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Decision

Matter of: Huffman Building P, LLC

File: B-418752

Date: August 21, 2020

Rebecca E. Lipson, Esq., and Donald W. McClintock, Esq., Ashburn & Mason, PC, for the protester.

Michael Jungreis, Esq., Reeves Amodio, LLC, for Winco Anchorage Investors I, LP, the intervenor.

M. Leah Wright, Esq., General Services Administration, for the agency.

Katherine I. Riback, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency performed improper present value price evaluation is denied where the agency's present value price evaluation was reasonable and consistent with the terms of the solicitation.

2. Protest challenging contracting officer's affirmative responsibility determination is denied where protester's allegations do not establish that the contracting officer failed to consider available relevant information when making responsibility determination.

DECISION

Huffman Building P, LLC (Huffman), a small business of Anchorage, Alaska, protests the award of a lease for warehouse space to Winco Anchorage Investors I, LP (Winco), of Hidden Hills, California, by the General Services Administration (GSA), under request for lease proposals (RLP) No. 7AK2257. The protester challenges the agency's price evaluation and the contracting officer's affirmative determination of responsibility.

We deny the protest.

BACKGROUND

The RLP, issued on August 16, 2019, provided for the award of a 20-year lease of warehouse space in Anchorage, Alaska.¹ Agency Report (AR), Tab 1, RLP at 12, 38; Contracting Officer's Statement (COS) at 4. The lease anticipates serving two divisions of the United States Geological Survey (USGS), the Alaska Science Center, and the Alaska Volcano Observatory. RLP at 78. GSA was seeking to lease between 14,390 to 15,110 of American National Standards Institute/Building Owners and Managers Association Office Area square feet (ABOA SF)² of contiguous space in a warehouse type building. *Id.* at 12. The RLP informed offerors that the lease would be issued to the offeror that submitted the lowest-priced, technically acceptable lease proposal. *Id.* at 31.

The solicitation advised offerors that the agency would determine the lowest price by conducting a present value price evaluation. *Id.* at 32. As relevant here, the RLP provided that certain costs would be added to the gross present value cost, including "[t]he cost of relocation of furniture, telecommunications, replications costs, and other move-related costs, if applicable." *Id.* at 32.

The RLP also included a list of requirements to be submitted with an offer, including the following regarding zoning:

Evidence that the Property is zoned in compliance with local zoning laws, including evidence of variances, if any, approved by the proper local authority, or the Offeror's plan and schedule to obtain all necessary zoning approvals prior to performance if the same have not been received at the time of submission of offers.

Id. at 27. GSA received technically acceptable lease proposals from Huffman and Winco. COS at 3. After conducting the present value price evaluation, the agency found that Winco's evaluated price was \$12.56 per ABOA square foot, and Huffman's evaluated price was \$13.11 per ABOA square foot. AR, Tab 25, Winco Present Value Analysis at 37; Tab 24, Huffman Present Value Analysis at 41. As Winco submitted the lowest-priced, technically acceptable proposal, the agency awarded it the lease. This protest followed.

¹ The RLP provided that the term of the lease was 20 years, with government termination rights effective any time after a 10-year firm term of the lease. RLP at 13.

² 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 n.2.

DISCUSSION

Huffman, the incumbent, argues that the agency failed to conduct a reasonable present value evaluation because the agency failed to consider the costs of relocation, which Huffman asserts was required by the RLP. Protest at 2-3. The protester also contends that the agency's affirmative responsibility determination is unreasonable because the property proposed by Winco does not meet the solicitation's requirement that the property be "zoned in compliance with local zoning laws." *Id.* at 4-5.

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 Assocs., LLC*, B-409904, *supra*, at 6. With respect to the decision that Winco is a responsible offeror, we note that section 9.103(b) of the Federal Acquisition Regulation (FAR) provides that "[n]o purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility." As set forth in greater detail below, we do not review affirmative determinations of responsibility unless a contracting officer has ignored evidence that, by its nature, raises "serious concerns that in reaching a particular determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation." 4 C.F.R. 21.3(c).

We have reviewed all of the protester's arguments and find that none of the challenges to this evaluation, or responsibility determination, provides a basis to sustain the protest.

Present Value Price Evaluation

Huffman argues that the agency did not conduct a reasonable present value evaluation because it failed to consider the costs of relocation, as required by the RLP. Protest at 2-3. The protester contends that the agency's failure to add relocation costs to the present value analysis resulted in a lower price for the awardee. *Id.* at 3. Huffman goes on to argue that the relocation expenses for Winco would be high because the move would require the relocation of over 14,000 square feet worth of stored core samples, rocks, industrial racking, equipment, and other highly specialized items stored in the present facility, in addition to incurring routine expenses for furniture, telecommunications, and other associated move-related costs. *Id.*

In response, the agency contends that according to the terms of the RLP, relocation costs would only be added if deemed to be applicable. Memorandum of Law (MOL) at 9 (citing RLP at 32). The agency states that it did not add relocation expenses to the present value analysis of Huffman or Winco's proposals because relocation expenses were not considered applicable under the circumstances. *Id.* at 11.

