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Decision

Matter of: The Moreland Corporation

File: B-283685

Date: December 17, 1999

C. Patrick Stoll, Esq., Herrig & Vogt, for the protester.

Phillipa L. Anderson, Esq., and Dennis Foley, Esq., Department of Veterans Affairs, for the agency.

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DIGEST

Protest that in best value procurement agency improperly gave evaluation credit for aspects of awardee's proposal that exceeded the solicitation's minimum requirements is denied; where detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merits of competing proposals, qualitative distinctions among the technical proposals are appropriately made under the various evaluation factors, and there is no basis to object to the recognition of advantageous features of a proposal that are clearly related to the stated evaluation factors.

DECISION

The Moreland Corporation protests the award of a contract to Heidorn & Heidorn under solicitation for offers (SFO) No. 573-184-002-99, issued by the Department of Veterans Affairs (VA) for the lease of a building to be constructed for use as a VA outpatient clinic in Daytona Beach, Florida.

We deny the protest.

The SFO, issued on December 4, 1998, contemplated the award of a lease for a term of 15 years with one 5-year renewal option. The SFO sought offers to construct a clinic building with 44,500 occupiable square feet on a pre-selected site, and to lease the facility to the VA. The lease was also to include certain services, such as exterior maintenance, trash removal, and window washing. The SFO provided concept drawings of the site plan and floor plan to be followed.

The SFO listed three technical evaluation factors and emphasized that when combined, these would have the same weight as cost or price in the source selection. SFO § 2.2. The SFO listed the following technical evaluation factors in descending order of importance: operations and maintenance plans; technical quality; and offeror's qualifications. Id. The SFO also provided a brief narrative for the evaluation factors and identified subfactors that would be evaluated for each factor. The price comparison methodology, which the SFO explained in detail, involved a present value price evaluation based on occupiable square feet and including the option period price. SFO § 2.3.

The first two technical evaluation factors are relevant here. For operations and maintenance plans, the SFO provides that evaluators will consider "the adequacy and efficiency of the proposed Operations and Maintenance Plans to maintain standards of cleanliness, orderliness, and repair for the entire proposed facility." SFO § 2.4. For technical quality, the SFO lists one subfactor, "the quality of the building and the design concept," which would be evaluated based on the following sub-subfactors: architectural concept; building design; quality of construction materials; and energy efficiency. For the building design sub-subfactor, the SFO provided the following guidance:

This sub-factor refers to the technical excellence and the appropriateness of the design in meeting VA program needs and goals. Building efficiency, energy conservation, functionality, and building systems are key elements to be considered, as well as building quality Also included in this factor is the way natural daylight will be accessed within the building design, i.e., the number of windows, skylights and open courtyards as well as their relative location to administrative spaces and major [waiting] areas will be considered. The VA will **only** consider designs that incorporate the three open courtyard concept as depicted in the suggested floor plan. The only alternatives which will be considered are providing courtyards that are open to the outdoors with overhead screen enclosures or maintaining the courtyard space within the building and providing a minimum 15' X 15' skylight centered in the three courtyards.

SFO § 2.4(2)(a)(2).

Under the energy efficiency sub-subfactor, the SFO provides that "offerors should submit information in the design narrative which addresses the proposed R-value of insulation, glazing of windows, lighting efficiency, HVAC efficiency, and any other factors related to energy conservation." SFO § 2.4(2)(a)(4).

The SFO stated that after negotiations had been conducted and final proposal revisions had been reviewed, the lease would be awarded to the offeror whose

proposal represented the best value to the government, price and other factors considered. RFP § 2.8.

