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Decision

Matter of: Hope Village, Inc.

File: B-414342.2; B-414342.3; B-414342.4

Date: February 21, 2019

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DIGEST

1. Protest challenging agency's evaluation of protester's proposal as unacceptable under technical/management factor and conduct of discussions is denied where the record provides no basis on which to conclude that discussions were not meaningful and where the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest arguing awardee failed to provide sufficient proof of right to use the proposed facility as required by the solicitation is sustained where the awardee provided a letter of intent, which was not listed as a form of acceptable evidence of right to use, and the record contains no indication that the agency assessed the validity of the offeror's right to use as required by the solicitation.
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DECISION

Hope Village, Inc., of Washington, DC, protests the award of a contract to CORE DC, LLC, of Washington, DC, under request for proposals (RFP) No. RFP-200-1270-ES, issued by the Department of Justice, Bureau of Prisons (BOP), for residential re-entry center (RRC) and home confinement services. The protester, which is the incumbent contractor for the requirement, challenges the evaluation of the proposals, conduct of discussions, source selection decision, and the agency's responsibility determination.

We sustain the protest in part and deny the protest in part.

BACKGROUND

The solicitation was issued on January 15, 2016, pursuant to Federal Acquisition Regulation (FAR) part 15, and as amended, contemplated the award of one or up to four indefinite-delivery, indefinite-quantity contracts with fixed unit prices for a 1-year base period and four 1-year option periods. RFP at 1, 5, 10, 35.¹ The solicitation stated that award would be made to the offeror whose proposal, conforming to the solicitation, was determined to be in the best interest of the government, price and other factors considered. Id. at 40. This standard specifically included the offeror's "compliance with those minimum or mandatory technical/management requirements to the extent specified in the [t]erms and [c]onditions and/or specifications contained in this solicitation." Id. More specifically, the solicitation, as amended, contemplated award on a best-value tradeoff basis considering the following factors in descending order of importance: past performance, technical/management, and price. Id. at 40, 43.

The technical/management factor was comprised of six subfactors, one of which was site location. Id. at 42. This subfactor included two equally weighted elements, only one of which--site validity and suitability--is relevant here. Id. Among the areas that the solicitation advised would be evaluated under this element, were the suitability of the site location by considering (1) the validity of the offeror's right to use and (2) local area concerns and the responsiveness to proximity requirements defined in the statement of work (SOW)² and RFP section J. Id.

Of particular relevance here, the SOW stated the following with regard to offender referral and intake processing:

It is the philosophy and policy of the Bureau of Prisons that all inmates are afforded the opportunity for community placement; including but not limited to, sex offenders, violent offenders, arsonists, etc., in RRCs. Policies which may restrict the placement of inmates within community facilities are subject to the interpretation of the BOP, who is the determining agency for placement in community facilities.

The contractor will accept all inmates for placement at the facility and manage any inmates referred by the [residential reentry manager (RRM)]. In cases where local and/or state laws or ordinances do not allow for placement of a specific type of referral, the contractor will submit written justification to the RRM who will determine if the justification is in

¹ The solicitation was amended 14 times. Citations are to the conformed copy of the RFP provided by the agency.

² The SOW set forth detailed performance requirements for the contract. See generally RFP, attach. 1, SOW. The SOW also specifically advised offerors that contract performance was to comply with the SOW. Id. at 2.

compliance with the technical proposal. Acceptance of a federal offender under this contract not referred by the RRM may result in non-payment or other negative contract action.

RFP, attach.1, SOW at 43.

Section J of the RFP included a compliance matrix listing each factor and the corresponding solicitation instructions. See generally RFP, attach. 9, Compliance Matrix. For the technical/management factor, offerors were instructed to “follow the format in the [c]ompliance [m]atrix” and to “specifically address the factors outlined in the [c]ompliance [m]atrix.” RFP at 37-38. The solicitation instructions required that the “proposals shall provide evidence supporting the offeror’s [r]ight-[t]o-[u]se the proposed facility. Acceptable evidence of right-to-use is limited to deeds, leases, bills of sale, options to lease, options to buy, contingency leases or contingency deeds. Offeror shall notify the [c]ontracting [o]fficer immediately if the offeror loses its right-to-use the proposed facility.” RFP at 38 (emphasis omitted); see also RFP, attach. 9, Compliance Matrix, at 7. Also relevant here, offerors were required to “address if there are any laws or ordinances in place which precludes the housing of certain types of inmates.” RFP, attach. 9, Compliance Matrix, at 8.

