



**CORRECTED DOCUMENT FOR PUBLIC
RELEASE**

The corrected decision issued on the date below was subject to a GAO Protective Order. This corrected redacted version has been approved for public release.

Decision

Matter of: RTD Middleburg Heights, LLC

File: B-421477; B-421477.2

Date: May 31, 2023

Gordon Griffin, Esq., Hillary J. Freund, Esq., and Richard Ariel, Esq., Holland & Knight LLP, for the protester.

Robert W. Foltman, Esq., General Services Administration, for the agency.

Katherine I. Riback, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated the awardee's and the protester's price proposals, and insufficiently documented that evaluation, is sustained where the agency failed to provide adequate explanation and documentation to support the reasonableness of its price evaluation.

DECISION

RTD Middleburg Heights, LLC, of Oklahoma City, Oklahoma, protests the award of a lease to Michael Downing Realty Ltd, of Warrensville Heights, Ohio, by the General Services Administration (GSA) under request for lease proposals (RLP) No. 7OH2414, for the lease of general purpose office space in a circumscribed area of Ohio. The protester contends that the agency's price evaluation was unreasonable and inadequately documented.

We sustain the protest.

BACKGROUND

On October 23, 2019, GSA issued the RLP for the award of a 15-year lease of office space in the Middleburg Heights, Parma, North Royalton and Strongsville, Ohio area.¹ RLP at 4.²

GSA was seeking to lease a minimum of 6,363, and maximum of 6,681, of American National Standards Institute/Building Owners and Managers Association Office Area square feet (ABOA SF) of contiguous space.³ RLP at 4. The RLP informed offerors that the lease would be issued to the offeror that submitted the lowest-priced, technically acceptable lease proposal. *Id.* at 20.

The solicitation advised offerors that the agency would determine the lowest price by conducting a present value price evaluation. As relevant here, the RLP provided that the agency would add certain costs to the offerors' gross present value cost, including "[t]he cost of relocation of furniture, telecommunications, replications costs, and other move-related costs, if applicable," and a tenant improvement allowance. RLP at 21. This analysis, referred to as a present value analysis, provides a single cost representation of various inputs, such as variations in operating costs, amortizations, and tenant improvement overhead costs. Supp. Memorandum of Law (MOL) at 1-2. This analysis enables the agency to understand the "true price of all offers in today's (present value) dollars." *Id.* at 2.

GSA received technically acceptable lease proposals from Middleburg, the incumbent offeror, and Michael Downing. The latter's proposal was for new construction on land next to the incumbent protester's property. AR, Tab 11, Contracting Officer's Statement (COS) at 1. Final proposal revisions were requested and neither offeror revised its proposal. *Id.*

After an initial evaluation, the agency provided both offerors an opportunity to update their proposals with any changes due by July 25, 2022. Revisions were made by the

¹ The RLP covered the general terms of the procurement, such as how the agency would conduct the price evaluation (Agency Report (AR), Tab 1, RLP at 20), and provided the specifics, such as the amount and type of space sought by the agency, as well as the location. The RLP provided that the term of the lease was 15 years, with government termination rights effective after a 10-year firm term of the lease. RLP at 4.

² The agency used a Bates numbering system to provide page numbers for most of the exhibits it submitted with the agency report; citations to these exhibits refer to the Bates numbers assigned by the agency. Citations to the parties' pleadings or agency exhibits without Bates numbers refer to the Adobe PDF page numbers associated with those documents.

³ ABOA SF refers to the area available for use by a tenant for personnel, furnishings, and equipment, and is generally synonymous with usable square feet. See *Hoover Properties*, B-418844; B-418844.2, Sept. 28, 2020, 2020 CPD ¶ 373 at 2 n.3.

protester, but not the awardee. COS at 1. The adjusted present value analysis indicated that the awardee's proposal was the lowest-priced, technically acceptable proposal. AR, Tab 3, Michael Downing Final Present Value Analysis at 1; AR, Tab 4, Middleburg Final Revised Present Value Analysis at 1. The Social Security Administration, the tenant agency, delayed signing the lease and, in response, GSA provided a copy of a "cost benefit analysis" as "added confirmation" to illustrate that Michael Downing's offer was the lowest-price technically acceptable proposal. Supp. MOL at 5; COS at 1; AR, Tab 5, Cost Benefit Analysis. The tenant agency then allowed GSA to move forward with the proposed new lease. COS at 1.

On February 13, 2023, the agency notified Middleburg that it had made award to Michael Downing as the lowest-priced proposal with an evaluated present value price of \$23.87 per ABOA SF. AR, Tab 9, Letter to Unsuccessful Offeror. The agency informed Middleburg that its evaluated present value analysis price was \$32.50. *Id.* This protest to our Office followed.