Thirteen firms submitted initial proposals by the January 22 deadline.¹ A five-member technical evaluation board (TEB) reviewed and scored the technical proposals. The agency scored proposals on a 100-point scale, allotting 50 points to the price factor and 50 points to the combined technical factors. Agency Report, Tab 32, Competitive Range Determination, at 1. The TEB prepared a memorandum showing the overall technical score for each offer (calculated as an average of the TEB members' scores for each offer) and ranking the offers according to their numerical scores. Agency Report, Tab 27, Recommendation of the TEB. Heidorn's technical proposal received [deleted] points, while Moreland's received [deleted]. Id. at 2. A net present value lease analysis was performed for each cost proposal, in which the VA calculated a unit cost that reflected the offeror's price per occupiable square foot per year, including both the amortization of construction costs and all leasing expenses. Agency Report, Tabs 25-26, Lease Analysis Program. Cost proposals were rated on a 50-point scale, with the lowest evaluated price receiving a score of 50 points. Based on the technical and cost evaluations, Heidorn's proposal received the highest combined score, with [deleted] points. Moreland's proposal received a combined score of [deleted] and was ranked [deleted]. Agency Report, Tab 32, Competitive Range Determination, at 1.

The contracting officer included the six most highly-rated offers in the competitive range, including those of Heidorn and Moreland. Discussions were held with each of the competitive range offerors. During discussions with both Heidorn and Moreland, the contracting officer noted that each offeror had submitted a duplication of VA's conceptual drawing as supplied by the SFO, without deviating from the original or making any improvements. The contracting officer advised that the drawing was considered strictly conceptual and that it was the offeror's responsibility to correct errors and code violations, and make any improvements that would enhance its offer. The contracting officer asked each offeror to describe its plans for three courtyard areas that were included in the SFO concept drawings, discussing the feasibility of enclosing one or more of the courtyards and providing ventilation at a later date, after award. The contracting officer asked each offeror to describe its heating, ventilation and air conditioning (HVAC) system, and asked whether the system being proposed had sufficient capacity to accommodate the courtyard spaces if they were later enclosed, commenting that the extra load capacity would earn extra points under the evaluation. The contracting officer asked each offeror to describe any enhancements that were being offered beyond the requirements established in the SFO, and indicated that an offeror "should specify in his technical

¹ Heidorn submitted two alternate proposals, which differed in design details and price. We refer in this decision only to the lower-priced of the two, which is the one relevant here.

design narrative all the extras he was providing in detail, such as extra skylights, additional windows, etc.” Agency Report, Tabs 30-31, Negotiation Records, at 2.

The competitive range offerors were invited to revise their technical proposals based on the negotiations and were given a due date of March 29. After reviewing the revised proposals, the contracting officer again held discussions with the competitive range offerors. During this round of discussions, the contracting officer noted that Moreland had not included any enhancements in its revised technical proposal. Agency Report, Tab 45, Negotiation Record, at 1. When Moreland stated that it did not want to provide this information at that time but that it intended to present enhancements in its final proposal revisions, the contracting officer advised Moreland that without a revised technical submission, the agency could not re-evaluate Moreland’s proposal. Id. Further revisions were permitted, to be submitted by June 24.

Thereafter, the contracting officer reviewed and evaluated all revised and final proposals. He noted the following revisions in Heidorn’s final proposal: an increase in HVAC capacity to fully support enclosed courtyards; the addition of skylight enclosures over the courtyards and atria below, and the use of these areas with no increase in rental cost; ten additional skylights to be placed at the VA’s discretion; energy-efficient, insulated windows;² an expanded landscaping plan with a credit toward additional plants and trees, walkways, benches, and a gazebo; and the addition of a local property management firm to oversee building operations and maintenance. Agency Report, Tab 64, Price Negotiation Memorandum, at 5-6, 10-11. He noted the following revisions in Moreland’s proposal: hurricane shutters, as required by the SFO; a change in the roofline; and landscaping for the exterior, including a walkway, benches, and a gazebo. Id. at 5.

Cost negotiations were also held, and offerors were permitted to submit revised cost proposals when they submitted each round of technical revisions. In their final revised offers submitted on June 24, Moreland offered a rental rate of \$[deleted] per square foot (which, when converted to net present value (NPV) by the VA, became \$[deleted]) and a total cost for construction of \$[deleted], while Heidorn offered a rental rate of \$17.85 per square foot (\$10.05 NPV) and construction costs of \$981,316. Agency Report, Tab 64, Price Negotiation Memorandum, at 9. Cost proposals were evaluated as follows: the NPV was multiplied by square footage offered (in each case, 44,500 square feet) and by the term of the lease, i.e., 20 years; this amount was added to the lump sum for construction. Calculated in this manner, the projected 20-year cost for the construction and lease proposed by Moreland was \$[deleted],

² While the evaluation document inaccurately describes the proposed windows as “triple insulated glass,” the upgrade that Heidorn actually offered was for “high performance, low-E insulated dual pane and tinted” windows. Agency Report, Tab 50, Letter from Heidorn to the Contracting Officer 4 (March 29, 1999).

versus Heidorn's proposal of \$8,944,500. The cost differential between the two offers over the 20-year life of the lease was thus \$[deleted], representing a difference of approximately [deleted] percent.