The agency received five timely proposals, including the proposals of Hope Village and CORE DC. Contracting Officer’s Statement (COS) at 4. A competitive range was established which included the proposals of Hope Village and CORE DC. See Agency Report (AR), Tab 17, Competitive Range Determination at BOP000005. As relevant here, the competitive range determination noted that Hope Village’s proposal was assigned an unsatisfactory rating for the site location subfactor and an unsatisfactory rating for the site validity and suitability element under that subfactor.³ Id. at BOP000004. In this regard, the agency found that Hope Village’s proposal did not meet all the requirements of the solicitation. Id. Specifically, the agency noted that Hope Village would not accept all offenders for placement and did not provide copies of laws or ordinances that prohibit placement of certain offenders at its proposed facility. Id.

During discussions, Hope Village was repeatedly informed that its proposal was deficient under the site validity and suitability element. See AR, Tab 8A, Discussion Notice 1 to Hope Village at 1; AR, Tab 8C, Discussion Notice 2 to Hope Village at 2; AR, Tab 8E, Discussion Notice 3 to Hope Village at 1; AR, Tab 8G, Discussion Notice 4 to Hope Village at 1-2. Specifically, the agency advised that the solicitation required the contractor to accept all offenders referred for placement unless local laws or ordinances

³ Unsatisfactory was defined as “[o]fferor’s technical proposal fails to meet most of the requirements of the solicitation. Technical proposal has problems[] that will result in a negative impact on service delivery (a negative impact on the [g]overnment). Problems are serious, and it is not likely that they can be resolved through discussions.” RFP at 41.

prohibited placements of a particular type of offender; however, Hope Village's proposal failed to identify any laws or ordinances that would preclude it from housing certain types of offenders at its facility. Id. The agency also requested that Hope Village provide a plan for accepting all referrals made by the agency. AR, Tab 8C, Discussion Notice 2 to Hope Village at 2; AR, Tab 8G, Discussion Notice 4 to Hope Village at 1-2.

In the agency's final request for final proposal revisions (FPRs),⁴ the agency advised Hope Village that its response to the final discussion notice was unclear as to whether Hope Village would accept all offenders regardless of classification. AR, Tab 10E, Req. for FPR 3, to Hope Village at 1. As a result, the agency directed Hope Village to "provide a clear response" as to whether Hope Village would accept all offenders "regardless of classification, at its proposed location, yes or no?" Id. However, in its response to the final request for FPRs, Hope Village did not affirmatively state whether it would accept all offenders regardless of classification at its proposed location. AR, Tab 10F, Hope Village Response to FPR 3, at 2-3.

As a result, Hope Village's final revised proposal was assigned an unsatisfactory rating for the site validity and suitability element because Hope Village did not provide or cite to any ordinances that might preclude it from accepting specific types of referrals and limited the acceptance of certain high risk offenders based on their classification. AR, Tab 31, Source Selection Decision (SSD) at 34. The agency also assigned the Hope Village proposal an overall unsatisfactory rating for the technical/management factor because it did not meet the requirements in the site validity and suitability element. Id. at 33, 41.

CORE DC's proposal was found to be satisfactory under the site validity and suitability element.⁵ AR, Tab 18A, Final Technical Evaluation at 2; AR, Tab 31, SSD at 23. As relevant here, the agency found that the documentation submitted by CORE DC--a "letter of intent" to sign a formal lease signed by CORE DC and a landlord, and a "master lease" between that landlord and a third party--was "satisfactory as valid proof of right-of-use." AR, Tab 18A, Final Technical Evaluation at 3; AR, Tab 31, SSD at 23.

