



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

# Decision

**Matter of:** LSS Leasing Corporation

**File:** B-259551

**Date:** April 3, 1995

Charles G. Moerdler, Esq., Stroock & Stroock & Lavan, for the protester.  
Paul S. Sibener, Esq., Tananbaum & Sibener, for The Horowitz Living Trust, an interested party.  
Scarlett D. Orenstein, Esq., General Services Administration, for the agency.  
Linda S. Lebowitz, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. In a procurement for leased office space, the General Services Administration properly considered, in accordance with its regulatory provision at 48 C.F.R. § 552.270-3, which addresses late submissions, the awardee's initial offer which was submitted after the closing date for receipt of initial offers, but prior to the closing date for receipt of best and final offers.
2. Where the solicitation provided that technical evaluation factors were more important than price, the contracting officer reasonably awarded a lease based on a higher technically rated, higher-priced offer.

## DECISION

LSS Leasing Corporation protests the award of a lease to The Horowitz Living Trust (HLT) under solicitation for offers (SFO) No. MNY 92-673, issued by the General Services Administration (GSA) for office space for the Social Security Administration (SSA) in Queens, New York. LSS generally challenges the contracting officer's price/technical tradeoff decision.

We deny the protest.

GSA issued the SFO on October 25, 1993, for 15,400 to 16,200 net usable square feet (nusf) of space in a building of sound and substantial construction. The SFO provided that space on a "single floor/ground floor" was preferred. The

SFO provided for the award of a 10-year lease to the responsible offeror whose offer, conforming to the solicitation, was most advantageous to the government, price and other factors considered. The SFO listed in descending order of importance the following technical evaluation factors: (1) quality (consideration of the character, quality, and appearance of the building's interior and exterior; the quality of the building's systems, including heating, ventilation, and air conditioning (HVAC), plumbing, security, fire prevention, and elevators; and the quality and appearance of the building's lobbies and entryways) (50 points);<sup>1</sup> (2) layout (consideration of the potential for an efficient office layout, consistent with the government's intended use) (45 points); and (3) parking (5 points). The SFO stated that an offeror's price was of less importance than the combination of technical evaluation factors.

The SFO stated that initial offers were due by the closing date of November 19. The SFO also included GSA's regulatory provision at 48 C.F.R. § 552.270-3, captioned "Late Submissions, Modifications, and Withdrawals of Offers," which provided in relevant part that "[a]ny offer received . . . after the exact time specified for receipt of best and final offers [BAFO] [would] not be considered. . . ."

LSS submitted its initial offer on November 19. LSS offered space on the second floor of a 20-story office building which is approximately 30 years old. HLT submitted its initial offer on December 14. HLT offered ground floor contiguous space in a single-story building, to be completely renovated, which was previously used as a tire and battery retail outlet.

The offers of LSS and HLT were included in the competitive range. Following discussions and the submission of revised offers, each offeror submitted a BAFO. After reviewing BAFOs, the contracting officer reopened discussions with LSS and HLT and subsequently requested a second BAFO from each. Second BAFOs were evaluated as follows:

	<u>Quality</u>	<u>Layout</u>	<u>Parking<sup>2</sup></u>	<u>Price</u>
LSS	25	15	0	\$17.45/nusf
HLT	45	45	0	\$20.70/nusf

<sup>1</sup>The points assigned to each technical evaluation factor were not listed in the SFO, but instead, were listed in GSA's source selection plan.

<sup>2</sup>Neither LSS nor HLT offered parking spaces designated for government use.

The contracting officer recognized that LSS offered a lower price per square foot than HLT. However, in light of the SFO's evaluation methodology, which provided that price was less important than the technical evaluation factors, the contracting officer concluded that the technical superiority of HLT's offer, in terms of quality and layout, vis-a-vis LSS's offer, justified the award to HLT at a higher price per square foot.

Specifically, the contracting officer determined that the quality of HLT's space was excellent. The contracting officer pointed out that in accordance with the preference stated in the SFO, HLT offered ground floor contiguous space in a single-story building for which SSA would be the only tenant. In the contracting officer's view, this space would provide easy access for the elderly and handicapped. The contracting officer also favorably viewed HLT's offer to completely renovate the interior and exterior of its building and to install new HVAC, plumbing, and electrical systems. In addition, the contracting officer determined that the layout potential of HLT's space was excellent. In this regard, the contracting officer believed that the square configuration of HLT's space, which included a small number of columns and larger office bays, would result in a highly efficient, "bullpen" layout where SSA supervisors would have a direct line of sight to monitor employees and the high volume of visitors. The contracting officer concluded that the quality and layout potential of HLT's space--basically a new building with new systems--would result in an excellent work environment, where employee morale and productivity, security, and office operations would be enhanced.

