



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Anderson Development Company

File: B-261112

Date: August 18, 1995

Michael Anderson for the protester.

Katherine S. Nucci, Esq., Dykema Gossett, for Stamford Holdings No. 2, Inc., an interested party.

Donald R. Jayne, Esq., and Allan I. Aasmaa, Esq., General Services Administration, for the agency.

C. Douglas McArthur, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency is not required to hold successive rounds of discussions so that an unacceptable offer might become acceptable.

DECISION

Anderson Development Company protests the award of a contract to Stamford Holdings No. 2, Inc. under solicitation for offers (SFO) No. MCA93226, issued by the General Services Administration (GSA) for office space for the Military Enlistment Processing Service in Los Angeles, California. Anderson argues that the conduct of discussions by the agency was improper.

We deny the protest.

On November 17, 1993, the agency issued the SFO for lease of a minimum of 62,382 and a maximum of 65,501 net usable square feet of office space, with 76 reserved secured parking spaces, for a period of 10 years, with an option for two additional 5-year periods.¹ The SFO provided for award to the offeror whose offer would be most advantageous to the government, based on price and other factors, with price

¹The requirement was later increased to a minimum of 65,246 and a maximum of 68,508 net usable square feet of office space.

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of equal importance with technical factors.² Paragraph 3.13 of the SFO required offerors to submit evidence of capability to perform with their offers, including evidence of commitment of funds necessary to prepare the space and evidence of ownership or control of the site.

The agency conducted a market survey prior to issuing the solicitation and identified likely properties in the area. In addition to the current site, owned by the eventual awardee, the agency identified a parcel termed the "Singer & Nabel" site-- assessor's parcel number 5032-022-019, on Santa Rosalia Drive, near the intersection with Stocker Street. Both Cushman and Wakefield of California, Inc. (C&W) (acting on behalf of the owners of the site) and the protester, indicated an intention to submit an offer to construct a new building at the Singer & Nabel site. In a conversation with GSA personnel in late September 1993, the protester admitted that it lacked control over the site, and requested that GSA first issue a notice of its intent to enter into a lease, so that Anderson could obtain the financing to procure the site. When the agency declined to do so, the protester promised to contact the realty specialist in a couple of months, when it had something more concrete to offer. Anderson subsequently requested and received a copy of the SFO.

The agency received three offers on January 14, 1994; Anderson and C&W submitted offers based on construction of a facility at the Singer & Nabel site. The C&W offer provided evidence of ownership by Singer and Nabel, and evidence of an arrangement to transfer control to that firm. Anderson's offer, by contrast, did not identify the owner of the property and did not contain evidence of the protester's ability to gain control of the site. The protester's offer also lacked any evidence of a funding commitment.

On March 17, the GSA Realty Specialist met with the protester to discuss the information missing from its proposal, including the lack of a funding commitment, and evidence of control of the site. On June 16, GSA made its first request for the submission of best and final offers (BAFOs), with a due date of July 1, later extended to July 28. Letters sent to Anderson on June 16 and July 13 reminded the protester to submit the previously requested information with the BAFO.

On July 26, Anderson advised GSA's realty specialist of its inability to obtain control of the site, explaining that the owner was insisting on a letter from the Los Angeles Community Redevelopment Agency as well as on a commitment from the protester to purchase the site. Thus, Anderson's BAFO did not contain the requested information regarding the commitment of funds and site control.

²Technical factors, evaluation of which is not at issue in the protest, included as follows: (1) building not exceeding a 3:1 length to width ratio--"U" or "L" shape; (2) on-site parking for visitors; (3) extent to which area was contiguous and located in one building; and (4) whether tenancy would be shared.

GSA requested another round of BAFOs on October 12 in order to incorporate Davis-Bacon Act provisions into the lease, setting November 18 as the date for submission of BAFOs. In a telephone conversation, GSA's realty specialist again reminded the protester of the need to provide the missing financial information; further, the call was followed by two letters to Anderson seeking the previously requested information regarding a commitment of funds and evidence of site control. Although the protester advised GSA in a telephone conversation that it had obtained an option for the proposed site, its revised BAFO contained no evidence of financing or site control.

By letter dated December 7, the agency again notified the protester that its proposal was unacceptable. However, a change in the required occupancy date prompted the agency to request one more round of BAFOs. By letter of December 21, the agency requested the protester and the other two remaining offerors--Stamford Holdings and C&W--to submit BAFOs by December 23.³ In its December 23 BAFO, Anderson for the first time submitted evidence of an option to purchase the Singer & Nabel site. Anderson did not, however, provide evidence of a funding commitment, and modified its proposal by conditioning its offer on the agency's acceptance of a lease term of 15 years, with one 5-year option. GSA found the protester's proposal unacceptable because it took exception to a material solicitation provision--the lease term--and on April 10, 1995, GSA awarded the lease to Stamford Holdings, the only acceptable offeror. This protest followed.

Anderson contends that GSA failed to conduct discussions with the firm, failed to meet with Anderson to discuss its offer, and should have reopened discussions to permit the protester to cure any remaining deficiencies in its offer.

As a preliminary matter, we note that there is no obligation either to meet with an offeror in person or to help an offeror by conducting successive rounds of discussion until all deficiencies are corrected. Cajar Defense Support Co., B-242562.2; B-243520, June 12, 1991, 91-1 CPD ¶ 563. Nevertheless, GSA representatives did, in fact, meet with Anderson, and communicated with the firm repeatedly by telephone and by letter. The record shows that GSA clearly pointed out the deficiencies in the proposal and extended the protester several opportunities to revise its offer in order to correct those deficiencies. Apart from Anderson's change to the lease term, discussed below, there is no evidence that the agency failed to advise the protester of any weakness or deficiency which prevented it from having a reasonable chance of being selected for award. See Dept. of the Navy--Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422. Therefore, we conclude that GSA conducted adequate and meaningful discussions with Anderson. See Metropolitan Fed. Network, B-232096, Nov. 21, 1988, 88-2 CPD ¶ 495.

³Prior to the date set for receipt of this round of BAFOs, C&W withdrew its offer.

With respect to Anderson's decision to change the lease term in its BAFO—which rendered the proposal unacceptable—Anderson bore the risk that the change would result in rejection of its offer. Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD 76. There is no obligation for an agency to reopen discussions with an offeror that first introduces a deficiency into its BAFO, as Anderson did here when it altered the term of the lease. Id.; ABB Power Co. T&D, Inc., B-246249, Feb. 6, 1992, 92-1 CPD ¶ 157.

The protest is denied.

Christine S. Melody
for Robert P. Murphy
General Counsel