On October 19, 2018, the contracting officer, who served as the source selection authority for this procurement, selected CORE DC's proposal for award. AR, Tab 31, SSD at 34. Hope Village was notified of the award decision on November 1, 2018. Protest at 3; COS at 4. After a written debriefing, this protest followed. AR, Tab 26, Debriefing Letter to Hope Village.

⁴ The agency made earlier requests for FPRs; however, because none of the proposals were technically acceptable for award, the agency reopened discussions with all offerors. See AR, Tab 13, Memo. to Re-open Discussions.

⁵ Satisfactory was defined as "[o]fferor's technical proposal meets the requirements of the solicitation. Some minor problems exist, but can be resolved through discussions." RFP at 41.

DISCUSSION

Hope Village challenges the agency's evaluation of its and CORE DC's proposals, the agency's conduct of discussions, the source selection decision, and the agency's responsibility determination. In filing and pursuing this protest, Hope Village has made arguments that are in addition to, or variations of, those discussed below. While we do not address every issue raised, we have considered all of the protester's arguments and allegations and find that, except as discussed below, they provide no basis to sustain the protest.

Evaluation of Hope Village's Proposal

As an initial matter, the protester argues that the solicitation did not require offerors to accept all offenders. Protest at 15-28; Protester's Comments & Supplemental (Supp.) Protest at 18-40; Protester's Supp. Comments & Supp. Protest, Feb. 8, 2018, at 9-11, 15-32. The protester also asserts that because the agency had previously allowed Hope Village to bar certain types of offenders under its prior contracts with the agency, it "understood that this practice would continue under" the current contract. Protest at 27-28; Protester's Comments & Supp. Protest at 19, 23-25. Hope Village also argues that the agency's insistence that Hope Village accommodate all offenders was a new requirement that was being imposed without a reasonable basis. Protest at 27-28; Protester's Comments and Supp. Protest at 20, 25-26. Finally, Hope Village argues that the agency did not conduct meaningful discussions. As set forth below, we find no merit to any of these arguments, and conclude that the agency's evaluation was reasonable.

As stated above, the protester argues that this solicitation did not require the offeror to accept all offenders. Rather, according to the protester, the solicitation expressed a "philosophy" of affording all offenders community placement but indicated that placements would vary based on the circumstances because the solicitation stated that "[p]olicies which may restrict the placement of inmates within community facilities are subject to the interpretation of the BOP." See, e.g., Protest at 17 (quoting RFP, attach.1, SOW at 43); Protester's Comments & Supp. Protest at 22-23. The agency states that the solicitation clearly required the contractor to accept all referrals unless local and/or state laws or ordinances do not allow for placement of a specific type of referral. Memorandum of Law (MOL) at 5-6.

Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. Intelsat Gen. Corp., B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 8. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Crew Training Int'l, Inc., B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, B-406696,

July 24, 2012, 2012 CPD ¶ 302 at 8. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. See WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. Id.

Here, the protester's reading of the solicitation is not reasonable as it is inconsistent with the plain language of the solicitation. As discussed above, the SOW unambiguously stated that "[t]he contractor will accept all inmates for placement at the facility." RFP, attach 1, SOW, at 43. By the protester's own admission, its understanding, or interpretation, of the solicitation's requirements is based on the sentences in the paragraph preceding this clear statement, i.e., stating that "[p]olicies [that] may restrict the placement of offenders within the community facilities are subject to the interpretation of the BOP, [which] is the determining agency for placement in community facilities." Protest at 17-18; Protester's Comments & Supp. Protest at 22-23; Protester's Supp. Comments & Supp. Protest, Feb. 8, 2019, at 16-17. The protester's interpretation of the solicitation, i.e., that the solicitation did not require the contractor to accept all offenders and instead allowed "restrictive policies as flexible matters for review," would require the reader to read only the first paragraph of the SOW or ignore this clear statement. Compare RFP, attach. 1, SOW, at 43 with Protester's Supp. Comments & Supp. Protest, Feb. 8, 2019, at 16-17. The protester's reading, therefore, is not reasonable because it is not consistent with the solicitation when read as a whole and does not give effect to all of its provisions.