Taking price and technical merit into account, the contracting officer concluded that Heidorn's offer presented the best value to the government. In the memorandum documenting the source selection decision, the contracting officer notes that although Moreland's offer presented the lowest price, it only marginally exceeded the minimum requirements of the SFO. Agency Report, Tab 64, Price Negotiation Memorandum, at 10. The memorandum notes that Heidorn's offer was next low in price and identifies the enhancements, listed above, as justifying award.

Accordingly, the VA accepted Heidorn's offer and executed a lease with Heidorn on July 15. The unsuccessful offerors were notified of the award by letter of July 16. Moreland filed an agency-level protest by letter of July 20, essentially arguing that its own proposal should have been rated best overall and seeking additional information regarding the source selection. On September 9, the VA denied Moreland's protest. This protest to our office followed.

Moreland alleges that the award to Heidorn is improper because it is based on enhancements that are not related to the technical evaluation factors identified in the SFO. Protest at 7. In addition, the protester contends that the agency failed to conduct meaningful discussions because it did not identify the "deficiency" (of "not provid[ing] the 'enhancements' the VA wanted") during discussions. Protest at 9.

Moreland's allegation that the VA improperly credited Heidorn's proposal for enhancements is without merit. Where, as here, detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merits of competing proposals, offerors are on notice that qualitative distinctions among the technical proposals will be made under the various evaluation factors. Doss Aviation, Inc.; Dominion Aviation, Inc., B-275419 et al., Feb. 20, 1997, 97-1 CPD ¶ 117 at 8. Evaluation credit properly may be given, under these circumstances, where a proposal includes enhancements or features not specifically required by the solicitation. Id.

Moreland's underlying premise that the enhancements proposed by Heidorn are unrelated to the evaluation factors established in the SFO is misplaced. While the precise "extras" offered by Heidorn were not included as part of the minimum requirements listed in the SFO, they are very closely related to the stated evaluation criteria. For example, the "quality of building and design concept" and its subfactor, "building design," expressly include "the way natural daylight will be accessed within the building design, i.e., the number of windows, skylights and open courtyards" as considerations. SFO § 2.4(2)(a)(2). The SFO even mentions as an alternative to the courtyards depicted in the SFO floorplans "maintaining the courtyard space within the building and providing a minimum 15' X 15' skylight centered in the three

courtyards,” just as Heidorn proposed in its revised final offer. Id. Thus, the SFO very clearly placed offerors on notice that the agency was interested in a design concept that would maximize the elements of natural light and energy efficiency, and the enhancements offered in Heidorn’s revised proposal simply reflected a better implementation of the agency’s stated preferences in this area. Accordingly, the agency’s recognition of these enhancements in evaluating Heidorn’s proposal is unobjectionable.³

With respect to the protester’s allegation that the agency failed to conduct meaningful discussions, while an agency is required to lead an offeror into the areas of its proposal requiring amplification or revision, the agency is not obligated to “spoon-feed” an offeror as to each and every item that could be revised so as to improve its proposal. Du & Assocs., Inc., B-280283.3, Dec. 22, 1998, 98-2 CPD ¶ 156 at 7-8.

