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Decision

Matter of: SK Hart Properties, LLC

File: B-414338

Date: May 11, 2017

S. Lane Tucker, Esq., Stoel Rives LLP, for the protester.
Leigh Ann Bunetta, Esq., General Services Administration, for the agency.
Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging price provision in request for lease proposals is denied where the protester has not demonstrated that the provisions violate applicable procurement laws and regulations, and the provision is otherwise unobjectionable.

DECISION

SK Hart Properties, LLC (SK Hart), of Anchorage, Alaska, protests the terms of request for lease proposals (RLP) No. 5UT0131, issued by the General Services Administration (GSA), Public Building Service, for leased office space in Salt Lake City, Utah. SK Hart, the incumbent lessor, argues that the RLP's fixed tenant improvement allowance provision will result in a flawed price evaluation and is prejudicial to offerors that can accomplish the tenant improvements for less than the mandated amount.

We deny the protest.

BACKGROUND

GSA issued the RLP for the lease of between 17,936 – 19,929 ABOA¹ square feet within Salt Lake City, Utah. RLP at §§ 1.02(A), 1.03. The RLP contemplates the award

¹ The term ABOA is an acronym for American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) Office Area. RLP at § 1.02(A). It is the GSA-recognized standard, as defined by the ANSI/BOMA, for measuring the area where a tenant normally houses personnel, furniture, and/or equipment. See General Services Acquisition Regulation (GSAR) § 570.102; RLP § 1.02(A).

of a lease for 15 years (10 years firm) based on the lowest-priced, technically acceptable offer submitted. RLP at §§ 1.02(F), 4.03. The solicitation was amended four times; as finally amended, the RLP set February 3, 2017 at 4:30 pm as the closing time for receipt of proposals. Agency Report (AR), Tab 6, RLP Amend. 4, at 1.

At issue in this protest is a price provision in the RLP that establishes a fixed tenant improvement allowance. The RLP describes tenant improvements as the “finishes and fixtures” that typically convert a rental space to its finished, usable condition. The tenant improvement allowance is used to build-out the rented space for the lessee agency’s intended purpose. RLP § 3.07; AR, Tab 6, RLP Amend. 4, at 1. The RLP advises potential offerors that the tenant improvement requirements would be fully developed after award of the lease, and that the lessor would be compensated for the costs of the improvements, as well as receiving design and project management fees to be set under the lease. RLP at § 1.07(D). The RLP encourages offerors to minimize waste by using the rental space’s existing items and construction, but included the following caveat:

[A]ny existing improvements must be deemed equivalent to Lease requirements for new construction, and Offerors are cautioned to consider those requirements before assuming efficiencies in its [tenant improvements] costs resulting from use of existing improvements.

Id.

Potential offerors are instructed to include in their lease proposals a fixed amount of \$44.40 per ABOA square foot to accommodate anticipated improvements. AR, Tab 6, RLP Amend. 4, at 1. The anticipated terms of the lease, included as an attachment to the RLP, include a clause detailing the options available, should the actual cost of the build-out be more or less than the anticipated amount, and explaining how the agency would account for those costs over the term of the lease. See RLP, Ex. A, at §1.08.

The solicitation advises that award will be made to the lowest-priced technically acceptable offer. RLP at § 4.03(A). The RLP establishes a “present value price evaluation” methodology that takes into account various additions and deductions to the offered rental price. Id. at § 4.05.

SK Hart filed this protest with our Office on February 3, prior to the time established for receipt of lease proposals.

DISCUSSION

SK Hart challenges the terms of the RLP relating to the use of a fixed price per square foot for the tenant improvement allowance. The protester argues that the use of the fixed amount will not allow the GSA to meaningfully evaluate the price of leases. Protest at 4. As the incumbent lessor, the protester asserts that its costs would be substantially below the fixed amount and that it would be competitively prejudiced because the fixed tenant improvement amount would artificially inflate its price. Id. In

response, GSA explains that the tenant improvement requirements were not known when the RLP was issued, since they will not be fully developed until after award. AR, Legal Memorandum, at 3. The agency also observes that the RLP informs prospective offerors that after the construction was completed, if actual tenant improvements expenditures were less than the allowance, the agency would be able to return to the lessor any unused portion of the allowance, essentially crediting the lessor for existing improvements. Id. GSA asserts that the procurement is structured in a way to increase competition by not allowing the incumbent to claim savings for items for which the government has already paid. Id. at 5.

Agencies are required to consider the cost to the government in evaluating competitive proposals. Prosperity Metro Plaza of Virginia, LLC, B-411547, B-411548, Aug. 21, 2015, 2015 CPD ¶ 263 at 3. While it is up to the agency to decide upon an appropriate and reasonable method for proposal evaluation, the agency must use an evaluation methodology that provides a reasonable basis for comparing the relative costs of proposals. LCPP, LLC, B-413513.2, Mar. 10, 2017, 2017 CPD ¶ 90 at 3; TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 23. Further, agencies are not required to structure acquisitions in order to neutralize the competitive advantage of an incumbent, but may, nonetheless, use an evaluation method that attempts to foster competition by increasing the feasibility of a proposal being submitted by non-incumbent offerors. Prosperity Metro Plaza of Virginia, LLC, supra at 3.

Our review of the record and the agency's rationale for utilizing the fixed tenant improvement allowance gives us no basis to question the RLP's price evaluation methodology. Notwithstanding the protester's contention that it could provide these improvements at a lower cost, the agency has provided a reasonable basis for using the fixed allowance amount in its evaluation of prices, and the protester's disagreement with the approach does not render that choice unreasonable. Our Office has previously explained that the disadvantage that is the focus of the protester's complaint (to reduce or eliminate its incumbent advantage) is unobjectionable in view of GSA's broader objective of fostering competition, which is consistent with the overarching mandate of the Competition in Contracting Act to obtain full and open competition for the government's requirements. Id. at 4.

We do not agree that the use of the fixed tenant improvement allowance precludes the agency from accurately determining which proposal offers the lowest price. Because the price of tenant improvements was not to be separately evaluated, fixing this amount across offerors does not impede GSA from determining which proposal offered the lowest rental rate. See 1120 Vermont Avenue Assocs., LLP; 1125 15th Street, LLC, B-413019, Aug. 1, 2016, 2016 CPD ¶ 191 at 11-12. Contrary to the protester's assertions, this methodology allows GSA to compare the rental rates without concern for the accuracy of information provided relating to tenant improvements. See Prosperity Metro Plaza of Virginia, LLC, supra at 4. As the RLP contemplates that the rental rate will be adjusted based on the actual cost of the improvements, once

completed, using the fixed amount for evaluation purposes provides an equal footing to all potential offerors.

Further, since exact requirements for the build-out were not known at the time the RLP was issued, the actual costs to be incurred could not be incorporated into any proposal, including the incumbent's. Even had this information been known, we find GSA's methodology unobjectionable as we conclude that the agency structured the solicitation in a manner that attempts to promote, rather than hinder, competition. Prosperity Metro Plaza of Virginia, LLC, supra at 4.²

The protest is denied.

Susan A. Poling
General Counsel

² We have considered the protester's responses to this assertion, including that it is a *post hoc* rationalization that should be rejected, and conclude that none of them provide a basis to sustain the protest.