DISCUSSION

Middleburg contends that the agency's present value analysis of the awardee's price was too low because it did not include relocation and replication costs as required by the solicitation.⁴ The protester also argues that the agency's evaluation lacked documentation and any explanation of what rates were included in the agency's present value analysis. In addition, Middleburg asserts that the agency's cost benefit analysis used incorrect rates for the analysis of Middleburg's proposal. The protester further contends that the record is inadequately documented and cannot support the reasonableness of the agency's evaluation of the awardee's proposal. Last, Middleburg asserts that, as the only other firm in contention for award, it has met its burden of showing a reasonable possibility of prejudice. For the reasons discussed below, we sustain the protest.⁵

Relocation and Move-Related Costs

The protester contends that the agency's present value analysis of Michael Downing's proposed price was flawed because it did not include relocation and replication costs as required by the solicitation. To this end, Middleburg points to RLP language stating that the agency would add certain costs to the offerors' gross present value cost, including "[t]he cost of relocation of furniture, telecommunications, replications costs, and other move-related costs, if applicable." RLP at 21.

⁴ Replication costs are the costs of duplicating existing tenant improvements in a new property.

⁵ Although we do not address every issue raised by the protester, we have reviewed each issue and find that with the exception of those discussed in this decision, none provides a basis to sustain the protest.

The agency responds, without further elaboration that, “the move costs were not added to the analysis because it wasn’t applicable.” Supp. MOL at 2. The agency also states that proposals were evaluated in accordance with the policies and methods established by the GSA’s Leasing Central Office and these methods are used in every agency lease procurement. *Id.* The agency contends that not considering relocation and replication costs within the present value analysis was consistent with these policies and was needed “in order to evaluate offers on an equal basis.” *Id.* at 5.

In reviewing an agency’s evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. *Federal Builders, LLC--The James R. Belk Trust*, B-409952; B-409952.2, Sept. 26, 2014, 2014 CPD ¶ 285 at 3. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its evaluation conclusions. *Hoover Properties, supra at 7; Navistar Def., LLC, BAE Sys., Tactical Vehicle Sys., LP*, B-401865 *et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

As stated above, Michael Downing’s proposal was for new construction on land next to the incumbent protester’s property. AR, Tab 11, COS at 1. Therefore replication and moving costs would necessarily be incurred by the agency in the event of an award to Michael Downing. Here, however, the contemporaneous record is devoid of a meaningful explanation for the agency’s position that relocation and replication costs were “not applicable” and therefore need not have been included in the present value analysis.⁶ In addition, the agency failed to provide a post-protest explanation supporting its position.⁷ In light of this lack of explanation, we cannot find the agency’s interpretation of the RLP to be reasonable. As noted above, the solicitation expressly called for such costs to be included in the present value analysis, if applicable. RLP at 12.

We note that in *Hoover Properties*, our Office examined the same language, in the context of a similar issue, and concluded that “the RLP clearly put offerors on notice that relocation and move-related costs were to be added during the agency’s [net present

⁶ The agency also takes the position that it considered costs associated with relocating to the new building within its cost benefit analysis. We address that argument below.

⁷ The agency does note that for the awardee, the relocation costs would include the costs of moving to a new location that is less than 100-feet from the incumbent location. Supp. MOL at 5.

value] price evaluation.” *Hoover Properties, supra* at 6.⁸ The agency has not provided any information that would lead our Office to conclude differently here. Therefore, we find that the agency failed to provide adequate documentation or explanation for its failure to consider relocation and replication costs within its present value analysis.

Cost Benefit Analysis

To the extent the agency may have considered some costs of relocating to Michael Downing’s building when it identified Michael Downing’s proposal as the lowest price in the agency’s cost benefit analysis, the protester argues that this analysis is also flawed and unsupported.⁹ In this regard, Middleburg states that the agency used the wrong rates for the protester when determining which firm had the lowest price. Supp. Protest at 3. The protester notes that the agency erroneously compared Michael Downing’s proposed rates in response to the RLP to Middleburg’s current lease rates, as well as the operating costs from that lease. *Id.* at 4. The protester contends that instead of comparing the awardee’s rates to these “irrelevant” rates, the agency should have compared Michael Downing’s proposed rates and operating costs to Middleburg’s proposed rates. *Id.* at 6. Additionally, the protester argues that the costs the agency used for considering Michael Downing’s price are unsupported.

The agency concedes that it used incorrect rent numbers for Middleburg in conducting the cost benefit analysis. *Id.* The agency explains that it incorrectly used the rates from Middleburg’s current lease instead of the rent rates Middleburg proposed in response to the RLP. The agency nonetheless asserts that even if it had used Middleburg’s proposed rates, it would not have mattered because the awardee’s calculated price would still be lower than Middleburg’s. *Id.*

Here again, however, we find the agency’s contention unpersuasive. While the agency broadly asserts that the awardee’s price would have remained lower, the agency has not provided any documentation (either contemporaneous or post-protest) to support such a conclusion.¹⁰

⁸ The RLP in *Hoover*, like the present solicitation, referred to a present value price evaluation, however the agency record referred to a net present value price. Throughout the decision in *Hoover*, in referring to the agency’s price evaluation, we referred to the net present value price evaluation. *Hoover Properties, supra* at 2 n.4. In this decision we refer to the agency’s price evaluation as a present value analysis consistent with the RLP here.

