



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Champion-Alliance, Inc.
File: B-249504
File: December 1, 1992

Marshall J. Doke, Jr., Esq., and Paul W. Searles, Esq.,
Doke & Riley, for the protester.
David B. Dempsey, Esq., and Carl J. Peckinpaugh, Esq., Akin,
Gump, Hauer & Feld, for American Manufacturing Company of
Texas, an interested party.
Barry D. Segal, Esq., General Services Administration, for
the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest that solicitation for long-term lease required rejection of offer based on stepped rents is without merit where (1) the solicitation for offers did not explicitly prohibit stepped pricing; (2) the solicitation's price evaluation scheme, involving the use of net present value analysis, was suited to stepped pricing; (3) protester itself had offered stepped pricing in prior proposals; and (4) protester failed to show that agency misled it in discussions into believing that stepped pricing was no longer permitted.
2. Procuring agency adequately documented evaluation where record contained contemporaneous evaluation narrative, agency provided further detailed narrative explanations during protest, and, as a consequence, there was sufficient detail to judge the reasonableness of the evaluation.
3. In a negotiated procurement for the lease of office space, award was properly made to the low-priced offeror, where technical considerations were stated to be less important than cost and the procuring agency reasonably determined that the offers were technically equal.

DECISION

Champion-Alliance, Inc. protests the award of a lease to American Manufacturing Company of Texas (AMCOT), under solicitation for offers (SFO) No. R7-68-91, issued by the General Services Administration (GSA) for office space in

Fort Worth, Texas. Champion contends that GSA's evaluation of proposals was not in accord with the stated evaluation criteria.

We deny the protest.

The SFO was issued in May 1991. It requested proposals for approximately 172,000 net usable square feet of leased office space in Fort Worth, Texas, for the southwest regional headquarters of the Federal Aviation Administration (FAA). As amended, the solicitation provided for a lease term of up to 20 years, with a firm obligation on the part of the government for 18 years.

Four offers were received by the closing date. Champion's initial offer, dated June 10, 1991, consisted of six alternate proposals. Four of the proposals provided for a flat rental rate for the term of the lease; alternates III and IV, however, provided for different rents for different periods of time--so-called "stepped" rents. Following discussions, Champion submitted two revised offers, dated September 9 and November 12 respectively; again, alternate proposals III and IV were based on stepped rents. The other three firms that submitted offers, including AMCOT, also proposed stepped rents in their initial and subsequent offers. In the case of the other offerors, stepped rents were retained in their best and final offers (BAFO); Champion's BAFO, however, proposed a single rate for the term of the lease.

Based on a present value price analysis provided for in the SFO, GSA ultimately determined AMCOT's offer to be the lowest priced, and Champion's second lowest. As discussed below, price was the most important evaluation criterion; since GSA's evaluation of proposals under nonprice factors indicated that all were essentially equal, GSA awarded the lease to AMCOT on July 8 based on its low price. In this regard, GSA determined that AMCOT's average annual net present value price of \$8.76 per square foot, derived from the stepped rents that AMCOT proposed, was lower than Champion's average annual net present value price of \$9.27, derived from its single rental rate for the term of the lease. Over the 20-year term of the lease, GSA determined that AMCOT's price advantage would amount to a cost savings of \$1,760,000.

PRICING

Champion argues that GSA improperly accepted AMCOT's use of stepped rents in evaluating AMCOT's proposal. According to Champion, the SFO required offerors to propose one annual rental price for the life of the lease; instead, AMCOT proposed three different rents for three different periods.

This stepped pricing, according to Champion, meant that AMCOT's proposal failed to conform to a material term of the solicitation, and therefore could not form the basis for award. Specifically, Champion states that solicitation ¶ 1.10 required offerors to propose one annual price per square foot. In addition, solicitation ¶ 1.8 required offerors to submit as part of their offer GSA Form 1364, Proposal to Lease Space; in block 11 of this form, according to Champion, offerors had to enter their proposed "composite square foot rate per annum." Champion states that its own proposal complied with these requirements, since only one figure, \$16.50, was entered in the block. In contrast, the protester notes, the form submitted with AMCOT's proposal referenced an attached addendum, which indicated three different annual rents per square foot--years 1-6, \$14.66; years 7-12, \$15.30; and years 13-20, \$16.80. According to Champion, GSA improperly accepted this departure from the required pricing scheme to Champion's prejudice; if the protester had known that it too could have proposed stepped pricing, it would have been able to propose a lower composite rate than AMCOT's.

