



Comptroller General
of the United States

Washington, D.C. 20548

846106

Decision

Matter of: Cecil Pruitt, Jr., Trustee

File: B-251705.2

Date: June 10, 1993

Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for the protester.
Robert E. Gregg, Esq., Hazel & Thomas, for Prince Frederick Group, an interested party.
Robert J. McCall, Esq., General Services Administration, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated proposal and impermissibly selected a higher priced offeror is denied where record indicates that the agency evaluation was reasonable and consistent with the solicitation's evaluation criteria, and where the agency reasonably concluded that the awardee's superior proposal warranted its slightly higher price.
2. Contention that agency did not hold meaningful discussions regarding one feature of protester's proposed building is denied where the feature at issue was considered a meritorious element of protester's proposal but awardee's proposal in this respect was even better.

DECISION

Cecil Pruitt, Jr., Trustee (Pruitt), protests the award of a lease by the General Services Administration (GSA) to Prince Frederick Group, for office space for the proposed Army Corps of Engineers's facility near Winchester, Virginia, under solicitation for offers (SFO) No. MVA-92-050. Pruitt argues that GSA's evaluation of Prince Frederick's proposal was unreasonable and that the agency acted improperly in selecting Prince Frederick's higher priced proposal over the proposal of Pruitt.

We deny the protest.

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BACKGROUND

GSA issued the SFO on May 12, 1992, seeking proposals for 92,500 net usable square feet of office and related space in the City of Winchester, or in Frederick County, Virginia. The SFO advised that award would be made to the offeror whose proposal is considered most advantageous to the government, and that price would be of equal weight to the evaluation factors. These evaluation factors--seven in all, and all of equal weight--were:

- "Site conducive to an office building occupied by professionals."
- "Certainty that surrounding environment will remain a professional environment."
- "Efficient space planning possible."
- "[An] aesthetically pleasing building."
- "Quality construction."
- "Expansion possible."
- Environmental impact.¹

By the August 4 closing date for receipt of initial offers, GSA received 14 proposals, including one each from the protester and the awardee. After evaluation of the initial proposals, and evaluation of a subsequent round of revised proposals requested by the agency, GSA included six of the proposals in the competitive range and requested best and final offers (BAFO) from those offerors.

The agency evaluators rated the proposals on each of the seven factors above as either acceptable, providing added value, or providing superior value. In addition, the evaluators awarded point scores for the adjectival ratings. An acceptable rating merited 0 points, an added value rating merited 1 point, and a superior value rating merited 2 points. With respect to price, the agency evaluators calculated a net present value price per net useable square foot (NPV/NUSF) based on the offerors' rent charges over the life of the anticipated lease. The following is a summary

¹The above description of the seventh evaluation factor is an abbreviation of the environmental impact factor set forth in addendum No. 1 to the SFO. Since environmental impact is not at issue in this protest, we will not quote the entire text of this evaluation factor.

of the total scores and evaluated prices of the competitive range offerors:

	<u>Price</u>	<u>Score</u>
Offeror A	\$7.13	5
Pruitt	7.41	7
Prince Frederick	7.86	10
Offeror B	8.35	7
Offeror C	8.38	10
Offeror D	8.62	8

Prior to the selection of an awardee, Offeror A, the lowest priced offeror, withdrew its offer, leaving Pruitt as the offeror with the lowest price. However, Pruitt's proposal was scored three points lower than the proposal of Prince Frederick. The difference in the scores awarded the Pruitt and Prince Frederick proposals was due to the evaluation of the three areas set forth below:

	<u>Pruitt</u>	<u>Prince Frederick</u>
Efficient space planning possible	Added Value	Superior Value
Aesthetically pleasing building	Added Value	Superior Value
Expansion possible	Added Value	Superior Value

Based on these three factors, the agency concluded that the benefits of Prince Frederick's building more than outweighed the additional \$.45 NPV/NUSF in rent, which, according to the agency, translates to an additional \$1,186,345 over the life of the lease. As a result, the agency awarded a 20-year lease to Prince Frederick reserving the right to cancel the lease after 15 years.

DISCUSSION

Pruitt challenges the results of the evaluation of each of the three factors listed above where its proposal received a score of added value and Prince Frederick's proposal received a score of superior value. Pruitt also complains that the agency conducted inadequate discussions because it failed to advise offerors that only two-story buildings would receive a superior value rating on the "efficient space planning possible" evaluation factor. Further, Pruitt contends that the agency conducted an improper price technical tradeoff in selecting Prince Frederick's higher priced offer.

Evaluations

As stated above, Pruitt's challenge to GSA's evaluation of proposals focuses on each of the three areas where Prince Frederick received a higher rating than Pruitt. In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. A protester's disagreement with the agency's judgment, without more, does not show that the agency's judgment was unreasonable. Id.