⁹ As noted above, the agency’s cost benefit analysis was a post source-selection, lowest-price analysis that considered whether Michael Downing’s proposal would remain the lowest-priced if relocation and replication costs were added to its price.

¹⁰ The agency argues that the cost benefit analysis created by protester, as part of its legal briefing, shows that the awardee’s proposed price would still be cheaper, even after the above errors are corrected. We disagree. The protester notes that this

Additionally, although the agency's arguments and the record of its evaluation are equally lacking in clarity and detail, to the extent the agency attempts to support the reasonableness of its price evaluation by noting its addition of tenant improvement costs in its consideration of the awardee's price, we find the agency's argument unpersuasive. In its supplemental protest, Middleburg argues that the agency failed to justify the dollar value it used as the lump sum tenant improvement amount for Michael Downing in the cost benefit analysis. Supp. Protest at 7. We agree. The agency failed to explain what it included in these costs, how it derived the basis for these costs, whether they included replication and relocation costs, and whether they were used in the agency's present value analysis as required by the RLP.¹¹ Supp. Comments at 4-5. Accordingly, we are unable to find a reasonable basis for the agency's award decision.

In summary, given the lack of documentation, we are unable to determine that the agency reasonably evaluated the present value of the awardee's proposed price. Additionally, the agency acknowledges that it erred by using the wrong price for the awardee when it made its award determination. To the extent the agency contends that even if this error was corrected, the awardee's price would still be lower, the record contains no support for this assertion. Therefore, our Office cannot find that the agency acted reasonably when it concluded that Michael Downing proposed the lowest price.

Competitive Prejudice

Competitive prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving an award.

adjusted cost benefit analysis understates the awardee's price because it does not use a reliable representation for the "costs of replication and relocation" that should be included in the calculation of Michael Downing's price. Supp. Protest at 6. As explained above, the agency has not provided any support for its position that such costs should not have been used to adjust the awardee's price, or, alternatively, what costs the agency may have used in calculating the awardee's price.

¹¹ The agency claims it used an independent government cost estimate (IGCE) to derive the tenant improvement costs, and provided three IGCEs with the following estimates: [DELETED]. The total of these figures equals [DELETED], however the agency states that the total amount of the IGCE is [DELETED]. Supp. MOL at 5 n.2. This figure was achieved by adding the IGCE amounts of [DELETED] together. The agency does not provide an explanation for the third IGCE of [DELETED], or explain why this cost was not added to the costs of Michael Downing's proposal, when the other two IGCE figures, mentioned above, were added. Supp. AR, Tab 2, IGCE at 10. The agency, however, failed to explain whether the IGCEs included all replication and relocation costs and how the IGCEs were used to derive the tenant improvements costs. Supp. Comments at 4-5.

Octo Consulting Grp., Inc., B-413116.53, B-413116.55, May 9, 2017, 2017 CPD 139 at 10. When performing this analysis, GAO will resolve doubts regarding prejudice in favor of the protester; a reasonable possibility of prejudice is sufficient to sustain a protest. *Alutiiq-Banner Joint Venture*, B-412952 *et al.*, July 15, 2016, 2016 CPD ¶ 205 at 11.

Here, we have found that the record is inadequate for us to conclude that the agency's evaluation of the awardee's present value price was reasonable because it did not account for relocation and replication costs as required by the RLP. We also find that the agency's cost benefit analysis of the protester's proposal was not reasonable because the agency used the protester's current lease rates instead of the proposed rates Middleburg offered in response to the RLP. Given the nature of the errors in the agency's price evaluation described above, we have no basis to conclude with certainty that the awardee's proposal was the lowest-priced. A reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *J.R. Conkey & Assocs., Inc. d/b/a Solar Power Integrators*, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 11. Therefore, we find that Middleburg has met its burden of showing a reasonable possibility of prejudice.

RECOMMENDATION

The lease here has been awarded and signed by the agency and awardee, and the lease does not contain a standard termination for convenience clause. Rather, the lease permits the agency to terminate the contract only after the end of a 10-year firm term. In the absence of a termination for convenience clause, we ordinarily do not recommend termination of an awarded lease, even if we sustain the protest and find the award improper. *Federal Builders, LLC-The James R. Belk Trust, supra* at 7. Consequently, we recommend that the protester be reimbursed its proposal preparation costs, as well as the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. *Id.* § 21.8(f)(1).

The protest is sustained.

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General Counsel