



Decision

Matter of: Design Industry LLC

File: B-414816

Date: September 22, 2017

Filip Kristani for the protester.

G. Thompson Bell III, Esq., Stevens & Lee, for Greater Berks Development Fund, the intervenor.

Robert Notigan, Esq., General Services Administration, for the agency.

Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the technical evaluation of the protester's lease proposal is denied where the record establishes that the agency's evaluation was reasonable and consistent with the solicitation's technical specifications and evaluation criteria.

DECISION

Design Industry LLC (DIL), of Maywood, New Jersey, protests the award of a lease to Greater Berks Development Fund (Berks), of Reading, Pennsylvania, under request for lease proposals (RLP) No. 5PA0378, issued by the General Services Administration (GSA), Public Buildings Service, for office space. The protester challenges the agency's evaluation of its technical proposal.

We deny the protest.

BACKGROUND

The RLP was provided to four potential lessors on September 13, 2016, and sought proposals for 32,011 ABOA¹ square feet of office space within the central business

¹ ABOA (ANSI/BOMA Office Area) is the GSA-recognized standard, as defined by the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA), for measuring the area where the tenant normally houses personnel,

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district of Reading, Pennsylvania, to house federal district and bankruptcy courts and offices of the U.S. Marshals Service (USMS). Lease Contracting Officer's Statement (LCOS) ¶ 1; RLP §§ 1.02.A, 1.03, 5.02. The solicitation provided for a 10-year lease term with a 5-year renewal option and stated that award would be based on a best-value tradeoff among four evaluation factors: past performance and customer satisfaction, security, layout, and price. RLP §§ 1.02.F, 4.04.B-C. The RLP stated that the non-price factors were of equal importance and, when combined, were approximately equal to the price factor. Id. § 4.04.B.

The RLP specified, among other things, a number of minimum security requirements and "preferred/ideal" security parameters, and required offerors to submit a security plan and test fit layout for their proposed space. Id. §§ 3.06.K.b-c; 5. Offerors were advised that the agency may conduct negotiations and that all offerors within the competitive range would be provided a reasonable opportunity to submit revisions to their initial proposal, including any cost or price, technical, or other revisions that may result from negotiations. Id. § 4.01.

GSA received lease proposals from two offerors: Berks and DIL. LCOS ¶ 5. DIL had recently purchased, and proposed for lease, the incumbent building space. See Protest at 1. Proposals were evaluated by a source selection evaluation board (SSEB) and, after initial evaluations, the lease contracting officer conducted written and verbal discussions with both offerors. LCOS ¶ 5; see, e.g., AR, Exh. B, DIL Discussions (Disc.), at 1-4. The agency received and evaluated revised proposals and subsequently requested best and final offers (BAFOs). See LCOS ¶¶ 9-12; AR, Exh. K, Price Negotiation Mem. (PNM), at 9-10; Exh. G, DIL BAFO Req., Mar. 24, 2017, at 1-2.

The source selection authority (SSA) for the procurement found that Berks' final lease proposal met all RLP requirements and most of the ideal/preferred criteria.² LCOS ¶ 17; AR, Exh. K, PNM, at 12. By contrast, the SSA agreed with the SSEB's assessment that DIL's final proposal failed to meet the RLP's minimum security requirements and proposed an unacceptable security plan, as discussed below. AR, Exh. K, PNM, at 12. The SSA determined that Berks' ABOA square foot price was fair and reasonable and that its proposal provided the best value to the government. Id. GSA awarded the lease to Berks and this protest followed.

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furniture, and/or equipment. See General Services Acquisition Regulation (GSAR) § 570.102; Agency Report (AR), Exh. H, RLP § 1.02.A.

² DIL was not represented by counsel who could obtain access to non-public information, such as the evaluation record of the awardee's proposal, pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

DISCUSSION

DIL challenges the evaluation of its proposal under the security and layout evaluation factors, arguing that the proposal met the RLP's basic requirements.³ Although our decision does not specifically address each of DIL's arguments, we have considered all of the protester's assertions and find none furnishes a basis for sustaining the protest.⁴

Evaluation of DIL's Security Plan

As pertinent here, the RLP specified a number of minimum security requirements, including that the lessor provide: (1) at least one dedicated elevator to be used solely by the government; (2) one dedicated entrance/circulation path in close proximity to the sallyport⁵ to be used solely by the government; (3) a separate public elevator and entrance; and (4) that the public must always be separated from the judges and prisoners. See RLP §§ 5.01.B; 5.01.C.3. The SSEB assessed deficiencies in DIL's initial proposal for failing to meet a number of these requirements. See AR, Exh. J, SSEB Rep., at 8-10; Exh. K, PNM, at 9.