In assessing proposals under the evaluation factor entitled "efficient space planning possible," GSA explained that the Corps of Engineers--the tenant agency--reviewed each offeror's floor plans to determine which provided for efficient layouts based upon the tenant's particular requirements. This review attempted to determine which plans minimized inside travel distances, maximized windowlines, centralized the core of the building, and optimized efficiency of air circulation. As part of this review, GSA explains that "[g]enerally speaking, two story buildings were determined to be more efficient than one story buildings." Prince Frederick's two-story building was assessed as offering superior value on this evaluation factor, while Pruitt's one-story building was assessed as offering added value.

Pruitt argues that GSA could not favor two-story buildings over one-story buildings without amending the SFO provision which advised that "building[s] shall be no more than two floors or two levels. Any building which is more than two levels . . . will not be considered." In addition, Pruitt contends that it was improperly downgraded in this category based on interior column spacing and column locations.

Our review of the record finds no basis for concluding that the evaluation of this factor was unreasonable. First, Pruitt misapprehends the statement in the SFO advising offerors against proposing buildings with more than two floors. This provision offers no guidance about whether one or two floors are preferable but only states that any building with more than two levels will not be considered. We also disagree that the agency has shown an impermissible bias against one-story buildings. As pointed out by both Pruitt and GSA, the agency provided sample drawings of two-story and one-story buildings to potential offerors to illustrate how the tenant agency's needs might be met under either approach.

Pruitt's other contention regarding the evaluation of this factor--i.e., that it was downgraded based on the spacing and location of interior columns--is not supported by the record. Nothing in the evaluation materials reflects that Pruitt was downgraded based on the placement of its columns, and the contracting officer's statement referenced by Pruitt does not reflect such a downgrading. Rather, the contracting officer explained that Prince Frederick was given a superior rating because of an innovative floor plan that made its building unusually efficient.

The second category where Pruitt received an added value rating compared to Prince Frederick's superior value rating was "aesthetically pleasing building." Although Pruitt abandons the contention in its initial protest that "it is difficult if not impossible" to judge aesthetics,² it argues that the agency improperly considered the merits of the site, as opposed to the building. (The building proposed by Prince Frederick sits on a knoll overlooking a valley; the placement of the building was praised in the agency evaluation materials.) In addition, Pruitt argues that the placement of the building high on a knoll will present a significant grade problem for the access road, and that the access road will have to cross a flood plain, requiring approval from other governmental entities.

In our view, it was consistent with the "aesthetics" evaluation factor for the agency to consider the attractiveness of the site of the Prince Frederick building; however, the site was not the only aesthetic benefit of Prince Frederick's building. In comparing the relative benefits of the two buildings as part of the agency's selection decision, the agency explained that in addition to the pleasant site, the Prince Frederick "building is a handsome two story structure supported by columns of varying width." Also, the agency noted that the building's architect had designed an interesting circular parking lot that kept the building centered on the site. In assessing the Pruitt building as having added value--but not superior value--the agency noted that the site is "basically wide open and flat" and that the building's "unusual tear drop configuration [is] deemed not as attractive as the more

²Any challenge to the agency's decision to evaluate the aesthetics of proposed buildings is now untimely. Since the agency stated its intention to evaluate aesthetics in the SFO, challenges to this evaluation factor had to be filed prior to the time set for receipt of initial proposals.
4 C.F.R. § 21.2(a)(1) (1993).

traditional rectangular approach of Prince Frederick Group's building."

Pruitt has offered no reason why our Office should consider these findings improper or unreasonable. In addition, the agency explained that the grade for the access road is nowhere near as steep as estimated by Pruitt, that the grade is well within road standards, and that the Master Plan for the site--including the proposed access road--was recently approved. Further, GSA states that the site does not require a flood plain study as Pruitt contends.

The third evaluation category in which Pruitt received an added value rating compared to Prince Frederick's superior rating is "expansion possible." While GSA noted that both offerors "have the ability to provide the [g]overnment with expansion space on the sites being offered," it awarded a higher score to the Prince Frederick proposal because the offeror also owns 92 acres of adjacent property. Pruitt argues that it was unreasonable for GSA to make a distinction because of this fact without purchasing an option to use the surrounding land. According to Pruitt, if Prince Frederick is free to sell the adjacent 92 acres to another party, it is meaningless to give it a higher rating on this factor. Also, Pruitt argues that Prince Frederick is not the owner of the land as it claims in its proposal.

