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Decision

Matter of: Potomac Creek Associates, L.L.C.

File: B-406243.2

Date: November 26, 2013

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Richard J. Conway, Esq., and Matthew W. Turetzky, Esq., Dickstein Shapiro LLP, for Parcel 47D, LLC, the intervenor.
Michael P. Klein, Esq., General Services Administration, for the agency.
Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In a procurement for the lease of office space, protest that an agency's price evaluation failed to reasonably account for moving costs is denied where the agency reasonably evaluated offerors' proposed prices consistent with solicitation evaluation criteria.
 2. Protest that an agency failed to amend its solicitation to reflect that the agency would not need secure compartmentalized information facility (SCIF) space is denied where the solicitation did not identify any amount of SCIF space.
 3. An agency is not required during discussions to correct the protester's (the incumbent contractor) guess as to the amount of the agency's internal estimate of moving costs to be added to other competitors' offers.
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DECISION

Potomac Creek Associates, L.L.C., of Washington, D.C., protests the award of a lease to Parcel 47D, LLC, of Washington, D.C., by the General Services Administration (GSA) under request for lease proposals (RLP) No. 0DC2052, for the lease of office space in Washington, D.C. The protester challenges the agency's price evaluation and conduct of discussions. Potomac Creek also complains that the solicitation did not reflect the agency's needs and that the agency failed to amend the RLP.

We deny the protest.

BACKGROUND

The RLP, issued on November 16, 2012, provided for the award of a 15-year fully-serviced lease of office and related space in Washington, D.C. for the Department of Energy's National Nuclear Security Administration (NNSA).¹ RLP § 1.02(A); Agency Report (AR), Tab 8, GSA RLP Transmittal Letter, Nov. 16, 2012, at 1. Offerors were informed that the agency sought approximately 88,654 rentable square feet (RSF) yielding a minimum of 73,878 to a maximum of 77,572 of American National Standards Institute/Building Owners and Managers Association Office Area square feet (ABOA SF) of contiguous space. RLP § 1.02(A).

The RLP informed offerors that award would be made on a lowest-priced, technically-acceptable basis. RLP § 4.03(A). Although the solicitation provided minimum technical requirements for the lease space, the RLP contemplated that the design intent drawings would be provided by the successful offeror after award. RLP GSA Lease Form L201C (Lease Form) § 4.01(A). As relevant here, the RLP stated that the "[o]ffered space must be able to meet the agency's secure compartmentalized information facility (SCIF) requirement" and that the agency would also require one 500 square-foot and four 400 square-foot classified conference rooms.² RLP Lease Form § 7.03(B), (D). The solicitation, which provided additional security requirements for a level III federal facility, did not further identify any amount of SCIF space required.³ See RLP Lease Form, exhib. A, Security Requirements--Facility Security Level III.

¹ NNSA currently leases space from the protester under a lease that expires on July 31, 2014. Contracting Officer's (CO) Statement at 1.

² A year before the issuance of the RLP, NNSA prepared a draft program of requirements (POR) that anticipated a need for SCIF space of approximately 50,000 ABOA SF. CO's Statement at 2. NNSA's view of the likely requirement for SCIF space changed. Prior to the issuance of the RLP, NNSA determined that there would be no requirement for a SCIF, and that the agency would only need a few conference rooms that provided locked entrance doors and locked safes to store classified documents. See Supp. CO's Statement at 1; AR, Tab 5, E-mail from Broker to GSA, Oct. 21, 2011. The RLP, as issued, did not include the draft POR, and the draft POR was not provided to offerors.

³ The security level is established based upon, among other things, a facility's anticipated size and occupancy, and expected amount of public access. See RLP § 1.09(A); see also Interagency Security Committee, "Security Standards for Leased Space," Sept. 29, 2004, reprinted at, www.inteltect.com/transfer/GSA_ISC_Security_Lease_Standards.pdf.