In negotiated procurements, any proposal that fails to conform to the material terms and conditions of a solicitation should be considered unacceptable and may not form the basis for award. Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583. Generally, however, we will not disturb an agency's determination of the acceptability of a proposal absent a clear showing that the determination was unreasonable or in violation of procurement statutes or regulations. Id. In resolving disputes concerning the interpretation of a solicitation, we read the solicitation as a whole and in a manner that gives effect to all solicitation provisions. Hydraudyne Sys. and Eng'g B.V., B-241236; B-241236.2, Jan. 30, 1991, 91-1 CPD ¶ 88; Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149. We will read a provision restrictively only where it is clear from the solicitation that such a restrictive interpretation was intended by the agency. Ampex Data Sys. Corp., B-248112, July 30, 1992, 92-2 CPD ¶ 71; MAR Inc., B-242465, May 6, 1991, 91-1 CPD ¶ 437.

We find no support for Champion's restrictive interpretation of the SFO's price provisions. First, the SFO does not prohibit the use of stepped pricing or expressly require a single price for the lease. While the SFO does state that offers will be evaluated on the basis of the "annual price per square foot" and a "composite square foot rate per annum," nothing in these or any other SFO provisions requires that these prices be the same for each of the 20 years of the lease. That is, there is nothing in the SFO to preclude an offeror from offering one price for year 1

and another price for year 2 (stepped pricing), as opposed to offering the same price for years 1 and 2 (flat pricing).

The fact that the SFO provides for a net present value analysis of prices--a methodology that is suited to comparing multiple or stepped prices--also is consistent with a stepped pricing approach. Specifically, in this regard, SFO ¶ 1.10 states that "the government will make present value price evaluation by reducing the prices to a composite annual square foot price. . . ." This provision is followed by a description of the specific calculations to be used in performing the present value analysis. The paragraph concludes that "the sum of the above [adjustments] will be the per square foot value of the offer for price evaluation purposes." By thus providing a means for reducing offered prices to a single composite figure, the SFO made it possible to compare stepped prices to other stepped prices or to nonstepped prices. This evaluation scheme thus is consistent with the view that stepped rates could be proposed.

Champion acknowledges that it used stepped pricing in six of its own proposals, prior to submitting a BAFO, but maintains that it was dissuaded from including such pricing in its BAFO by GSA's statements in the course of discussions. Specifically, Champion states it was told that (1) unless Champion's BAFO was prepared in strict compliance with the requirements of the SFO, it would not be considered for award; and (2) Champion needed to state its "lowest annual square foot rental." According to Champion, it interpreted these statements to mean that its prior use of stepped rents (in alternate offers III and IV) was unacceptable, and that it must propose only a single rate in its BAFO.

We find nothing in GSA's alleged statements during discussions that reasonably should have led Champion to conclude that stepped prices were not permitted. The agency's advice that Champion should be careful to prepare its BAFO in accord with solicitation requirements in no way suggests that stepped pricing was not permitted, and Champion has presented nothing that would lead us to interpret this statement as other than a general reminder given to all offerors in pre-BAFO discussions. Likewise, the agency's advice that Champion should propose its "lowest annual square foot rental" is not inconsistent with our reading of the SFO as permitting stepped pricing; in light of our discussion above, we think this language simply was advice to Champion to make certain its prices were as low as possible, since this would be Champion's last opportunity to compete for the lease.

In any case, the agency's account of the discussions is somewhat different from Champion's. GSA reports that Champion was advised to reevaluate its proposed rental rates

(in alternates III and IV) for years 11-20 of the lease term. According to GSA, Champion was told that a reduction in these stepped rates was possible because it appeared to the agency that the majority of Champion's construction costs would be recovered over years 1-10 of the lease based on its proposed rental rates for those years. Champion does not dispute GSA's account of these substantive discussions. Had GSA considered Champion's stepped rate structure unacceptable, there would be no logical reason for the agency to ask the firm to lower its rates within that structure. Thus, we think this aspect of the discussions actually should have signaled to Champion that its pricing structure was acceptable.

In sum, we find that Champion has failed to show that its alleged interpretation of these statements was reasonable and, therefore, that it was misled by GSA during discussions. See 12th & L Streets Ltd. Partnership, B-247941; B-247941.3, Oct. 9, 1992, 92-2 CPD ¶ ____; Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 (protester was not reasonably misled during discussions where the protester's interpretation of the discussions was unreasonable).