Similarly, there is nothing in the solicitation to support the protester's argument that because the agency allowed Hope Village to bar certain types of offenders under its prior contracts, it "reasonably understood that this practice would continue under" the current contract. In this regard, Hope Village has not provided any information showing that the SOWs of its previous contracts contained similar or identical language to that in the current solicitation.⁶ See Protest at 15-18; Protester's Comments & Supp. Protest at 19, 23-25. In fact, not only did the solicitation clearly state that "[t]he contractor will accept all inmates for placement," but the solicitation also required an offeror to specifically identify in its proposal under the site validity and suitability element, "any laws or ordinances in place which precludes the housing of certain types of inmates." RFP, attach. 1, SOW, at 43; RFP, attach. 9, Compliance Matrix, at 8. If the agency had intended to allow contractors to bar certain types of offenders, these requirements would be inconsistent with that intent.

The protester also argues that the agency unreasonably imposed a new requirement to accommodate all offenders. Protest at 27-28; Protester's Comments & Supp. Protest at 20, 25-27; Protester's Supp. Comments & Supp. Protest, Feb. 8, 2019, at 9-11. This protest allegation is untimely. Our Bid Protest Regulations contain strict rules for the

⁶ The protester acknowledges that "[d]espite the parties' longstanding understanding . . . the . . . solicitation in this procurement changed course and announced that . . . all offenders 'are offered the opportunity for community placement'" Protest at 17.

timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl., Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. There is no dispute that the requirement that “[t]he contractor will accept all inmates for placement at the facility” has been part of the solicitation as originally issued. See Protest at 17. Accordingly, to be timely, any objections to this requirement had to be raised prior to the initial proposal due date.

The protester also argues that the agency failed to conduct meaningful discussions with Hope Village concerning the requirement to accept all offenders. Protest at 28; Protester’s Comments & Supp. Protest at 27-28; Protester Supp. Comments & Supp. Protest, Feb. 8, 2019, at 28-30. In this regard, the protester does not dispute that the agency informed Hope Village during discussions that its proposal was deficient under the site validity and suitability element for failing to identify local laws or ordinances precluding the acceptance of all offenders, nor does it dispute that the agency repeatedly requested that Hope Village provide a plan for accepting all offenders. Rather, the protester contends that the agency did not disclose until its fourth discussion notice to Hope Village the rationale for insisting that Hope Village accept all offenders regardless of classification, and argues that as a matter of law, that rationale was incorrect.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency’s judgments in this area to a determination of whether they are reasonable. InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award. FAR § 15.306(d); Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 12.

Here, as discussed above, the agency repeatedly informed Hope Village during discussions that its proposal was deficient under the site validity and suitability element for failing to address the clearly stated requirement to accept all offenders for placement or by addressing the existence of “any laws or ordinances in place which precludes the housing of certain types of inmates.” On this record, we have no basis to conclude that discussions were not meaningful. Accordingly, this protest ground is denied.

On this record, we also find, as set forth below, that the agency followed the clear and unambiguous terms of the solicitation and reasonably found Hope Village’s proposal unacceptable. As discussed above, the solicitation clearly required the contractor to accept all offenders for placement at the facility unless local and/or state laws or ordinances do not allow for placement of specific types of referrals. The solicitation also

clearly instructed offerors to “address if there are any laws or ordinances in place which precludes the housing of certain types of inmates.” Hope Village’s proposal neither unequivocally stated that it would accept all offenders at its facility, nor identified specific legal authority that would allow Hope Village to refuse the acceptance of certain types of offenders at its facility. Hope Village ran the risk of the agency evaluating its proposal unfavorably where it failed to clearly demonstrate compliance with this solicitation requirement. See RFP, attach. 9, Compliance Matrix, at 8; see, e.g., Distributed Sols., Inc., B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. As a result, we find the agency’s evaluation both reasonable and consistent with the solicitation and the protester’s arguments do not provide any basis to sustain the protest.

