



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Maryland Office Relocators

File: B-291092

Date: November 12, 2002

D. Cameron Amick for the protester.
Alex Tang, Esq., and Christian S. White, Esq., Federal Trade Commission, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation required that an offeror's fixed price for basic moving services include the cost of all required packing materials, but also specifically required the offeror to specify how many crates were included in its fixed price and the cost of additional crates, agency reasonably adjusted protester's evaluated price upward to reflect its finding that protester's proposal did not include a sufficient number of crates to perform the work.

DECISION

Maryland Office Relocators (MOR) protests the Federal Trade Commission's (FTC) award of a contract to Office Movers, Inc. (OMI) under solicitation No. 29-2-Q-0022, for moving services. MOR challenges the evaluation of proposals.¹

We deny the protest.

The solicitation provided for award of a contract for transportation and related moving services to relocate several FTC bureaus and offices, including a total of approximately 513 employees, from two Washington, D.C. locations to a third over

¹ Although the solicitation was termed an "RFQ" in block 14 of Standard Form 1449, it was elsewhere described as a request for proposals and the agency views it as such. Solicitation at 13-15, Amend. No. 2, Mover RFP Questions; see Contracting Officer's Statement (COS), at 1; Memorandum of Law at 1. The proper designation is not relevant to our discussion here.

five phases (essentially five weekends). Offerors were required to furnish “a firm fixed price for the transportation and related move services by move phase for the relocation of office contents, furniture, equipment, libraries, files, supplies and common areas. The price should include cost and volume of all required packing materials.” Solicitation at 17.

The solicitation advised that “[t]he FTC has determined that a majority of plastic packing crates will be utilized for this move. . . . In addition, a supplement of standard cardboard cartons will also be supplied by the moving contractor for a small amount of items that must remain packed beyond the crate rental period.” Solicitation at 6. (This reference to a rental period apparently referred to a separate requirement that the crates be available no later than 2 weeks prior to the move and for at least 1 week after the move phase, that is, for approximately 3 weeks.) Responding to a preproposal question as to how many crates were requested per phase and what percentage of containers should be crates versus cartons, FTC responded in writing that “[w]e have requested that the movers submit their estimate for packing crates and/or boxes as part of the RFP.” Amend. 0002, Question 5. In a sworn declaration, the FTC facilities management specialist who coordinated the evaluation of proposals states that he advised vendors at the pre-bid conference that “only a handful of the hundreds of FTC employees who were relocating would be using cardboard boxes.” FTC Facilities Management Specialist Declaration at 2.

Offerors were required to specify in the pricing schedule the “[n]umber of packing crates included in the above price” for the base moving services, Solicitation at 17; offerors were required to include in their technical proposals the “[n]umber of cartons or crates included in ‘Base Moving Services,’” *id.* at 14; and the additional/optional pricing section of the schedule included the requirement to provide a “[p]rice per additional crates.” *Id.* at 4, 18. The solicitation elsewhere emphasized that “[t]he move contractor will provide all crates, cartons, tape, bubble wrap and other packing materials required for the move. *All quotations should include the cost and quantity of crates, which are to be furnished by the Move Contractor.*” *Id.* at 6.

In order to establish their “qualifications,” offerors were required to include in their proposals a detailed description of their approach and qualifications, including resumes of the project manager and assistant project managers, references for prior moves, a discussion of the physical approach to moving, a detailed time schedule, a “[d]etailed breakdown of the number and deployment of supervisors, movers, packers, drivers, and additional staff,” contingency plans, and a list of required equipment (as well as hourly rates for extra labor and equipment). Solicitation at 13-14. Proposals were to be evaluated

in terms of Offerors understanding of the desired services, appropriate methodology, qualifications, and experience with similar projects, cost proposal and any other factors within the sole discretion of the FTC. Cost will be a significant, but not necessarily the only, determining

factor in the decision. The FTC is not obligated to award a contract based on the lowest cost proposed.

