



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: HG Properties A, L.P.

File: B-280652

Date: November 2, 1998

Michael S. Craig, C&S Property Services, for the protester.
Jane S. Converse, Esq., and Philip S. Kauffman, Esq., Department of Veterans Affairs, for the agency.
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation for offers for the lease of space unfairly favors offerors proposing new construction is denied where the protester has not shown that the claimed competitive advantages are the result of unfair action by the government or do not represent the government's actual requirements.

DECISION

HG Properties A, L.P. protests solicitation for offers (SFO) No. 541-184-003-98 issued by the Department of Veterans Affairs (VA) for the lease of space for its outpatient medical clinic in Canton, Ohio.

We deny the protest.

Since April 1, 1980, the VA has occupied space--currently 47,662 net usable square feet--on the first and second floors of a building owned by HG in Canton's central business area under a General Services Administration (GSA) lease. Agency Report at 1; Contracting Officer's (C.O.) Statement at 1. The leased space is used as an outpatient medical clinic for eligible veterans. Report at 1. The current lease will expire March 31, 2000. Id.

In the Fall of 1997, the VA advertised that it would be conducting a competition for alternative space for a new lease term commencing April 1, 2000.¹ Protester Comments, Exhibit 5. The VA informed potential offerors that it would relocate "if advantageous to the Government," and that the cost of moving, alterations, and other factors would be considered when determining whether to relocate. Id. The VA specified the amount of space it sought and delineated the geographic area in

¹The VA states that it has been delegated leasing authority from GSA. Report at 4; C.O. Statement at 1.

which the space is to be located. Id. The VA requested interested offerors to submit information concerning their properties by November 21, 1997. Id. In early April 1998, VA again advertised its need for the new lease and sent HG a copy of the advertisement. Report at 2; C.O. Statement at 1.

On May 19, HG sent the contracting officer a complete set of plans and a land survey of its facility. Protester Comments, Exhibit 1. According to the contracting officer, on May 27 and 28, a VA market survey team conducted a market survey of properties in Canton, including the existing HG facility, to determine their suitability as a potential location for a new lease. C.O. Statement at 1. The contracting officer states that potential offerors of those properties--including the existing facility--which met or were determined to have the potential to meet the VA's basic requirements were informed that they would receive the SFO. Id.

The VA issued the SFO on June 25 and established July 27 as the due date for offers. Report at 2; SFO at 8. Under the SFO, VA proposes to lease a minimum of 40,680 to a maximum of 42,715 occupiable square feet of space located within Canton's central business area. Report at 2; SFO at 8. The delineated area includes the existing clinic location. C.O. Statement at 2. The new lease will be for a term of 15 years with a 5-year renewal option. SFO at 8. The SFO further specifies that the space must be adjoining and be on no more than two contiguous floors, and can be provided by new construction or modification of existing space. Id. The SFO requires that if the space offered is not located in a new or modern office building, it must be in a building that has undergone, or will undergo, restoration or adaptive reuse so that the office space contains modern conveniences. Id. at 12. If the restoration work is underway or proposed, then architectural plans acceptable to the contracting office must be submitted as part of the offer. Id.

The SFO established that the evaluation of offers and subsequent selection of the offer representing the best value to the government will be made on the basis of the following factors listed in order of descending importance: (1) the annual price per occupiable square foot, including any option period; (2) the quality of the building and design concept; (3) the quality of the site; (4) the offeror's qualifications and past performance; and (5) the adequacy and efficiency of the operation and maintenance plans required to be submitted. Id. at 14. According to the SFO, when combined, the technical evaluation factors ((2) through (5) above) are approximately equal to the price factor ((1) above). Id.

The SFO requires offerors to submit with their offers various specified plans, elevations, and drawings, including:

One-eighth inch (1/8") scale full floor plans of the space offered. These floor plans and the building sections indicated below shall clearly and accurately convey proposed column spaces and bay configuration; location and number of elevator shafts and stairwells, as

required; and location, size and configuration of public corridors, lobbies and similar areas.