As noted above, the RLP stated that relocation costs would be considered "if applicable." RLP at 32. Here, the agency states that it determined that these relocations costs were not applicable in this instance for two reasons. First, the

contracting officer explains that relocation costs would apply equally to the proposals of both Huffman and Winco because Huffman's proposed location would require the moving and storage of personal property to facilitate the required tenant improvements. COS at 16, 18. Because the relocation costs would apply equally, the contracting officer decided not to include such costs in the agency's present value analysis. *Id.* Second, the agency contends that because the customer agency, USGS (*i.e.*, not GSA) was responsible for separately contracting for the relocation, relocation costs were not applicable here. MOL at 11. In this case, the protester's challenges to the agency's evaluation essentially assume that the agency was required to consider relocation costs. Based on our review of the record, we find that the protester has not meaningfully refuted the reasonableness of the agency's determination to not include relocation costs in its present value analysis. See *HG Properties A, L.P.*, B-284170 *et al.*, Mar. 3, 2000, 2000 CPD ¶ 36 at 6-7.

As a result, we find that the agency analyzed the present value of Huffman and Winco's proposals in a manner that was reasonable and consistent with the terms of the RLP. Therefore, we deny this protest ground.

Affirmative Responsibility Determination

Next, the protester challenges the contracting officer's affirmative responsibility determination, contending the contracting officer unreasonably failed to consider available relevant information regarding Winco's ability to comply with local zoning laws. Protest at 4-5. In this regard, the protester argues that Winco's proposed property is zoned B-3 General Business in Commercial District, and that, according to the Anchorage Municipal Code (AMC), warehouse use in a B-3 zone is only allowed in connection with retail sales use of the property. *Id.* at 4. Huffman further contends that if the lease use is considered "warehouse or wholesale establishment light," then Winco would need to seek a conditional use permit under AMC § 21.05.060(A)(1)(b)(ii), which would involve a public hearing, notice, and a finding by local authorities that the proposed use is consistent with the Municipal Comprehensive Plan and the zoning district. *Id.* Thus, according to Huffman, the contracting officer should have doubted whether Winco's property would be properly zoned during performance of the lease, and found Winco not to be responsible.

The agency maintains that the contracting officer considered all reasonably available relevant information in making his affirmative responsibility determination. MOL 15-16. In response to the protest, the contracting officer explains that he reviewed all of the information contained in the agency's market survey report, as well as Winco's proposal, before making his determination that Winco was responsible. COS at 14-15. Based upon this information, the contracting officer states that he found Winco's proposed property to be compliant with local zoning laws. *Id.* at 15.

Generally, evidence of compliance with zoning laws relates to the ability of the successful offeror to perform rather than to whether the offer is acceptable, and, therefore, is a matter of responsibility. See *Western Alternative Corrections*, B-409315,

B-409315.2, Mar. 10, 2014, 2014 CPD ¶ 94 at 6; *Public Facility Consortium I, LLC*; JDL Castle Corp., B-295911, B-295911.2, May 4, 2005, 2005 CPD ¶ 170 at 1, 3. Our Office has found zoning to be an aspect of an offeror's responsibility even where the solicitation expresses the requirements in terms of responsiveness or technical acceptability. *Western Alternative Corrections, Inc., supra*; *TRS Design & Consulting Servs.*, B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168 at 4.

Since the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office will generally not consider a protest challenging an affirmative determination of responsibility except under limited, specified exceptions.³ 4 C.F.R. § 21.5(c); *FCi Fed., Inc.*, B-408558.4 *et al.*, Oct. 20, 2014, 2014 CPD ¶ 308 at 7. One specific exception is where a protest identifies evidence raising serious concerns that a contracting officer, in making an affirmative determination of responsibility, unreasonably failed to consider available relevant information. 4 C.F.R. § 21.5(c); *Verestar Gov't Servs. Group*, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 3-4. This includes protests where, for example, the protest includes specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. *Universal Marine & Indus. Servs., Inc.*, B-292964, Dec. 23, 2003, 2004 CPD ¶ 7 at 2; *see also Southwestern Bell Tel. Co.*, B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 (sustaining protest where contracting officer was generally aware of allegations of misconduct by awardee but took no steps to consider the awardee's record of integrity and business ethics).