Here, the agency explicitly pointed out the areas of the protester’s proposal that were acceptable but could be improved. The contracting officer specifically addressed the agency’s interest in enhancements during discussions with both offerors. The record shows that both Heidorn and Moreland initially submitted conceptual drawings that did not deviate from the basic drawing provided in the SFO, and that the contracting officer suggested to both offerors that they might want to make improvements in the drawings that would enhance their offers. Agency Report, Tab 30, Negotiation Record for Heidorn, at 1, and Tab 31, Negotiation Record with Moreland, at 2. The contracting officer specifically asked about each offeror’s plans for the courtyard areas, asked about the feasibility of enclosing the courtyards, asked about the HVAC system and its ability to accommodate ventilation of the courtyards, and asked what extras were being proposed, such as extra skylights or additional windows. Both offerors were told that the VA would consider a trade-off against cost to obtain the best overall value, and that it was important that the offeror indicate clearly in its narrative all the items it was providing above and beyond minimum requirements to receive full technical credit by the evaluation team. Id. When discussions were held with Moreland following the submission of revised proposals, the contracting officer specifically questioned Moreland about the lack of any enhancements in its technical proposal, and told Moreland that its final

³ The fact that Heidorn offered extra features which the VA viewed as enhancing the technical quality of the building design concept in Heidorn’s proposal does not lead to the conclusion that Moreland’s “proposal would be deemed deficient if it failed to provide enclosed courtyards and HVAC capacity sufficient to condition that additional space,” as Moreland also alleges. Protester’s Comments at 3. Moreland’s technical proposal was never deemed deficient, but rather, was found to exceed (albeit only marginally) “the minimum requirements of the SFO.” Agency Report, Tab 64, Price Negotiation Memorandum, at 10.

proposal could not be re-evaluated without a revised technical submission. In these circumstances, the protester was led directly into the area where its proposal could be improved. Accordingly, Moreland was afforded meaningful discussions.

In its comments on the agency report, Moreland suggests that the skylights, additional windows, and landscaping together only represent costs of approximately \$10,000 and concludes, therefore, that the enclosure of the courtyards must be the key to the contracting officer's source selection. Protester's Comments at 2. Moreland argues, further, that the SFO specified a maximum space of 44,500 occupiable square feet, SFO at 3, and that it was outside the scope of the SFO and therefore improper for the VA to give any extra credit for the extra "usable space at no additional rent to the government" that the enclosure of the courtyards would provide.

First, we find no merit in Moreland's valuation of the enhancements, which is based only on the cost of initial construction and not on their continued use over the potential 20-year duration of the lease. Moreland's analysis also fails to take into account the ongoing value of certain energy-efficiency enhancements offered, or the benefits of having local operations and maintenance management. Moreover, Moreland's attempt to quantify the dollar value of the offered enhancements does not take into account any aesthetic consideration by the procuring agency in its evaluation of Heidorn's revised approach. Such aesthetic judgments are inherently subjective, and the exercise of that judgment is within the reasonable discretion of procuring officials. See SDA, Inc., B-256075, B-256206, May 2, 1994, 94-2 CPD ¶ 71 at 10.

With respect to Moreland's objections to the enclosed courtyard areas as "exceeding the scope of the SFO," Moreland disregards the actual terms of the SFO. In section 1.1, Amount and Type of Space, the SFO specifies that the VA "is proposing to lease a maximum of 44,500 occupiable square feet (OSF) of space," and refers offerors to SFO § 3.13 for a more detailed definition of OSF. In section 3.13, the SFO provides, in bold-face type, that "[o]ccupiable space is the area for which VA will pay a square foot rate." Heidorn's revised proposal offered to lease no more than the 44,500 square feet established in the proposal; the fact that it also offered to provide additional space in the enclosed courtyards, free of any additional rental amount, does not alter the amount of space actually being offered for lease. Indeed, the lease document executed by Heidorn and the VA specifies that enclosed courtyard areas with skylights and atria planted with native trees and plants will be provided at "no additional cost to the Government and no increase in either the rental rate or the maximum 44,500 OSF [occupiable square feet] required in the SFO." Agency Report, Tab 66, Lease No. 573-184-002-99, at 7. Thus, the enclosed space that Heidorn was offering to provide without charge does not fall within the SFO's definition of "occupiable space," and does not deviate from the maximum occupiable square

footage specified in the SFO. Accordingly, we see no basis to object to the contracting officer's decision to afford evaluation credit for the enclosed courtyard areas that Heidorn proposed to provide.

The protest is denied.

Comptroller General
of the United States