Evaluation of CORE DC’s Proposal

Hope Village also argues that CORE DC failed to provide sufficient proof of the right to use as required by the solicitation. Protester’s Comments & Supp. Protest at 43-47. Specifically, the protester primarily argues that the letter of intent to lease provided by CORE DC was not a document identified in the solicitation as acceptable evidence of the right to use.⁷ Id. at 43. In response, the agency argues that notwithstanding the use of the term “letter of intent,” the documentation submitted by CORE DC was clearly a contingency lease or option to lease because it explicitly stated that it was contingent on CORE DC “winning and securing the government contract” and was signed by CORE DC and the landlord. Supp. MOL at 4-5. As a result, the agency maintains that it reasonably determined that the documentation submitted by CORE DC adequately demonstrated its right to use its proposed property. Id.; Supp. COS at 2.

In reviewing protests challenging an agency’s evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency’s evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Western Alt. Corrs., Inc., B-412326, Jan. 19, 2016, 2016 CPD ¶ 71 at 3. It is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is technically

⁷ A protester in Hope Village’s position ordinarily would lack the requisite interest to challenge other aspects of the evaluation or the selection decision. See Delta Risk, LLC, B-416420, Aug. 24, 2018, 2018 CPD ¶ 305 at 13-14 n.2; Priority One Servs., Inc., B-415201.2, B-415201.3, Apr. 13, 2018, 2018 CPD ¶ 182 at 4. However, because only CORE DC’s proposal was found acceptable, if the protest here were sustained, CORE DC also would be ineligible for award, and the agency would be faced with resoliciting the requirement. Under these circumstances, we find that Hope Village is an interested party for purposes of challenging the acceptability of CORE DC’s proposal. See Delta Risk, LLC, supra; Priority One Servs., Inc., supra; CGI Fed., Inc., B-410714, Jan. 28, 2015, 2015 CPD ¶ 67 at 5 n.2; DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 2 n.2.

unacceptable and cannot form the basis for award. CR/ZWS LLC, B-414766, B-414766.2, Sept. 13, 2017, 2017 CPD ¶ 288 at 5.

Here, as discussed above, the solicitation required offerors to “submit official documentation that demonstrates they have a right to use, signed by both parties” that was “limited to deeds, leases, bills of sale, options to lease, options to buy, contingency leases, or contingency deeds.” RFP, attach. 9, Compliance Matrix, at 7 (emphasis added); see also RFP at 38. The solicitation also required the agency to assess “the validity of the offeror’s right to use,” which included “both the legality of the instrument and the nature of the interest . . . as it relates to any potential risk it poses to the [g]overnment.” RFP at 42.

CORE DC’s FPR represented that CORE DC and the landlord for its proposed site “have executed a letter of intent to sign a formal lease for the property” and that the letter of intent was “an ‘option to lease’ as set forth in the Compliance Matrix.” AR, Tab 7A, CORE DC Technical Proposal at 20. CORE DC’s proposal contained no further explanation as to why the letter of intent qualified as an “option to lease” as set forth in the solicitation. Similarly, the contemporaneous record also does not provide such explanation. Compare RFP at 42 with AR, Tab 18A, Final Technical Evaluation at 3; AR, Tab 31, SSD at 23. Instead, the agency’s contemporaneous evaluation documentation concludes that CORE DC submitted a letter of intent signed by both parties in which the parties agree to sign a formal lease at a later date and a copy of a “master lease” between the landlord and a third party; the agency’s materials also conclude that these two documents were “satisfactory as valid proof of right-to-use.”⁸ AR, Tab 31, SSD at 23.

The agency explained that it viewed the letter of intent as an option to lease or a contingency lease because the letter stated that it was “contingent on CORE DC winning and securing the government contract,” and was signed by both CORE DC and the landlord.⁹ Supp. MOL at 4. We find the agency’s explanation problematic for several reasons.

⁸ As noted during discussions, CORE DC originally submitted a sublease from a sublandlord without submitting a copy of the “master lease” as its evidence of right to use. See AR, Tab 9C, Discussion Notice 2 to CORE DC at 1. In its response to the discussion notice and in its FPR, CORE DC provided a lease executed in 2015 between the landlord and a third party for the lease of CORE DC’s proposed facility. See AR, Tab 7A, CORE DC Technical Proposal at 27-73; AR, Tab 9D, CORE DC Response to Discussion Notice 2, at 14-31.