The RLP contained detailed instructions for the preparation of price proposals. Offerors were instructed to submit a total annual price per ABOA SF. The RLP required that this price include a tenant improvement (TI) allowance⁴ of \$35.07 per ABOA SF, and a Building Specific Amortized Capital (BSAC) amount of \$25 per ABOA SF. RLP §§ 3.07, 3.08. The BSAC amount was to be used only for security-related build-out, and could not be used for other types of TI or costs associated with the building shell. RLP § 3.08(B). The RLP noted that since each building is unique, the final BSAC costs would not be determined until after award--during the design phase, and identified in the design intent drawings and construction documents. RLP § 1.09. Offerors were also informed that, to the extent that actual TI and/or security-related build-out expenditures exceeded the stated allowances, they were not included in consideration of the offerors' proposed prices. Instead, the agency would later account for them during performance of the lease by reducing the requirements, paying a lump sum for the excess amount, or negotiating an increase in rent. RLP Lease Form §§ 1.09, 1.12.

The RLP advised offerors that the agency would evaluate the present value of their annual prices per ABOA SF. RLP § 4.05(C). The RLP also stated a number of costs that would be added to the gross present value calculation, such as relevant here, the "cost of relocation of furniture, telecommunications, replications costs, and other move-related costs, if applicable." RLP § 4.05(C)(7). The RLP did not, however, identify any methodology for determining these move-related costs.

GSA received eight initial proposals, including Potomac Creek's and Parcel 47D's. CO's Statement at 3. Discussions were conducted with the offerors, and revised proposals received. The offerors' revised prices were evaluated as follows:

	Net Present Value Per SF	Present Value Total Annual Rent
Parcel 47D	\$34.46	\$2,547,765
Offeror 2	\$34.81	\$2,571,693
Offeror 3	\$35.36	\$2,612,326
Offeror 4	\$35.62	\$2,631,534
Potomac Creek	\$36.22	\$2,675,861
Offeror 6	\$37.66	\$2,782,245
Offeror 7	\$42.32	\$3,126,516
Offeror 8	\$43.66	\$3,232,761

CO's Statement at 7; AR, Tab 34, Abstract of Final Offers, June 10, 2013. GSA selected Parcel 47D as the apparent successful offeror, and this protest followed.

⁴ TIs are the finishes and fixtures that typically take space from the shell condition to a finished, usable condition. RLP § 3.07(a).

DISCUSSION

Price Evaluation

Potomac Creek challenges GSA's price evaluation, arguing that GSA failed to reasonably account for the replication and relocation costs that the agency would incur if it moved from Potomac Creek's premises.⁵ Protest at 13. GSA estimated move-related costs of approximately \$5.4 million that were added to all other offerors' proposed prices. Potomac Creek contends, however, that those costs should have amounted to approximately \$15 million (rather than \$5.4 million) to account for SCIF and other security features required by the RLP. Protest at 2, 12.

The agency explains that its estimate of \$5.4 million for move-related costs reflected historical estimates for "medium-cost moves."⁶ CO's Statement at 3. Based upon these figures, GSA calculated moving costs of \$18,000 per employee, multiplied by the 300 employees that the agency estimated would be moving. Id.; AR, Tab 34, Abstract of Final Offers.

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 RFP's evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester bears the burden of proving that an evaluation

⁵ Potomac Creek makes numerous arguments challenging various aspects of the agency's conduct of the procurement. Although we specifically address only the protester's principal arguments, we have considered all of Potomac Creek's arguments and find that none provide a basis to sustain the protest.

