



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: HG Properties A, L.P.

File: B-277572.4

Date: February 11, 1998

Thomas W. Rochford, TRS Design & Consulting Services, for the protester.
Patricia Dearing, Department of Agriculture, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the amendment of a solicitation for lease of office space that delays the requested occupancy date and deletes references to microwave equipment is denied where the later occupancy date satisfies the agency's needs and accommodates delays caused by a prior protest and where the agency had determined that it will have no microwave equipment in the office space.

DECISION

HG Properties A, L.P. protests the U.S. Forest Service's amendment of solicitation for offers (SFO) No. R1-97-04.

We deny the protest.

As issued, the SFO requested offers for a 10-year lease with two 5-year options for office and related space in a new or existing building for a Forest Service supervisor's office within or near Libby, Montana. The SFO stated that the space must be ready for occupancy by March 1, 1998, and informed offerors that if a different occupancy date were proposed, the contracting officer would determine if that date would reasonably fulfill the Forest Service's needs. The SFO provided specifications detailing the architectural, mechanical, electrical, plumbing, utilities, maintenance, and service requirements. One "special requirement" of the specifications was that the computer room space must be located "away from areas housing microwave equipment and radio transmitters."

The SFO provided for a best value basis for award and stated that technical evaluation factors were of equal importance to price. The proposal preparation instructions required offerors to provide, among other things, plans illustrating the space offered, and site plans showing the placement of the building on-site,

proposed parking, and landscaping. The following technical evaluation factors were provided in descending order of importance:

Potential for Efficient Layout
Energy Efficiency
Location
Physical Characteristics
Past Performance

Offers were received from five firms, including HG and Mountain States Leasing-Libby (MSL). HG, the incumbent contractor, offered its existing space within the Libby city limits, while MSL offered space in a building to be constructed outside the Libby city limits. Discussions were conducted, and best and final offers (BAFO) were received from HG, MSL, and two other offerors. The contracting officer selected MSL's proposal for award based upon the firm's higher technical score, given there was only a minimal price difference between the proposals.

HG protested that the Forest Service failed to evaluate MSL's proposed layout in accordance with the stated SFO requirements regarding the location of the computer room. Specifically, HG complained that the Forest Service had not evaluated MSL's proposal to situate the telecommunications room within the space containing the computer equipment. We agreed and sustained HG's protest on this basis. HG Properties A, L.P., B-277572, et al., Oct. 29, 1997, 97-2 CPD ¶ 123 at 5. We recommended that the Forest Service amend the SFO to state its actual requirements regarding the location of the computer room vis-à-vis the microwave equipment and radio transmitters, and reopen negotiations with the competitive range offerors to allow them an opportunity to respond to the amended solicitation.

On October 31, in response to our decision, the Forest Service amended the SFO to change the occupancy date from March 1 to July 1 and to delete references to microwave equipment. The agency also reopened the competition, requesting BAFOs from HG, MSL, and another firm.

Prior to the closing date for receipt of BAFOs, HG protested the terms of the amended solicitation. Specifically, HG complains that the Forest Service had no reasonable basis to change the required occupancy date and to delete references to microwave equipment; the protester asserts that these changes were made in bad faith to favor MSL in the competition.

The Forest Service responds that because of delays caused by HG's earlier protest a March 1 occupancy date was not realistic for firms, such as MSL, that would be required to do construction or remodeling. The agency estimated that award would not be made until mid-December and that this would not allow sufficient time for construction or remodeling to meet the original occupancy date, particularly considering the severe winter conditions usually experienced in Libby. The delayed

occupancy date would, in the agency's view, be less restrictive of competition. The agency also states that it deleted the reference to microwave equipment because the Forest Service supervisor's office does not have, and will not in the future use, microwave equipment.¹

HG disagrees with the agency's statements, asserting that the Forest Service has not provided evidence to establish that the change in the occupancy date was necessary or that the agency does not have, and will not have, microwave equipment in the Forest Service supervisor's office. Regarding the amended occupancy date, HG asserts that the agency's minimum requirements have not changed and that maintaining the original occupancy date would not be restrictive of competition because the competition was already limited to the original competitive range offerors. In the alternative, HG argues that the change in the occupancy date is such a substantial and material change in the solicitation that the Forest Service was required to conduct a new, unrestricted competition.

We find that the Forest Service had a reasonable basis to amend the SFO's occupancy date. Because contracting agencies have broad discretion in determining their needs and the best method of accommodating those needs, we will not question an agency's determination of its needs unless that determination has no reasonable basis. OPS, Inc., B-271835, July 31, 1996, 96-2 CPD ¶ 50 at 4. The delay in the procurement occasioned by HG's prior protest and the anticipated severe weather conditions to be expected in Libby during the winter provide the agency with a reasonable basis to delay the occupancy date, given that such a delay will meet the agency's needs.

We note that acceptance of HG's contention would apparently provide the firm a competitive advantage, given its offer of existing space, should the occupancy date not be delayed to reflect the delays in the procurement and the need for new construction to be performed during the winter; our Office will not consider this type of contention--that is, that a solicitation requirement that the agency believes meets its needs should be made more restrictive than the agency believes is required. See Simplix, B-274388, Dec. 6, 1996, 96-2 CPD ¶ 216 at 5-6.

¹The Forest Service states that the Forest Service supervisor at this location uses a VHF/UHF radio communication system rather than a microwave communication system. HG suggests that placing radio transmitters within the computer room would also be a proposal deficiency. We do not address this concern because HG's allegations prematurely presume that the agency will not appropriately account for offerors' proposed layouts, including the location of radio transmitters vis-à-vis the computer room, in their evaluation of proposals under the Potential for Efficient Layout factor.

We also find no evidence that the Forest Service's amendment of the occupancy date was the result of bias or bad faith in favor of MSL or against HG. Where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating bias against the protester or for the awardee, and that the agency's bias translated into action that unfairly affected the protester's competitive position. Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 17. HG's bald allegations do not satisfy this standard.

We also disagree with HG's arguments that the delay in the occupancy date is a cardinal change in the solicitation such that a new, unrestricted competition was required to be conducted. In fact, the original SFO provided for the contracting officer's evaluation of whether a later proposed occupancy date would satisfy the agency's needs. In any event, since HG was provided with an opportunity to submit a BAFO under the amended solicitation, it was not competitively disadvantaged by the agency's determination to continue with the competition under this SFO.

HG also protests the deletion of the SFO's references to microwave equipment, alleging, contrary to the agency's statements, that the Forest Service supervisor's office currently has microwave equipment. In response to this protest allegation, the agency has provided us with an inventory and specifications for all the communications equipment currently located in the Forest Service supervisor's office in Libby. This evidence, which is unrebutted by the protester, establishes that the communications equipment used by the Forest Service at this location is radio, not microwave, equipment. In addition, the agency reiterates that it will not install and use microwave equipment in this location in the future. Accordingly, we find no basis to object to the agency's deletion of solicitation references to microwave equipment, given the absence of such equipment at this location, nor do we find any evidence of bias in the agency's actions.

The protest is denied.

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