Following the evaluation of DIL's initial proposal, the lease contracting officer provided DIL a deficiency letter on January 30, 2017, requesting that the offeror revise and resubmit its security plan and test fit layout to properly address these specifications. See LCOS ¶ 5; AR, Exh. B, DIL Disc., at 2. The letter reminded DIL that, under the terms of the RLP, judges and prisoner corridors must be separate from the public at all times and a judge, for example, should not have to walk past a public elevator to get to a courtroom or chamber. See AR, Exh. B, DIL Disc., at 2. The letter requested, among other things, that DIL provide details on how it would meet the RLP's security requirements and that it show secure circulation (paths of travel): from the parking area to each chamber; from the chambers to courtrooms; and from the sallyport to the USMS space. Id.

³ DIL does not challenge the evaluation of its past performance or price, or GSA's evaluation of the awardee's proposal.

⁴ For example, we do not address DIL's suggestion that GSA, in its request for BAFOs, should have asked DIL to further address any deficiencies in its revised proposal or ask for more clarifications. See Protest at 3. GSA, in its agency report, addressed this argument (asserting that the agency conducted meaningful discussions and was not required to reopen discussions after DIL's revised proposal continued to demonstrate a lack of secure circulation paths), but the protester, in its comments on the report, did not respond to GSA's assertions. Compare Memorandum of Law at 3-4 with Comments at 1-7. We thus consider the protester to have abandoned this argument since DIL did not attempt to rebut GSA's assertions that it conducted meaningful discussions. See, e.g., Liberty St. E. Assocs., B-299486.3, June 15, 2007, 2007 CPD ¶ 112 at 3.

⁵ Sallyports are vestibules or short corridors with interlocked doors that only can be opened one at a time. RLP, Exh. B, USMS Pub. No. 64, at 42.

On February 1, the lease contracting officer also held verbal discussions with DIL to review the security requirements, deficiency letter, and the proposal revisions requested above. See AR, Exh. K, PNM at 9; LCOS ¶ 8. She explained the RLP's secure circulation requirements and how they should be depicted on DIL's revised test fit layout. See id. She advised DIL that its initial test fit did not show: (1) that judges would remain separate from the public at all times; (2) secure circulation from the parking lot to the Bankruptcy Chamber on floor 3; (3) secure circulation from the parking lot to the District Chamber on floor 4; and (4) secure circulation from the District Chamber to the District Courtroom on floor 4. See id. The lease contracting officer emphasized that security was of the utmost importance and must be properly shown on the layout. See AR, Exh. K, PNM at 9.

DIL submitted a revised proposal on February 15. See AR, Exh. K, PNM at 9; LCOS ¶ 9. Although the SSEB identified a number of strengths in DIL's revised security plan and layout, the evaluators found a number of unresolved deficiencies. See AR, Exh. J, SSEB Rep., at 9-10. The SSEB found that DIL had still not proposed secure circulation paths for the judges and USMS, and that its proposal continued to show that judges, prisoners, and the public would have to walk past each other through certain corridors. See id. at 9. For example, the evaluators found that DIL proposed no way for judges to travel securely from the elevator to their chambers or courtroom, or for the USMS to transport prisoners to courtrooms securely. See id. at 10. The evaluators also noted that DIL's revised proposal reflected no changes from the initial proposal in that regard, even though the deficiencies were brought to the offeror's attention during written and verbal discussions. Id. The SSEB concluded that these deficiencies made DIL's security plan unacceptable and the proposal non-responsive to the RLP's minimum security requirements. See id. at 9-10.

DIL disputes these findings, arguing that they were unreasonable and that DIL met the RLP's requirements. See Protest at 1-3. DIL states that its proposed design was based on the existing layout that, according to the protester, "seem[s] to have worked pretty well" and was previously approved by the government. Comments at 6. DIL expresses "surprise" that its proposal was found deficient since "the existing layout is similar" and security "has not been an issue" See id. at 5. DIL also complains that, unlike the details provided in the solicitation for the USMS office space, the RLP did not list the specific space allocations for the courtrooms, chambers, jury facilities, and probation offices. Protest at 2. Without such information, the protester claims, it was not possible for DIL to submit drawings of secured corridors and passageways. See id. DIL states that it assumed that such details "would be developed in future design phases when more detail was known and given to us." Id. DIL asserts that it "simply worked with what was provided and requested in the RLP." Comments at 6.

We find, based on our review of the record here, that GSA reasonably evaluated DIL's security plan. 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 instead examine the record to determine whether the agency's judgment was reasonable and in accord with the RLP evaluation criteria. William J. Brant, Jr. & Assocs., B-406908,

Sept. 26, 2012, 2012 CPD ¶ 264 at 3. The protester bears the burden of proving that an evaluation was unreasonable, and disagreement with the agency's evaluation, without more, provides no basis to question the reasonableness of the evaluators' judgments. See, e.g., Marianas Mgmt. Corp., B-411593, Sept. 3, 2015, 2015 CPD ¶ 280 at 5.