⁹ The agency also relies on an additional document in CORE DC’s proposal to support its conclusion that CORE DC provided sufficient proof of its right to use its proposed facility. Supp. MOL at 4. This document is a memorandum from a brokerage firm to the agency. AR, Tab 7A, CORE DC Technical Proposal at 21. The memorandum acknowledges that “several of the dates and terms [of the letter of intent] are no longer applicable.” Id. The memorandum represents further that “most business terms have
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The solicitation clearly prescribed specific types of acceptable documents to demonstrate that an offeror had a right to use; however, a letter of intent was not one of the instruments listed in the solicitation. RFP, attach. 9, Compliance Matrix, at 7; see also RFP at 38. Further, while both CORE DC and the agency allege that the letter of intent is an option to lease or a contingency lease, the document itself clearly states that it is a letter of intent. See AR, Tab 7A, CORE DC Technical Proposal at 22 (“We are pleased to submit the following Letter of Intent [] . . . that [CORE DC] would lease [the proposed property] . . . from [the landlord] . . . subject to the following terms and conditions.”). In fact, the actual language of the letter of intent indicates that this document was not the lease between CORE DC and the landlord, and that a lease would be negotiated or executed in the future. For example, the letter states in pertinent part, that:

The Tenant and Landlord shall finalize a lease prior to April 1, 2017. However, it shall be explicitly written in the Lease that the entire Lease Agreement is contingent on the Tenant successfully winning, without protest, and securing the government contract In the event the Tenant is not awarded the aforementioned contract by May 1, 2017 then the Lease shall be null and void It shall also be explicitly written in the Lease that the entire Lease Agreement is contingent on the Landlord terminating the Current Tenant’s lease obligation and the Landlord having the ability to Lease the Building free and clear to the Tenant.

AR, Tab 7A, CORE DC Technical Proposal at 22. Finally, even if the letter of intent could be construed as either an option to lease or a contingent lease, the letter, on its face, states that if the contract is not awarded by May 1, 2017, any agreement for a lease is null and void.

The solicitation here clearly required the agency to consider “the validity of the offeror’s right to use,” which included “both the legality of the instrument and the nature of the interest . . . as it relates to any potential risk it poses to the [g]overnment.” RFP at 42. However, there is nothing in the record showing that the agency contemporaneously analyzed the legality, the nature of the interest, or the continued viability of the letter of intent provided by CORE DC. Instead, the record shows that the agency concluded that the letter of intent was an option to lease as set forth in the compliance matrix without any assessment of the legality of the letter of intent or the nature of the interest. See AR, Tab 18A, Final Technical Evaluation at 3. Similarly, the record shows that the agency also concluded that the letter of intent and the master lease were “satisfactory

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been fully negotiated and remain the same as the [letter of intent]” that had already been provided and that the brokerage firm was in negotiations with the landlord “to consummate a direct lease.” Id. We conclude that this memorandum cannot reasonably be read as providing proof of the right to use consistent with the solicitation’s requirement to submit acceptable evidence of a legal commitment.

as valid proof of right-to-use” without any further consideration of the validity of the offeror’s right to use as required by the solicitation. AR, Tab 31, SSD at 23.

In sum, we cannot conclude on this record that the agency reasonably evaluated whether CORE DC provided proof of the right to use as required by the solicitation. An agency may not properly accept for award a proposal that fails to meet one or more material solicitation requirements. Working Alts., Inc., B-276911, July 2, 1997, 97-2 CPD ¶ 2 at 4. Accordingly, we sustain this protest ground.

RECOMMENDATION

We recommend that the agency reopen the competition, conduct discussions as necessary, document its evaluation consistent with the solicitation and this decision, and upon the completion of this evaluation, prepare a new source selection decision. Alternatively, the agency may find it appropriate to assess whether the solicitation accurately reflects its actual needs, and either reopen the competition or revise the solicitation. We also recommend that the agency reimburse the protester its costs associated with filing and pursuing the protest, including reasonable attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester’s certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained in part and denied in part.

Thomas H. Armstrong
General Counsel