



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** HG Properties A, L.P.

**File:** B-277572; B-277572.2; B-277572.3

**Date:** October 29, 1997

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Thomas W. Rochford, TRS Design & Consulting Services, for the protester.  
Lisa A. Hallenbeck, Esq., Poore, Roth & Robinson, for Mountain States Leasing-Libby, an intervenor.

Richard Salazar, U.S. Forest Service, 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.

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## DIGEST

In a negotiated procurement for the lease of office and related space, the agency unreasonably found that the awardee's proposed layout satisfied all solicitation requirements and was entitled to a high evaluation score, where the layout was inconsistent with the stated requirement that the computer room be located "away from areas housing microwave equipment and radio transmitters."

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## DECISION

HG Properties A, L.P., protests the award of a lease by the U.S. Forest Service to Mountain States Leasing-Libby (MSL) under solicitation for offers (SFO) No. R1-97-04.

We sustain the protest.

The SFO requested offers for a 10-year lease with two 5-year options for a minimum of 20,728 to a maximum of 21,000 occupiable square feet (sq. ft.) of office and related space in a new or existing building for a Forest Service supervisor's office within the city limits, or up to 2.5 miles outside the city limits, of Libby, Montana. A formula was provided for calculating occupiable space, which the SFO defined to be that portion of rentable space that is available for a tenant's personnel, equipment, and furnishings. 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." A "conceptual" drawing of a floor plan for the required space was provided with the SFO to graphically indicate desired spatial relationships and traffic patterns, not to "dictate design" requirements. The SFO stated that, if there were an inconsistency between the written requirements and the conceptual drawing, the written requirements would govern.

The SFO provided for a best value basis for award and stated that technical evaluation factors were of equal importance to price. Offerors were informed that the price evaluation would be on the basis of the total annual price per square foot for occupiable space, including any option periods; that the price for parking and "wareyard" areas would be evaluated; and that relocation costs would be added to those offers that would require relocation. 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 SFO, as amended, provided the following technical evaluation factors and subfactors in descending order of importance:<sup>1</sup>

- A. Potential for Efficient Layout
- B. Energy Efficiency
- C. Location
  - (1) Public Visibility/Accessibility
  - (2) Size, Configuration, and Flexibility
  - (3) City Utilities (water and sewer)
- D. Physical Characteristics
  - (1) Environment
  - (2) Safety of Visitors and Occupants
- F. Past Performance

The SFO provided that award would be made by either the agency's notification of unconditional acceptance of the offer or the execution of the lease document by the contracting officer. Offerors were also informed that the executed lease would include all the required clauses, representations and certifications, and pertinent provisions of the SFO and successful offer.

Offers were received from five firms, including HG and 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 with the offerors, and best and final offers (BAFO) received. Because HG's BAFO excluded floor receptacles, the agency decided to reopen

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<sup>1</sup>Occupancy date was originally the second to least important technical evaluation factor, but was deleted by amendment during the competition.

discussions with, and obtain revised BAFOs from, HG, MSL, and two other offerors. HG's and MSL's proposals were evaluated as follows:

	<b>MSL</b>	<b>HG</b>
Potential for Efficient Layout (250 Maximum Points)	225	175
Energy Efficiency (210 Max. Pts.)	189	168
Location (190 Max. Pts.)	152	152
Physical Characteristics (180 Max. Pts.)	144	126
Past Performance (170 Max. Pts.)	136	136
<b>TOTAL POINTS</b> (1,000 Maximum)	<b>846</b>	<b>757</b>
Price Per Square Foot <sup>2</sup>	\$12.93	\$12.90
Present Value Analysis <sup>3</sup>	\$7.26	\$6.70
Annual Cost <sup>4</sup>	\$267,948	\$270,900

MSL's higher total point score was primarily based on its high score under the potential for efficient layout factor, which reflected its offer of newly constructed space that closely followed the layout provided in the SFO's conceptual drawing. In contrast, HG's offered existing space was found not to meet all the SFO special requirements; for example, HG's proposed layout for the computer room was "not conducive to easy movement of supplies and equipment." The contracting officer found that MSL's BAFO was technically superior to that of HG. In this regard, MSL's offer was found to meet "all aspects of the SFO," while HG's offer "did not

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<sup>2</sup>This is a composite rate for occupiable space, including all services.

<sup>3</sup>In accordance with the SFO price evaluation criteria, the Forest Service discounted offerors' gross annual per sq. ft. prices annually at 8 percent to yield a gross present value cost per sq. ft.

<sup>4</sup>The difference in MSL's and HG's annual costs reflects HG's offer of 272 more square feet of office space than MSL's offer.

meet the basic floor plan in the SFO." The contracting officer also determined that the difference between HG's and MSL's evaluated price per square foot, and as discounted in the agency's present value analysis, was "minimal," and concluded that MSL's BAFO represented the best value to the government. Acceptance of MSL's offer was mailed to MSL, and this protest followed. Performance of the contract has been stayed pending our decision in this matter.

HG complains 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. We agree and sustain HG's protest on this basis.

In considering protests of an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was rational and consistent with stated evaluation criteria and applicable statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Such judgments are by their nature often subjective; nevertheless, the exercise of these judgments in the evaluation of proposals must be reasonable and bear a rational relationship to the announced criteria upon which competing offers are to be selected. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.