As initial matter, DIL's complaints regarding the amount of information provided in the RLP are untimely. 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). This rule includes challenges to alleged improprieties that do not exist in the initial solicitation but which are subsequently incorporated into it; in such cases, the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation. Id.; see Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4.

Here, DIL should have protested the RLP's alleged lack of space allocations for specified areas prior to the closing time for receipt of initial proposals, January 3, 2017. 4 C.F.R. § 21.2(a)(1); AR, Exh. I, RLP amend. 1, at 1. To the extent that any alleged improprieties or ambiguities regarding those requirements may have arisen during discussions, DIL should have protested those terms prior to the closing time for receipt of revised proposals, or February 22.⁶ See AR, Exh. K, PNM, at 9. In this respect, DIL's objection that its proposal was found deficient despite being based on the layout of the current space, also lacks merit.⁷ As the lease contracting officer states (and the protester does not dispute), she advised DIL, before the RLP was issued and during verbal discussion, that DIL should approach its proposal as if the courts were a new tenant and should not assume that "the layout could be left as is . . ."⁸ LCOS ¶ 16.

Contrary to DIL's objections, the record shows that GSA reasonably evaluated DIL's proposal with respect to the RLP's minimum security requirements. Offerors were to submit a security plan outlining how the lessor would meet the security specifications,

⁶ The original deadline for submission of revised proposals, as stated in the deficiency letter to DIL, was February 16. AR, Exh. B, DIL Disc., at 1. The lease contracting officer states that during verbal discussions, she advised DIL that the due date was extended to February 22. LCOS ¶ 5. Although DIL disputes that it was advised of the extension during verbal discussions, Comments at 6, it could nevertheless have protested the requirements prior to the February 16 deadline.

⁷ We note that the lease contracting officer states, and the protester does not dispute, that its proposed layout did not accurately depict the current layout of the incumbent space. Compare LCOS ¶ 16 with Comments.

⁸ The lease contracting officer further states, and again the protester does not dispute, that during verbal discussions, DIL did not request any additional information to meet the RLP's security requirements. Compare LCOS ¶ 8 with Comments.

including a narrative, supplemented by renderings, sketches, photographs, and floor plans indicating the public and government circulation plans, and location of the government entrances and elevators. RLP §§ 3.06.K.b-c. The RLP stated that GSA would review all plans submitted to determine if an acceptable level of safety was provided and, in particular, whether the common corridors in place or the proposed corridor pattern (or both) would achieve an acceptable level of safety. Id. § 3.06.N.5.

Here, the record shows that the SSEB reviewed DIL's security plan and drawings, including for the proposed parking areas, corridors, and elevators, consistent with the RLP's specifications and evaluation criteria. AR, Exh. J, SSEB Rep., at 9-10. Based on this review, the evaluators, in our view, reasonably assessed the various deficiencies discussed above, and reasonably concluded that DIL proposed an unacceptable security plan that failed to meet the solicitation's minimum security requirements. Notably, in addressing the deficiencies assessed in its proposal, DIL admits that with respect to parking, a "second layer of security was not show[n] in the drawing" Comments at 4. DIL also states that its proposal contains a "drawing description error" with respect to judges' access to the first floor. Id. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. See, e.g., Marianas Mgmt. Corp., supra, at 8. Thus, while DIL disputes the SSEB's findings, the protester essentially concedes that it failed to submit a well-written security plan and detailed proposal.

In sum, DIL objects to the evaluation of its lease proposal, but its objections reflect nothing more than belated complaints about the terms of the solicitation and disagreement with the agency's evaluation judgments, which provides no basis for us to question the reasonableness of the evaluation.⁹ See, e.g., id. at 5.

The protest is denied.

Susan A. Poling
General Counsel

⁹ Because we find that the SSEB reasonably found that DIL's final proposal failed to meet the RLP's minimum security requirements and proposed an unacceptable security plan, we need not address the protester's challenge to the SSEB's finding that DIL also proposed a poor layout, because DIL cannot show that it was prejudiced in that regard. Our Office 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 had a substantial chance of receiving the award. See Liberty St. E. Assocs., supra, at 4. Here, even if GSA improperly evaluated DIL's proposal layout, its proposal would still remain unacceptable insofar as it failed to meet the RLP's minimum security requirements and proposed an unacceptable level of safety. It follows that DIL was not competitively prejudiced by any alleged errors in the evaluation of its proposed layout.