Id. at 21. The VA provided 1/8" scale floor plans with the SFO, which states that these floor plans

are conceptual in nature, and are provided as a visual representation of layout drawings which might be developed for this outpatient clinic facility. These floor plans provide guidance on functional adjacencies and interior functional requirements desired by the VA. Other building shapes and size may be proposed, providing that the layout of clinic functions can be adequately designed within the building footprint offered, without compromising the functionality of the outpatient clinic facility.

Id. at 29.

The SFO requires offerors to submit other detailed information with their offers to address the above-listed evaluation factors, including a narrative explanation and analysis of the design concept and the quality of the site, information on past performance, financial resources, and qualifications, and evidence of compliance with local zoning laws or variances and documenting ownership or control of the site. Id. at 9, 21-22, 26-28. The SFO also requires each offeror to submit a proposal bond and a performance bond with its offer. Id. at 10-11.

Following issuance of the SFO, the protester submitted a letter to the contracting officer dated June 30, requesting that the due date for offers be extended so that HG could adequately develop floor plans for the existing facility, and obtain estimates for the costs of the alterations and improvements to the existing facility necessary to implement such plans. In this letter, HG also questioned whether the SFO's bonding requirements apply to the incumbent lessor, requested the numerical weighting of the technical evaluation factors, and asked that the SFO's price evaluation scheme be amended to include a moving cost adjustment.

On July 6, the protester submitted another letter to the contracting officer, this time requesting clarification primarily of numerous specification requirements. In another letter, dated July 20, HG reiterated its earlier request to the agency to extend the time for offers, to amend the price evaluation scheme and to clarify the applicability of the bonding requirements. HG asked the contracting officer to explain how HG has an equal chance of competing with an offeror offering new construction when the SFO contains conceptual drawings for new construction, but not the existing facility, and the weighting of the technical evaluation factors favors a new single tenant facility over HG's existing multi-tenant facility. Finally, HG requested that the contracting officer provide a written response, including to its previous letters, along with any information provided to other offerors in response

to their inquiries. HG stated that, while it was continuing to prepare its offer, "until we receive [the contracting officer's] written response, we are constructively barred from preparing a meaningful proposal." Protester Comments, Exhibit 1. HG received no written response from the contracting officer to any of its letters.² Protest at 2; Protester Comments at 2.

The agency received several offers, including HG's, on July 27. C.O. Statement at 1, 2. HG filed its protest in our Office on July 27, prior to the deadline for receipt of offers.

HG first maintains that the solicitation unduly restricts competition because the SFO was tailored to favor award to offerors proposing new construction, specifically, offerors who propose floor plans which replicate the SFO's conceptual floor plans, over the existing facility for which no floor plans were provided or approved. Protest at 2-4, Protester Comments at 3. According to the protester:

The lack of a conceptual floor plan drawing for the existing facility places the incumbent lessor at a severe time and economic disadvantage with the other offerors. The incumbent must guess what alternate floor plans will work, go through the time and expense of designing an alternate floor plan within the confines of the existing building footprint and hope that the floor plan concept will be equal to the government provided conceptual floor plan drawings. . . . HG must produce these drawings without the benefit of VA guidance or assistance whereas the offerors proposing a new facility simply adopt the VA conceptual floor plans and submit their proposals accordingly.

Protest at 2. HG contends that it will be the only offeror not offering the conceptual floor plans contained in the SFO and it seeks "specific feedback" from the VA regarding the acceptability of the existing building's floor plans. Protester Comments at 2. HG maintains that, since offerors proposing new construction can rely on the conceptual floor plans provided with the SFO in developing their offers, HG should be given an equal opportunity to base its offer on a layout design acceptable to the VA.