OTHER FACTORS

Champion also asserts that GSA had no reasonable basis for its conclusion that all proposals were basically equal with respect to nonprice factors. SFO ¶ 2.3, "Other Factors," provided that:

"[T]he lease will be awarded to the offeror whose offer will be most advantageous to the government, price and other award factors which follow considered.

"Price is more important than the [following] combination of factors: . . . Configuration of the space as it relates to efficient layout, cost of moving, cost to relocate federal telephone lines and cost of those lines, cost to relocate employees . . . relocation of special equipment owned or leased by the government."

As noted above, GSA found all offerors essentially equal in this category, and therefore based its award decision on price, the more important factor. Champion, however, argues that this aspect of GSA's evaluation record is so devoid of documentation--and so inadequately explained in GSA's report on the protest--that there is no basis for concluding that the agency's evaluation of proposals under SFO ¶ 2.3 was reasonable.

In reviewing protests against allegedly improper evaluations, our Office will examine the record to determine whether the agency's determination was reasonable and consistent with the evaluation criteria listed in the solicitation. Hattal & Assocs., 70 Comp. Gen. 632 (1991), 91-2 CPD ¶ 90. Implicit in the foregoing is that the agency must document these judgments in sufficient detail to show that they are not arbitrary. U.S. Defense Sys., Inc., B-245567, Jan. 17, 1992, 92-1 CPD ¶ 89; see also Federal Acquisition Regulation (FAR) §§ 15.608 and 15.612(d)(2). Where there is inadequate supporting documentation for an award decision, we cannot conclude that the agency had a reasonable basis for the decision. Hattal & Assocs., *supra*.

We find that GSA has adequately documented its evaluation of proposals and that Champion has failed to show that the evaluation was unreasonable. The record--essentially consisting of a contemporaneous summary evaluation narrative and a post-protest amplification of that narrative--shows that GSA's evaluators made the following assessment in considering proposals under SFO ¶ 2.3:

"All four offerors who submitted best and final offers submitted offers which were technically acceptable as to the 'Other Award Factors' set out in the SFO. All space offered had efficient layout. The cost of moving, the cost of relocating telephones, the cost of use of those lines, the cost to relocate employees and the cost to relocate special equipment owned or leased by the government was equal for all offerors."¹

In responding to the protest, the contracting officer elaborated on these findings. In discussing how various proposals complied with specific requirements of the SFO, she noted that:

"The Champion offer provided for column spacing of 30 feet in the clear. The AMCOT offer provided for column spacing of 30 feet in the clear. Champion offered a 172,345 net usable square foot building and AMCOT offered a 172,345 net usable square foot building. All offerors offered bay sizes of 32' x 32'. Both Champion and AMCOT offered buildings with lobbies in excess of the required 2,000 square feet. Both were suitable. The differences between all offerors were so insignificant that all offers were considered essentially equal."

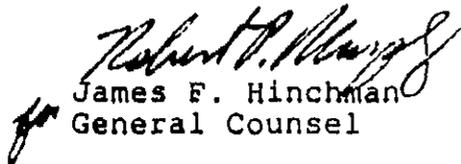
¹The quotation is from a price negotiation memorandum dated May 18, 1992.

We find these explanations--which Champion does not rebut--adequate under the circumstances of this procurement; the record indicates that relatively little documentation was required because the proposals were very similar and the agency, therefore, reasonably found the proposals technically equal. See Hydraudyne Sys. and Eng'g B.V., supra.²

Champion's only specific objection to the agency's substantive findings is that Champion's proposed configuration of space, as it relates to an efficient layout, was superior to AMCOT's: "The enhanced flexibility and organizational functionality of its design likely would have resulted in its superiority with respect to an efficiently configured layout." Aside from this bare assertion, however, Champion does not offer any evidence--and our own review has disclosed none--that its proposal was superior to AMCOT's.

In view of the undisputed indications in the record that the proposals were essentially the same, and in the absence of specific evidence to the contrary, we find that the agency had a reasonable basis for its conclusions.

The protest is denied.


for James F. Hinchman
General Counsel

²In GSA's report on the protest, the agency explains that the building plans of both AMCOT and the protester support the evaluators' findings quoted above. AMCOT, in commenting on the report, likewise states that "a comparison of the two building drawings . . . shows virtually no difference between the space configuration layouts of AMCOT and Champion." Although the building plans were provided to counsel for Champion under a protective order issued by our Office, Champion has not disputed these statements, either in its comments on the report or in supplemental comments that were filed after AMCOT's submission.