led to its low rating under the safety factor. The record shows that the protester's building was downgraded under this factor for several reasons. First, the agency considered the space offered by Chaffins to represent a greater fire risk than the other space offered. The agency's conclusion in this regard was based primarily on the fact that Chaffins' second floor space is housed in a wooden building which has potentially hazardous occupants, including a restaurant and a bakery. There is also an oil delivery business located at the rear of the building which has oil storage tanks at that location.

The protester responds to the agency's concerns about safety by pointing out that the awardee's building also contains a restaurant. The agency explains, in this regard, that the cafeteria in the Holden Center is located beyond fire walls and far enough away that it would not have a detrimental effect on the leased office space. In addition, the record shows that the awardee's space is located on the first floor of a brick building. Thus, we find the agency's conclusion that the protester's property presented a greater fire risk

¹(...continued)

in its offer relating to these "technical" areas during the market survey, oral discussions, and in its written request for a best and final offer. In any event, most of the listed factors concerned inherent characteristics of the property which the offeror would not have been able to change.

because of the location of the restaurant and bakery than the awardee's to be reasonable.

The protester also disputes the agency's finding that an oil delivery business located in the rear of its building contributes to its safety risk. It asserts that the tanks contain heating oil, which the protester states is not a flammable substance, and are "certified as safe by State and Federal Regulations." Even if we were to agree with the protester that oil does not burn, we think that the presence of oil delivery trucks along with the accompanying fumes and stench present legitimate safety concerns.

The agency also downgraded the protester's offer under the safety factor because motor vehicle access from its location is difficult during peak hours of traffic. Chaffins argues that the Holden Center has similar traffic conditions since exiting vehicles would have to merge into the same flow of traffic. The agency found that the Holden Center did not have the same safety problem since access from its parking area is controlled by a traffic light. Chaffins does not dispute this.

Finally, with respect to the safety factor, the agency found that the protester's "steep stairway access" was an undesirable feature of its building. The protester has not contested the agency's view in this regard.

After a careful review of the evaluation record in the context of the arguments of both the agency and the protester, we find no legal basis upon which to interfere with the agency's ratings under this factor.


Chaffins also objects to the agency's evaluation of its offer under the parking factor. Chaffins contends that since it will provide adequate parking, its offer should have been rated equal to the awardee's.

The record shows that the agency downgraded Chaffins under this factor because its parking area is located on the side or rear of the building and is subject to oil and sewage odors. The parking area for the Holden Center is, according to the agency, well lit and in front of the building. We find that the agency's evaluation of Chaffins' more remote and less accessible parking was reasonable and consistent with the solicitation, especially in light of the requirement that "access for wheelchairs shall be provided from the street, sidewalk or parking." While the protester asserts that it will provide adequate parking, this does not prevent the agency from differentiating through point scores among offers based on the properties' relative strengths or weaknesses.

The protester has not disputed the superior ratings received by the Holden Center under the factors pertaining to layout of the space, the general environment of the building and its immediate surroundings and the location of the space on the ground floor. We have no reason to question the agency's conclusions under these factors.

We have reviewed the evaluation record and find no basis upon which to disturb the agency's selection.

The protest is denied.

for 
James F. Hinchman
General Counsel