We find that the SFO does not unfairly favor award to offerors proposing new construction. The SFO states that besides new construction, the solicited space "can be provided by . . . modification of existing space" and allows an offeror to satisfy the requirements of the solicitation by offering space in an existing building. See SFO at 8, 12, 22, 34, 55. Even if firms offering new construction do enjoy an advantage, this does not mean that the solicitation unduly restricts competition,

²The record does not indicate that other offerors received written responses to any of their inquiries.

since certain firms may enjoy a competitive advantage over other offerors by virtue of their own particular circumstances and HG does not challenge the agency's underlying need for the modern facilities it seeks for its medical clinic. See National Customer Eng'g, B-254950, Jan. 27, 1994, 94-1 CPD ¶ 44 at 6-7.

Moreover, as described above, the VA considers that HG's existing facility meets, or has the potential to meet, the VA's basic requirements. According to the contracting officer:

When developing the parameters and requirements of the space procurement for inclusion in the SFO, VA took care to ensure that the building and property currently leased by GSA for the VA outpatient clinic would be able to compete in the space procurement. The delineated area of consideration was configured so as to include the existing property. Rather than specify that the entire space be provided on one floor only [as is apparently the usual practice], up to two contiguous floors were allowed. The floor plans for the space currently occupied by the VA were reviewed, to ensure that the space need set forth in the SFO could be provided by the Lessor on the floors currently occupied by the VA, without changing the shape or size of the building.

C.O. Statement at 2. Although an offeror proposing new construction may submit the conceptual floor plans contained in the SFO, and an offeror proposing restoration of an existing building will have to draw up its own floor plans of its proposed facility, the agency asserts--unrebutted by the protester--that HG, as the incumbent lessor, already has plans in its possession which meet the requirement, and has been so informed. Report at 6; C.O. Statement at 3. Furthermore, notwithstanding HG's complaint that it is at a competitive disadvantage because the agency has not provided feedback on the relative merits of its proposed floor plans, we are unaware of any requirement that the agency pre-approve, before the submission of offers, alternate floor plans for offerors unable to propose the conceptual floor plans included in the SFO.

While HG asserts that the SFO, in effect, automatically "gives everyone offering the VA's conceptual floor plan [which only a newly constructed facility can exactly replicate] a superior technical score to that of HG," Protest at 3-4, the agency correctly notes that there is no SFO requirement that the building footprint be identical to the conceptual plans. C.O. Statement at 4. According to the VA, the conceptual floor plans merely provide a starting point for offerors to design the proposed space and the "VA will not dictate the exact layout, and is, in fact, willing to consider any proposed layout that would not compromise VA's mission to provide optimal medical care and treatment to veterans." Report at 3. The contracting officer further states that the building footprint and floor plans submitted with an offer are judged on their functional and technical merits under

the evaluation scheme, not on whether they conform exactly to the SFO's conceptual plans. C.O. Statement at 4. Indeed, an offeror's architectural concept will form the basis of the agency's evaluation of the flexibility with which VA architects can lay out the interior functional requirements of the outpatient clinic and the agency will evaluate the extent to which an offeror's building design meets VA program needs and goals. SFO at 15. Moreover, as described above, the quality of building and design evaluation factor under which an offeror's floor plans are evaluated is only one of several evaluation factors and not even the most important one. Thus, contrary to the protester's contention, a proposal based on the conceptual plans included in the SFO should not automatically result in its receiving the highest evaluation rating.³

In sum, HG has not shown that any claimed competitive advantage enjoyed by an offeror proposing new construction is the result of a preference or unfair action by the government, that the SFO provisions do not represent the government's actual requirements, or that HG could not be the successful offeror under the SFO.⁴

HG next complains that the SFO fails to consider the cost of relocating from the existing facility as part of the price evaluation. Protest at 3. The contracting officer responds that "[i]t is entirely possible that the cost of moving various VA functions within the [existing] building, because it will involve multiple moves to accommodate the Lessor's renovation schedule of the existing space, will exceed the cost of moving VA activities out of the building altogether" and "[t]he cost of

³To support its contention that, historically, the offeror receiving the highest technical score is the one who proposes the conceptual floor plans, the protester submitted a statement from another HG representative involved with a different VA SFO. Protester Comments, Exhibit 4. This individual states that he was told by a representative of the same contracting officer involved here that HG should follow the conceptual plans in that competition "as closely as possible" and that "any departure from those conceptual plans would result in a lower technical evaluation." Id. Agency actions in connection with other procurements are irrelevant since each procurement stands on its own. SEAIR Transp. Servs., Inc., B-274162, Nov. 25, 1996, 96-2 CPD ¶ 198 at 3 n.2.