Based upon our review of the record, we find the protester has not provided evidence that shows the agency failed to consider all relevant information in reaching his responsibility determination.

Here, the record shows that the contracting officer considered all available information that was relevant to whether Winco had the capability to comply with the solicitation's zoning requirements. First, the contracting officer stated that a review of the market survey report caused him no concern with zoning compliance issues with respect to Winco's property. COS at 15. For example, the market survey report states that the Winco property was a 113,000 square foot one-story warehouse constructed in 1983 in an industrial area known as Corporate Express Park with a parking ratio of one parking

³ Our Office will also review an agency's affirmative determination of a contractor's responsibility where the protester has alleged that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.5(c); *American Printing House for the Blind, Inc.*, B-298011, May 15, 2006, 2006 CPD ¶ 83 at 5-6. A definitive responsibility criterion is a specific and objective standard, qualitative or quantitative, that is established by a contracting agency in a solicitation to measure an offeror's ability to perform a contract. FAR 9.104-2; *Public Facility Consortium I; JDL Castle Corp., supra*, at 3. Here, the protester does not contend that the solicitation's zoning requirement constitutes a definitive responsibility criterion.

space per 1,000 square feet, which the contracting officer explains is a parking ratio typical for industrial-warehouse use in most GSA Region 10 markets.⁴ *Id.* at 14.

Along with reviewing the market survey, the contracting officer also reviewed the information contained in Winco's initial proposal that showed compliance with local zoning laws. *Id.* at 15. Specifically, Winco submitted three documents with its initial proposal to demonstrate that its property was zoned in compliance with local zoning laws. First, Winco submitted a zoning letter from the Municipality of Anchorage, dated March 11, 2016, which states that "[t]he use of the warehouse/storage was established as an accessory use to a permitted retail use at the time of construction in 1984 under building permit number 83-0415." AR, Tab 26, Winco Zoning Letter (Mar. 11, 2016) at 2. Second, Winco also submitted a Prior Use Statement Letter, dated September 12, 2019, stating that the prior use of the offered space has been for "office and light warehouse since our purchase of the building in 2003." AR, Tab 28, Winco Prior Use Statement Letter (Sept. 12, 2019). Third, Winco also provided a Public Record of Use Document, dated September 9, 2019, which stated that the building type is "Office Warehouse" with 80,136 / 99,288 Gross Building square feet or 81% used for warehouse, and titles the property the "Campbell Creek Industrial Park." AR, Tab 27, Winco Public Record of Use (Sept. 9, 2019) at 1. After reviewing this information, the contracting officer and other GSA project team members determined that Winco's proposed building was compliant with local zoning code requirements. COS at 15.

As described above, the record shows that the contracting officer considered numerous sources of information in determining whether Winco could comply with the solicitation's zoning requirements. On this point, we note that the protester has not identified any specific information that the contracting officer failed to consider. Rather, the protester contends that based upon the information reviewed, the contracting officer should have further scrutinized the contents of Winco's proposal and had doubts about Winco's ability to comply with the zoning requirements of the lease. Protest at 4-5. That is, the protester argues that while the prior use of Winco's property may comply with local zoning laws, Winco's use of the property under the lease would likely not comply with those same zoning restrictions. Protester's Comments at 6-8. The protester's challenges, however, reflect disagreement with the ultimate conclusion reached by the contracting officer, and do not establish that the contracting officer failed to consider available relevant information. An offeror's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *DynCorp Int'l, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 8; see also *USS Chartering, LLC*, B-407601, Jan. 15, 2013, 2013 CPD ¶ 69 at 4.

In addition, our Office has found that the determination of the correct zoning for a site is a matter for the local zoning authorities, and any questions regarding zoning are an issue to be resolved between the offeror and the zoning authorities. *Bannum, Inc.*, B-407079.2, B-407079.3, July 14, 2015, 2015 CPD ¶ 235 at 5. Indeed, the protester

⁴ The contracting officer notes that an office or retail use requires one parking space per 300 square feet. COS at 14.

acknowledges that Winco's proposed property could be used to perform the requirements of this lease and comply with applicable zoning laws if Winco obtains a conditional use permit from local authorities. Protest at 4. Ultimately, whether Winco's proposed property complies with local zoning laws in accordance with the solicitation's requirements is a matter of contract administration that is the responsibility of the contracting agency and is not for consideration by our Office. 4 C.F.R. § 21.5(a); see *AJT & Assocs., Inc.*, B-284305, B-284305.2, Mar. 27, 2000, 2000 CPD ¶ 60 at 5-6. Accordingly, the protester's allegations provide no basis to question the contracting officer's determination that Winco was responsible.

The protest is denied.

Thomas H. Armstrong
General Counsel