



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: 901 W Walnut Hill Lane Holdings Ltd Partnership

File: B-416106; B-416106.2

Date: June 11, 2018

Theodore R. Flo, Esq., Ballard Spahr LLP, for the protester.
Stuart W. Turner, Esq., and Amanda J. Sherwood, Esq., Arnold & Porter Kaye Scholer LLP, for CentrePort Properties, LLC, the intervenor
Helen Y. Kearns, Esq., Public Buildings Service, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that building proposed for lease failed to meet solicitation requirement that property be accessible to food and transit service by continuous public sidewalk is denied where solicitation did not provide for such a requirement.

DECISION

901 W Walnut Hill Lane Holdings Limited Partnership (Walnut Hill), of Irving, Texas, protests the award of a lease to CentrePort Properties, LLC (CentrePort), of Fort Worth, Texas, by the General Services Administration (GSA), under request for lease proposals (RLP) No. 6TX0568, for the lease of office space. The protester asserts that the building proposed by CentrePort does not meet all of the solicitation requirements and thus is ineligible for award. Walnut Hill also protests any award to Offeror B, asserting that the building proposed by Offeror B also fails to meet all solicitation requirements.

We deny the protest.

BACKGROUND

The RLP, issued on August 1, 2017, provided for the award of a 15-year lease of office space in Fort Worth, Texas, for the Small Business Administration's (SBA) Office of Disaster Assistance. GSA was seeking to lease approximately 141,454 of American National Standards Institute/Building Owners and Managers Association Office Area

square feet (ABOA SF)¹ of contiguous space. Agency Report (AR), Exh. 2, RLP § 1.02(A). The RLP informed offerors that award would be made to the offeror that submitted the lowest-priced, technically-acceptable lease proposal. RLP § 4.03(A). The RLP included a statement of requirements that the offered property must meet. As relevant here, space was required to be contiguous, RLP § 1.02(A). In addition, employee and visitor entrances were to be connected to public sidewalks by continuous, accessible sidewalks, and the primary functional entrance of the building was required to be within a safely accessible, walkable three mile radius distance of food and transportation services. AR, Exh. 4, RLP amend. 1 § 105(B).

GSA received lease proposals from CentrePort, Offeror B, and Walnut Hill. AR, Exh. 15, Price Negotiation Memorandum, at 16. The agency found that all three proposals met the requirements of the solicitation. Id. at 8, 11, 15. Offeror B offered to lease its property at \$18.22 per square foot, and Walnut Hill at \$18.60 per square foot. Id. at 16. The agency awarded the lease to CentrePort which submitted the lowest-priced proposal at \$17.43 per square foot. Id. at 16-17. This protest followed.

DISCUSSION

Walnut Hill protests that the property proposed by CentrePort does not meet the solicitation requirements for contiguous space and that the functional entrance of the building be connected to public sidewalks by continuous accessible sidewalks. Protest at 5, 8. Walnut Hill also asserts that the functional entrance of the building offered by Offeror B is not connected to food or transit services by continuous public sidewalks. Comments & Supp. Protest at 6. Walnut Hill concludes that neither offeror is eligible for award and that it is the only offeror that submitted an acceptable proposal.

GSA responds that the proposals of both CentrePort and Offeror B met all of the requirements of the RLP. Supp. Memorandum of Law (MOL) at 3; Supp. Contracting Officer's Statement (COS) at 2. GSA further asserts that since Offeror B submitted the second lowest-priced lease proposal, Offeror B, not Walnut Hill, would be in line for award if Walnut Hill's challenge to the acceptability of CentrePort's lease proposal is sustained. MOL at 3. GSA thus argues that Walnut Hill is not an interested party to maintain a protest against the award to CentrePort.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. The Metropolitan Square Assoc., LLC, B-409904, supra. Where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives

¹ ABOA SF refers to the area available for use by a tenant for personnel, furnishings, and equipment. See The Metropolitan Square Assocs., LLC, B-409904, Sept. 10, 2014, 2014 CPD ¶ 272 at 2 n.2.

effect to all of its provisions; to be reasonable, an interpretation must be consistent with such a reading. Blue Origin, LLC, B-408823, Dec. 12, 2013, 2013 CPD ¶ 289 at 6.

As discussed in detail below, we agree that the building proposed by Offeror B meets the solicitation requirement for accessibility to food and transit services, and is therefore acceptable. We further agree that Walnut Hill is not an interested party to protest the award to CentrePort.