⁶ The CO states that the agency's move-related cost estimate was based upon estimates established by GSA's Public Buildings Service (PBS) Office of Real Property Asset Management for the Capital Investment and Leasing Program. GSA selected for this procurement an amount that reflects the historical estimates for "medium-cost" moves of GSA's agency clients in and out of approximately 100 thousand square feet of combined lease and federally-owned space in the Washington, D.C. metropolitan region. CO's Statement at 2, 3; 2nd Supp. CO's Statement. Medium-cost moves are characterized by some open space and some office space suitable for mid-level management, professional operations and support space; medium-cost new furniture with moderate flexibility; mid-range information technology (IT) combining existing IT with new upgrades; some special spaces, such as SCIFs, computer rooms, or child care centers; and medium-level security needs. CO's Statement at 2.

was unreasonable, and mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

We find no merit to Potomac Creek's challenges to the agency's evaluated moving costs. First, we disagree with the protester's belief that the relocation and replication costs were to include build-out of security-related space, such as a SCIF. Rather, these costs, including SCIF space, were accounted for in the offerors' proposed annual prices that were required to include a BSAC amount of \$25 per ABOA SF. See RLP §§ 1.09, 3.08. In this regard, the RLP stated that the BSAC amount was to be used only for security-related build-out in accordance with government-approved design intent drawings. Id. § 3.08(B). Offerors were informed that the final BSAC costs would not be determined until after award, during the design phase and identified in the design intent drawings and construction documents. Id. § 1.09. There is also no merit to Potomac Creek's contention that all other offerors were required to replicate the protester's current security-related space, such as a SCIF. Simply stated, the RLP did not identify any amount of required SCIF space, other than to state that the offeror's space must be able to meet the agency's future SCIF requirements, which would be determined after award. See RLP Lease Form §7.03(B).

Potomac Creek also complains that GSA has failed to provide any documentation substantiating the agency's estimate of \$18,000 per employee for relocation and replication costs. Protester's Comments at 3-4. The CO responds that she reasonably relied upon the well-established historical estimates of the agency's PBS for moving costs. 2nd Supp. CO's Statement.

The record provides no basis to question the agency's use of the \$18,000 estimate per employee for offerors' moving costs. One of GSA's statutory missions is to enter into leases of real property and facilities, on behalf of government agencies, to meet the government's needs. 40 U.S.C. § 585 (2006). The moving cost estimates were derived from historical information maintained by the agency's PBS Office of Real Property Asset Management, which is an office within GSA with responsibility for making rent and move costs estimates. See <http://www.gsa.gov/portal/category/22180>. Although Potomac Creek generally disagrees with the CO's reliance on PBS's estimates for these costs, it has provided no supported arguments to demonstrate that the \$18,000 per person estimate is unreasonable. The fact that the protester disagrees does not alone provide a basis for our Office to find the agency's judgment unreasonable. See Citywide Managing Servs. of Port Washington, Inc., supra.

The protester also contends that, even accepting the agency's \$18,000 per person estimate, GSA applied that estimate against 300 employees, where the draft POR indicated that the new leased space would house 367 individuals. Protester's

Comments at 4-5. The agency responds that, although the draft POR indicated that the new leased space must accommodate data cabling for 367 persons, other documents indicated that the new space must accommodate 300 persons.⁷ See Supp. AR at 2, citing, Tab 3, GSA Kick-off Meeting Agenda, at 2 (providing for 200 private offices and 100 work stations).

Here too, the protester has not provided supporting arguments to show that the agency's estimate of the number of persons to be moved were unreasonable. Further, the protester has not shown that the consideration of an additional 67 persons in the agency's evaluation of relocation and replication costs would have resulted in the protester's evaluated price being lower than Parcel 47D's evaluated price. Thus, we have no basis to find a reasonable possibility of prejudice, even if we accept that the agency should have applied its \$18,000 per person estimate against 367 persons.

Security Requirements

Potomac Creek argues that the agency's security requirements for SCIF space changed during the procurement, and that the agency failed to inform offerors of the changed requirements.⁸ Protester's Comments 6-13. In this regard, the protester notes that the RLP informed offerors that the "[o]ffered space must be able to meet the agency's secure compartmentalized information facility (SCIF) requirement," see RLP Lease Form § 7.03(B), but that prior to the issuance of the RLP, GSA knew that NNSA did not need SCIF space. See Protester's Comments at 7, citing, AR, Tab 2, DOE Email to GSA, Sept. 29, 2011.