Solicitation at 15.

OMI and MOR submitted proposals. Although FTC found both to be acceptable, it determined that OMI's indicated a better understanding of the scope of work and better experience, while MOR's contained a number of weaknesses with respect to technical approach, capability, experience, and resumes. As a result, OMI's proposal received a significantly higher technical score (96 of 100 available points) than MOR's (83 points). Best Value Memorandum at 1-2; COS at 4-5; FTC Facilities Management Specialist Declaration at 2-4. In addition, OMI's evaluated price (\$270,420 for base and option items) was lower than MOR's (\$280,411).

In this regard, MOR's evaluated price reflected an upward adjustment of \$25,350 to its proposed price to reflect FTC's determination that MOR's proposal did not provide a sufficient number of crates to perform the work. In this regard, while FTC estimated that the move would require between 9,480 and 11,376 plastic crates, and OMI proposed 10,070 crates, MOR's proposal specified only an "[e]stimated number" of "1,000 crates per move"—calculated by the agency as 5,000 total crates (1,000 crates for each of the 5 moves)—and 3,780 totes (that is, cardboard boxes). MOR Proposal at 20, 23. FTC therefore added to MOR's price the cost of an additional 5,070 crates—that is, the difference between the 5,000 crates MOR proposed and the 10,070 crates OMI proposed—calculated at \$5.00 per crate, which was MOR's proposed weekly rate. FTC did not credit MOR with the proposed cardboard boxes on the basis that the agency wanted the work performed primarily with crates and had advised offerors that boxes were to be only a supplement for a small quantity of items. (According to the agency, crates are more reliable than boxes, can be stacked, are not damaged as easily by water or handling, hold more, and are more secure.) FTC Facilities Management Specialist Declaration at 2. Based on OMI's technical superiority and lower price, FTC selected OMI's proposal for award.

MOR argues that it was improper for FTC to adjust its price upward for purposes of the evaluation. According to the protester, since the solicitation required offerors' fixed prices to include the cost of all required packing materials, it was obligated to furnish all necessary crates for its offered price. MOR asserts that its price in fact included whatever crates might be required.

In considering a challenge to an agency's evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and consistent with the stated evaluation factors and applicable procurement statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11; Main Bldg. Maint., Inc., B-260945.4, Sept. 29, 1995, 95-2 CPD ¶ 214 at 4. We find no basis to question the award to OMI.

Although the solicitation did require that offered prices for the base moving services include the cost of all required packing materials, it also specifically required offerors to specify how many crates were included in their fixed prices. Specifically, as noted above, the solicitation required offerors to specify in the pricing schedule the “[n]umber of packing crates included in the above price” for the base moving services, Solicitation at 17; to include in their technical proposal the “[n]umber of cartons or crates included in ‘Base Moving Services,’” *id.* at 13-14; and to provide in the additional/optional pricing section of the schedule a “[p]rice per additional crates.” *Id.* at 4, 18. MOR provided the requested numbers and prices. In light of these provisions, we think the solicitation, while inartfully written, reasonably could be read as providing that, notwithstanding the general fixed-price nature of the contract, the contractor would be paid for additional crates (above the number included in the offeror’s base price) found necessary to perform the contract. Since, under this reading of the solicitation, the agency would be liable for MOR’s price for additional crates, it follows that there was nothing unreasonable in adjusting MOR’s price to reflect its determination that it would require a substantially greater number of crates to perform.

To the extent MOR believes the quoted provisions should be disregarded, its argument is untimely. Even ignoring the interpretation discussed above, the solicitation was at least ambiguous as to whether the contractor would be paid (beyond its fixed base price) for additional crates. Any ambiguity in this regard was apparent from the face of the solicitation. An offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous solicitation terms and then expect relief when the agency does not act in the manner the offeror assumed; rather, offerors must challenge apparent ambiguities prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2002); American Connecting Source d/b/a Connections, B-276889, July 1, 1997, 97-2 CPD ¶ 1 at 3; Christie Constructors, Inc., B-271759; B-271759.2, July 23, 1996, 96-2 CPD ¶ 87 at 6.