With respect to Walnut Hill's challenge to the evaluation of Offeror B's proposal, as relevant here, the RLP provided:

B. Walkability and Amenities:

1. Employee and visitor entrances of the Building must be connected to public sidewalks by continuous, accessible sidewalks.
2. The primary functional entrance of the Building shall be within a safely accessible, walkable three mile radius of food services
3. Transit Accessibility: A subway, light rail, or bus rapid transit stop shall be located within the immediate vicinity of the Building, but generally not exceeding a safely accessible, walkable three mile radius distance from the principal functional entrance. . . .

RLP amend. 1 § 105(B).

In Walnut Hill's view, the purpose of the solicitation requirement for access by continuous public sidewalks is so that the "functional entrance" of the building is "safely accessible" and "walkable" to "food services." Comments at 6. Walnut Hill argues that the building proposed by Offeror B does not meet the requirement because it has a public sidewalk on the street immediately in front of the building which only extends a short distance in each direction, and does not connect to food or transit services. Id. at 7.

GSA responds that the solicitation, as amended, required that employee and visitor entrances be connected to public sidewalks by continuous, accessible sidewalks, and that the building Offeror B proposed meets this requirement. Supp. MOL at 3; Supp. COS at 1-2. GSA asserts, however, that the solicitation did not require that the building be connected to food and transit services by continuous public sidewalks. Id. Although the RLP states that the entrance of the building must be connected to public sidewalks by continuous sidewalks, we agree that there is nothing in the amended solicitation which requires amenities to be connected to the building by continuous public sidewalks.

As GSA explains, the solicitation as initially issued required that amenities, including food services, be within an accessible, walkable 2,640 foot distance from the building, and accessible from the building by continuous sidewalks, walkways, or pedestrian

crosswalks.² Supp. MOL at 2-3; Supp. COS at 1-2. The agency however, amended the solicitation to increase the maximum allowed distance to transit and food services to three miles from the building's functional entrance because the area in which it was seeking to lease property was chiefly an industrial area with limited access to such amenities. COS at 6. At the same time, the agency increased the permissible distance to amenities, it deleted the requirement that access to food and transit services be by continuous public sidewalk because the SBA did not require that restriction. *Id.*; AR, Exh. 3, E-mail from GSA Senior Leasing Specialist, Sept. 6, 2017. In this regard, the agency expected that there might not be continuous public sidewalks for three miles, and that in any case employees would not walk three miles for lunch. Supp. COS at 2. Since the amended solicitation did not require that food and transit services be connected to the building by public sidewalks, we agree that the proposal submitted by Offeror B was acceptable, and deny Walnut Hill's protest against any award to Offeror B.³

Under our Bid Protest Regulations, only an interested party may maintain a protest, that is, an actual or prospective bidder or offeror whose direct economic interests would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party to challenge an agency's evaluation where, even if the challenge has merit, another offeror would be in line for award if the protest was sustained. CACI, Inc.-Federal; Gen. Dynamics One Source, LLC, B-413860.4, et al, Jan. 5, 2018, 2018 CPD ¶ 17 at 21, 22. Here, since Offeror B's proposal is acceptable, Offeror B would be in line for award if Walnut's Hill's challenge to the evaluation of CentrePort's proposal is sustained. Accordingly, we dismiss Walnut

² RLP § 1.05(C), which became RLP § 1.05(B) in amendment 1, initially provided as follows:

Walkability and Amenities:

1. Employee and visitor entrances of the Building must be connected to public sidewalks by continuous, accessible sidewalks.
2. A variety of employee services, such as restaurants. . . shall be located within the immediate vicinity of the Building. The primary functional entrance of the Building shall be within safely accessible, walkable 2,640 foot distance of. . . amenities. . . . To be considered, amenities must be accessible from the Building by continuous sidewalks, walkways, or pedestrian crosswalks. . . .

³ GSA further notes that under the protester's interpretation of the solicitation the protester's proposal would be unacceptable because the employee and visitor entrances to the building that the protester proposed are not connected to a public sidewalk. The protester does not disagree that the entrance is not connected to a public sidewalk, but argues that it can easily remedy this.

Hill's protest against the award to CentrePort because Walnut Hill is not an interested party to challenge that award.

The protest is denied.

Thomas H. Armstrong
General Counsel