In contrast, the contracting officer determined that the quality of LSS's offered space on the second floor of an office building which was approximately 30 years old was good, but not excellent. The contracting officer pointed out that LSS offered the original HVAC system, with no plans for renovation, and the existing plumbing and electrical systems, with plans for superficial renovations only. The contracting officer also determined that the layout potential of LSS's space was only fair. In this regard, the contracting officer believed that the rectangular configuration of LSS's space, including numerous columns and smaller office bays, would limit the layout potential of the space, restrict the direct line of sight necessary for SSA supervisors to monitor employee and visitor areas, and create security risks.

LSS first objects to the contracting officer's consideration of HLT's initial offer which was submitted approximately 1 month after the stated closing date for receipt of initial offers.

Based on the solicitation, LSS knew that the contracting officer could consider any initial offer received prior to the closing date for receipt of BAFOs. Specifically, GSA included in the SFO its regulatory provision at 48 C.F.R. § 552.270-3 which authorizes GSA to consider an initial offer submitted any time prior to the closing date for receipt of BAFOs.<sup>3</sup> Thus, to the extent LSS is challenging the terms of the SFO, its post-award protest is untimely since protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1995); Gordon R. A. Fishman, B-257634, Oct. 11, 1994, 94-2 CPD ¶ 133; Tomasz/Shidler Inv. Corp., B-250855; B-250855.2, Feb. 23, 1993, 93-1 CPD ¶ 170.<sup>4</sup>

Consistent with the SFO, although HLT submitted its initial offer after the stated closing date for receipt of initial offers, it nevertheless submitted its initial offer prior to the closing date for receipt of BAFOs.<sup>5</sup> Therefore, the contracting officer properly considered HLT's offer for award.

LSS also argues that as the low-priced offeror, it was entitled to award.<sup>6</sup> Where, as here, the SFO does not

---

<sup>3</sup>We note that in 60 Key Centre, Inc. v. Administrator of Gen. Servs., No. 94-6043 (2d Cir. Feb. 1, 1995), the court held that 48 C.F.R. § 552.270-3 properly permits consideration of an offer submitted after the closing date for receipt of initial offers, but prior to the closing date for receipt of BAFOs.

<sup>4</sup>LSS also claims that its building was entitled to a "special priority" preference based on two congressional resolutions. However, the SFO did not permit such a preference. To the extent LSS alleges that this was a defect in the terms of the SFO, this allegation is also untimely. 4 C.F.R. § 21.2(a)(1).

<sup>5</sup>Contrary to the protester's contention, HLT also submitted GSA Form 3518, captioned "Representations and Certifications," prior to the closing date for receipt of BAFOs.


<sup>6</sup>LSS's protest basically was filed "upon information and belief." LSS alleged, without supporting details, that the contracting officer failed to consider its low price; that the evaluation of offers was improper; that negotiations were improper; and that HLT's offer did not comply with the requirements of the SFO. In its report on the protest, GSA

(continued...)

provide for award on the basis of the lowest-priced, technically acceptable offer, an agency has the discretion to make the award to an offeror with a higher technical score and a higher price where it reasonably determines that the price premium is justified considering the technical superiority of the awardee's offer and the result is consistent with the evaluation criteria. Id.; see 841 Assocs., L.P.; Curtis Center Ltd. Partnership, B-257863; B-257863.2, Nov. 17, 1994, 94-2 CPD ¶ 193.

Here, while HLT's price was approximately 16 percent higher than LSS's price, HLT's technical score was significantly higher--by approximately 55 percent--than LSS's technical score. HLT essentially offered a new building with, among other things, new HVAC, plumbing, and electrical systems, while LSS offered an older building with the original HVAC system and the existing plumbing and electrical systems. While LSS's systems had been maintained and were in good condition, these systems nevertheless were not new. In addition, HLT's space could be configured in a more efficient manner to meet the needs of SSA, in contrast to LSS's space. Therefore, in light of the SFO's evaluation methodology, where technical evaluation factors were considered more important than price, we have no basis to question the contracting officer's decision to award the lease to HLT, whose higher technically rated, higher-priced offer was deemed most advantageous to the government.

The protest is denied.

  
 For Robert P. Murphy  
 General Counsel

---

' (...continued)  
 responded to each of these allegations. In addition, LSS's counsel had access to HLT's offer, all evaluation and source selection documentation, the contracting officer's statement, and the legal memorandum. In its comments on the agency report, LSS simply stated that it "herewith reasserts all other protest grounds articulated in its previous letters [of protest]." Since LSS has failed to substantively rebut the agency's position on these issues, we consider them abandoned and will not consider them. See E-Systems, Inc., B-258667.2, Mar. 23, 1995, 95-1 CPD ¶ \_\_\_\_.