Here, as noted by HG, the SFO provides that the computer room must be located away from areas housing microwave equipment and radio transmitters. MSL's proposed layout, however, places the telecommunications room within the computer room space, even though the telecommunications room is to contain microwave equipment.<sup>5</sup> Although this does not appear to satisfy the SFO's written requirements, MSL received 225 points of the 250 points available under the most important potential for efficient layout factor, under which offerors' proposed layouts were evaluated. The evaluation report supporting this score states that "the layout of the building is very close to the conceptual drawing in the SFO" and that MSL's "offices and areas met size and special requirements shown in the SFO." Notwithstanding these generic conclusions about compliance, the contracting officer stated in a telephone hearing conducted by our Office that, although she attended all the meetings of the evaluators, she did not recall any discussion of MSL's proposed layout regarding the location of the computer room.

As noted by the agency, MSL's proposed layout is nearly identical to the layout set forth in the SFO's conceptual drawing, which locates the computer room and telecommunications room in close proximity to each other. But, as admitted by the contracting officer during the hearing, the written requirement to locate the computer room away from areas housing microwave equipment and radio

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<sup>5</sup>The SFO provides that the telecommunications room will contain microwave and telephone equipment and must be located within 100 feet of a radio antenna tower.

transmitters is not consistent with the SFO's conceptual drawing. Given that the SFO specifically provided that, in the event of an inconsistency between the written requirements and the conceptual drawing, the written requirements would control, the agency had no reasonable basis to find MSL's layout fully compliant with the SFO's special requirements.<sup>6</sup>

In sum, we find that the agency's evaluation of MSL's proposed layout was not rational and in accordance with the stated evaluation criteria; that is, the Forest Service did not evaluate MSL's proposed layout regarding the location of its computer room vis-à-vis the location of the microwave equipment against the SFO's written requirements.

HG raises numerous other challenges to the Forest Service's evaluation of offers and selection of MSL for award. We have reviewed each of these other protest allegations (although they are not all mentioned below) and find them to be either without merit, untimely filed under our Bid Protest Regulations, matters of affirmative responsibility not reviewable by our Office, or now academic given our protest recommendation that the agency reopen negotiations with the competitive range offerors.

For example, HG asserts that MSL failed to offer the 20,728 minimum occupiable square footage required by the SFO. Specifically, HG points to MSL's proposed layout, which includes the architect's notation that MSL's building would yield 26,764 gross sq. ft. and only 20,645 rentable sq. ft. However, the contracting officer explained during the hearing that the agency was aware in its evaluation of the architect's notation on MSL's layout, but that in the agency's judgment MSL's proposed layout, which as noted above was based upon the agency's conceptual drawing, would yield the minimum square footage required by the SFO. In this regard, although the Forest Service did not calculate the square footage actually offered by MSL in accordance with the formula provided by the SFO, the agency reviewed the size of the offices and space offered by MSL, concluding that it would provide the minimum square footage required; found that the gross square footage of MSL's building would reasonably be expected to yield the minimum occupiable square footage sought; and noted that MSL had unequivocally committed itself to provide the minimum occupiable square footage requested by the SFO. HG neither asserts that the agency's judgment was unreasonable nor provides its own calculation based upon MSL's layout to demonstrate that MSL will not offer the required minimum square footage.

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<sup>6</sup>The Forest Services does not state what its minimum needs actually are in this regard, or whether it is the written specification or conceptual drawing that actually reflects those minimum needs.

Also, HG challenges the point scores its BAFO received in the agency's technical evaluation. However, we find from our review of the agency's evaluation documents and the Forest Service's explanation in its report of its evaluation conclusions that the protester's allegations are nothing more than mere disagreement with the agency's evaluation, which does not demonstrate that the agency's judgment was unreasonable. AVIATE L.L.C., B-275058.6, B-275058.7, Apr. 14, 1997, 97-1 CPD ¶ 162 at 9-11.

The record belies the various other speculative allegations of HG, such as the contention that discussions were reopened for MSL's benefit (discussions were reopened primarily because of HG's noncompliant BAFO) and that MSL's initial proposal and BAFO may have been late.

HG's contention that the occupancy date evaluation factor was deleted during the competition without explanation to favor MSL is untimely filed under our Bid Protest Regulations because it was not protested prior to the closing date for receipt of BAFOs following the solicitation amendment, which deleted this factor. 4 C.F.R. § 21.2(a)(1) (1997).

Other contentions by HG concern MSL's responsibility, such as, for example, whether MSL will actually meet the March 1 occupancy date as promised and whether it will obtain adequate financing and required permits to meet this occupancy date. We will not review affirmative determinations of responsibility absent a showing of possible bad faith on the part of government officials or that definitive responsibility criteria in the solicitation were not met, neither of which circumstance exists here. 4 C.F.R. § 21.5(c).

Finally, HG challenges the Forest Service's selection of MSL's BAFO for award because MSL failed to return all the required clauses, representations, and certifications with its BAFO. We need not address this allegation, given our recommendation below to reopen the competition whereunder MSL can complete its offer.

The protest is sustained.

We recommend that the Forest Service amend its SFO to state its actual minimum 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. In the event that an offeror other than MSL is selected for award as a result of these new negotiations, the Forest Service should terminate MSL's award and make award to that offeror. We also recommend that the Forest Service reimburse HG its costs of filing and pursuing its protest, limited to the contention as to which we

sustain this protest. HG must submit its certified claim, detailing the time expended and costs incurred, directly to the Forest Service within 60 days of its receipt of this decision. 4 C.F.R. § 21.8(f)(1).

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