As explained above, GSA concluded that both offerors could accommodate ordinary expansion within the offered sites,³ and the agency explains that the protester is simply wrong when it claims that the knoll on which the Prince Frederick building is located would have to be stripped or lowered in grade to expand the usable space. On the other hand, the agency noted that if it should require significant expansion at some later date, Prince Frederick already owns the surrounding land, while Pruitt would have to acquire the land surrounding its building. In our view, there is nothing unreasonable about the agency's decision to give a slight edge under the "expansion" evaluation factor to Prince Frederick based on its current ownership of the surrounding

³In response to Pruitt's contention that Prince Frederick does not own the land at issue, GSA explained that Prince Frederick met the SFO's requirements for site control. As its name implies, the Prince Frederick Group is a collection of landowners and investors who jointly offered the land at issue here to the government. The Operating Agreement of the Prince Frederick Group required the individual landowners to surrender the land if the Prince Frederick proposal was selected for award.

land, and based on the recognition that, in the event of significant expansion, Pruitt would have to acquire the surrounding land.

Discussions

With respect to the "efficient space planning possible" evaluation factor, discussed in detail above, Pruitt also argues that the agency failed to hold meaningful discussions because Pruitt was not advised that only a two-story building could receive a superior rating. GSA disputes Pruitt's contention on two counts: first, it explains that it did not discuss with Pruitt the number of floors in its proposed building because the building had no weakness in this area--rather, the building merited a rating higher than acceptable but lower than superior; second, GSA disagrees that superior ratings were reserved for buildings with two floors.

The protester has not shown that the agency violated the requirement in the Competition in Contracting Act of 1984, 41 U.S.C. § 253b(d)(2) (1988), reflected in Federal Acquisition Regulation (FAR) § 15.610(b), to hold written or oral discussions with all responsible sources whose proposals are within the competitive range. This requirement is satisfied by 1) advising each offeror of weaknesses, deficiencies or excesses in its proposal the correction of which would be necessary for the offeror to have a reasonable chance for an award, and 2) affording it the opportunity to satisfy the government's requirements through the submission of revised proposals. FAR § 15.610(c)(2), (5); Department of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ ____.

As explained above, GSA's tenant agency reviewed each offeror's floor plans and attempted to determine which plans minimized inside travel distances, maximized windowlines, centralized the core of the building and optimized efficiency of air circulation. While GSA admits that two-story schemes were generally found more efficient than one-story schemes, the agency denies Pruitt's contention that only two-story buildings received superior ratings under the evaluation scheme. GSA cites as evidence a one-story building proposed in one of the other offers ultimately excluded from the competitive range that was awarded a superior rating under this evaluation factor. GSA explains that Prince Frederick's two-story building was assessed as offering superior value on this evaluation factor, in part, because the structure offered "[m]inimal travel distances throughout the building."

Both the Prince Frederick building and the building offered by Pruitt were viewed by agency evaluators as better than acceptable, and the differences between the two buildings were not due solely to the number of floors. Accordingly, since the number of floors in Pruitt's building was not even a weakness--much less a deficiency--GSA had no obligation to raise this matter during discussions, even though Pruitt's building was relatively less desirable (albeit less expensive) than Prince Frederick's building. See Fairchild Space and Def. Corp., B-243716; B-243716.2, Aug. 23, 1991, 91-2 CPD ¶ 190.

Price/Technical Tradeoff


Pruitt argues that GSA made an improper price/technical tradeoff in selecting Prince Frederick's higher priced building over the building proposed by Pruitt. In addition to challenging the results of the evaluation, discussed above, Pruitt argues that the record does not support the agency's decision to award to Prince Frederick given the discrepancy in price compared to the closeness of the evaluation scores.

As an initial matter, Pruitt's contention that the agency's selection decision is not properly documented is not supported by the record. As part of the agency report provided in response to this protest, GSA included a lengthy Price Negotiation Memorandum. In this document, the agency not only included textual summaries of the evaluations, but set forth a detailed comparison of the relative merits of the three offers viewed most advantageous to the government. After weighing the three proposals, the contracting officer concluded "that the superior qualities of the Prince Frederick [proposal] are worth more than the additional rent charged over its competition."

Our review also indicates that there is nothing about the selection decision here that is inconsistent with the stated evaluation criteria, or is unreasonable. As explained above, the SFO advised that award would be made to the offerer whose proposal is considered most advantageous to the government, and that price would be of equal weight to the evaluation factors. After completing the technical evaluation the agency concluded that the Prince Frederick proposal was superior to the Pruitt proposal under three of the seven equally-weighted evaluation factors. Then, as set forth in the Price Negotiation Memorandum, the contracting officer determined that the superiority of the Prince Frederick proposal justified its \$.45 NPV/NUSF higher rent, which translates to an additional \$1,186,345 over the 20-year life of the lease.

Since GSA's selection decision was consistent with the stated evaluation scheme, was properly explained and documented, and since Pruitt has failed to show why the decision should be considered unreasonable, we find no basis to question the agency's selection of Prince Frederick for this lease. Irwin & Leighton, Inc., B-241734, Feb. 25, 1991, 91-1 CPD ¶ 208. GSA was not required to make award to the offeror with the lowest price unless the RFP specified that price would be the determinative factor. Antenna Prods. Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43.

The protest is denied.


for James F. Hinchman
General Counsel