⁴HG asserts that the SFO's language that "A single tenant building is desired" prejudiced HG because the existing facility is a multi-tenant building. Protest at 3. However, as the agency points out, the same SFO provision referred to by HG stated that "if space is offered in a multi-tenant building, a separate entrance or other accommodation for advising the public of the VA's presence will be required" and that HG's existing facility already meets this requirement. Report at 3, C.O. Statement at 3. HG has not rebutted the agency's position in its comments and we consider this contention abandoned. See Terex Cranes, Inc., B-276380, June 10, 1997, 97-1 CPD ¶ 209 at 5-6.

moving VA activities is therefore considered a neutral factor, and does not prejudice [HG]." C.O. Statement at 4. Notwithstanding the protester's contention that the contracting officer's determination in this regard is undocumented, HG does not argue that the contracting officer's determination is erroneous, and, accordingly, we have no basis to object to the VA's failure to provide for the evaluation of relocation costs.

HG also protests that the contracting officer failed to provide written answers to HG's pre-proposal questions and requests for clarification submitted on June 30, July 6, and July 20. HG maintains that the agency's responses and clarifications are needed in order for HG and its project team to develop plans and pricing. Protester Comments at 3.

An agency's failure to respond to questions is only prejudicial to a protester, so as to warrant sustaining a protest, if a solicitation is otherwise inadequate, unclear, or ambiguous. See National Customer Eng'g, *supra*, at 4-5. A protester challenging the adequacy of the specifications must demonstrate that the solicitation lacked sufficient clarity to permit competition on an intelligent and equal basis. Ramirez Enters., B-229636.3, Mar. 28, 1988, 88-1 CPD ¶ 313 at 2.

The issues raised in HG's June 30, July 6, and July 20 letters have either been addressed above, do not explain why the solicitation requirements at issue lack sufficient clarity to permit competition on an intelligent or equal basis, or are otherwise without merit. For example, as observed by the agency, the numerous questions posed by HG pertaining to the SFO's technical requirements requested information on how to satisfy various building design and other building specifications set forth in the SFO, so that the agency would pre-determine whether HG's proposed solutions were satisfactory. Report at 5; C.O. Statement at 3. HG does not contend in its protest that these questions pertain to specifications that were unclear or overly restrictive, and, as noted above, we are unaware of any agency duty to pre-approve HG's particular solutions to the SFO requirements. Further, HG has cited no authority that requires the contracting officer to disclose the numerical weighting of the evaluation factors, as it requested, and the contracting officer's failure to do so cannot be regarded as creating any ambiguity in the SFO, which, as described above, clearly specifies the relative weights of the evaluation factors.⁵ See Federal Acquisition Regulation (FAR) § 15.203(a)(4) (FAC 97-02).

Finally, HG sought a time extension from the contracting officer in order to develop its own floor plans and obtain estimates for the cost of the alterations and improvements to its existing building necessary to implement its plans, and protests

⁵In addition, while HG questioned the SFO's bonding requirements, its protest does indicate that these requirements were unclear or violated any law or regulation.

that the SFO did not permit it sufficient time to prepare its proposal. However, HG has not persuaded us that it was disadvantaged by the contracting officer's failure to grant an extension because, as described above, HG already has presented acceptable plans to the agency, and the other offerors themselves had to obtain estimates for new construction or for modification to existing structures. We note that the SFO allowed at least the minimum 30-day response time required by FAR § 5.203(c), and HG has not shown that the solicitation response time here is unreasonable under the circumstances (especially considering HG's early involvement in this acquisition), or that the response time was designed or intended to be prejudicial to an offeror who proposes an existing building.

The protest is denied.

Comptroller General
of the United States