The agency responds:

Nothing in the RLP requires the Lessor to construct any minimum amount of SCIF space. The RLP simply puts the Offerors on notice that the Government has the right to include a SCIF requirement in its tenant improvements, and that the offered space must be able to be modified to meet such a requirement.

Supp. CO's Statement at 1.

⁷ As noted above, the draft POR was not provided to offerors or included in the solicitation.

⁸ Potomac Creek initially argued that the RLP's classified conference rooms were part of the SCIF space. See Protester's Comments at 7-9. GSA explained, however, that the classified conference rooms are different from any SCIF space that may ultimately be required. See Supp. CO's Statement at 1.

We agree with GSA that the RLP identified no requirement for the build-out of SCIF space, and therefore there was no requirement to amend the solicitation to reflect that SCIF space may not be required. Moreover, the protester does not explain how the build-out of SCIF space, or its lack, affected its or any other offerors' proposals, given that this construction was included in the \$25 per ABOA SF allowance for (security-related build-out) that all offerors were required to include in their proposed prices.

Meaningful Discussions

Potomac Creek also argues that it was misled by GSA during discussions, where the agency failed to inform the protester that SCIF space would not be required. See Protester's Comments at 13; Protester's Supp. Comments at 21. In this regard, Potomac Creek complains that it informed GSA during discussions that, in Potomac Creek's view, other offerors' relocation and replication costs would be approximately \$25 million. Protester's Comments at 13. Specifically, Potomac Creek informed GSA that its \$25 million estimate was based upon "(1) GSA traditional move costs @ \$45/RSF; (2) SCIF replication @ \$200/RSF[;] and (3) relocation of communications infrastructure between 955 L'Enfant [the protester's premises] and the Forestall Building [presumably Department of Energy's headquarters building] @ \$5 million." See AR, Tab 15, Protester's Response to Discussions, at 2. The protester states that, despite further discussions, GSA did not inform Potomac Creek that the protester's estimated moving costs were incorrect or that SCIF space would not be required.

In negotiated procurements, whenever discussions are conducted by an agency, the discussions are required to be meaningful, equitable, and not misleading. Grunley Constr. Co., Inc., B-407900, Apr. 3, 2013, 2013 CPD ¶ 182 at 7-8. To satisfy the requirement for meaningful discussions, the agency need only lead an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required, nor is the agency obligated to "spoon-feed" an offeror as to each and every item that could be revised to improve its proposal. ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7. The scope and extent of discussions with offerors are matters of a CO's judgment. Federal Acquisition Regulation § 15.306(d)(3) (2013).

We find that Potomac Creek was not misled in discussions. The record shows that GSA engaged in numerous rounds of discussions with the company, expressly informing it of the agency's concerns with various aspects in its proposal. The discussions did not include any reference to SCIF space, given that the solicitation contained no specific requirement for such space. In this regard, GSA had no obligation to address Potomac Creek's guess as to the amount of the agency's own estimated moving costs. These costs, which no offeror proposed, reflect the agency's internal estimate of moving costs, which would not, in any event, be added to Potomac Creek's proposed price. Finally, although an agency generally must

advise an offeror during discussions if its proposed price is considered to be unreasonably high, the agency has no obligation to inform an offeror that a price that is not unreasonably high differs from the prices of its competitors or a government's estimate. Lyon Shipyard, Inc., B-407771.2, July 15, 2013, 2013 CPD ¶ 173 at 4-5. Since Potomac Creek's price was ranked fifth out of eight proposals, and was not viewed as unreasonably high, we know of no obligation on the agency to address it during discussions.

The protest is denied.

Susan A. Poling
General Counsel