MOR asserts that no additional packing containers will be required--and that no adjustment to its evaluated price was necessary--because it in fact intended to furnish 9,000 crates, as well as 3,780 cardboard cartons. According to MOR, nowhere in its proposal does it specify 5,000 crates.

MOR’s position is not persuasive. Notwithstanding its claim to the contrary, given that there were to be 5 moves, the only reasonable interpretation of its reference to “1,000 crates per move,” was that MOR was offering a total of 5,000 crates. Further, MOR does not explain, nor is it otherwise evident, where in its proposal it indicated that MOR’s base price included 9,000 uses of a crate. We thus see nothing unreasonable in the agency’s reading of MOR’s proposal in this regard. We note that offerors are responsible for submitting an adequately written proposal, and they run the risk that their proposal will be evaluated unfavorably where they fail to do so. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3.

As for the number of additional crates that MOR would require, we think FTC reasonably relied on the number proposed by OMI (10,070 crates). This number was at the lower end of the range previously estimated by the agency (9,480 to 11,376 crates); MOR has asserted in its comments that it in fact was estimating that a total of 12,780 containers (9,000 crates and 3,780 cardboard cartons) would be required, MOR Comments, Sept. 6, 2002, at 1; MOR Comments, Oct. 24, 2002, at 1; and MOR has pointed to nothing in its proposal that demonstrated that it could perform with some lesser number of crates. The 3,780 cardboard cartons MOR proposed were not a substitute for an adequate number of crates. This number of cartons was inconsistent with the solicitation statement that cartons were meant only to be “a supplement . . . for a small amount of items that must remain packed beyond the crate rental period.” Solicitation at 6. In these circumstances, FTC’s determination to include the cost of an additional 5,070 crates (for a total of 10,070 evaluated crates) in MOR’s evaluated price was reasonable. It follows that FTC reasonably evaluated MOR’s cost as higher than OMI’s.

In any case, given the technical superiority of OMI’s proposal, the evaluated significant weaknesses in MOR’s proposal, and OMI’s consequent higher score (96 versus 83 points), there is no basis for concluding that MOR would have had a reasonable chance for award had the agency not adjusted its price for purposes of the evaluation. In this regard, the solicitation did not provide that price would be more important than the stated technical factors (understanding, appropriate methodology, qualifications, and experience), or otherwise indicate the relative importance of the factors; in these circumstances, it must be presumed that they were of equal weight. Forestry, Surveys & Data, B-276802.3, Aug. 13, 1997, 97-2 CPD ¶ 46 at 2 n.1; Carol Solomon & Assocs., B-271713, July 19, 1996, 96-2 CPD ¶ 28 at 2 n.2. Since price was only one of five factors, even if MOR had a price advantage, it would be entitled to significantly less weight than OMI’s evaluated technical superiority.

Although MOR generally asserts that the evaluation of its technical proposal was unreasonable, it furnishes no basis to question FTC’s determination that its proposal included a number of weaknesses such that, when considered with OMI’s evaluated strengths, OMI’s proposal was technically superior. For example, FTC found that MOR’s proposal failed to include the required detailed staffing plan, Solicitation at 13-14; FTC noted that, while the solicitation specified 5 moves with significantly varying numbers of employees being moved (including moves of 131, 99, 78, 131 and 74 employees), MOR proposed the same staffing level for each move. In addition, FTC determined that, not only were there gaps in MOR’s proposed staffing, but MOR’s overall staffing level (4,340 labor hours) was less advantageous than OMI’s (5,534 labor hours).

Although MOR maintains that its proposed staffing levels were more accurate than OMI’s, MOR essentially conceded in its initial protest that its proposed staffing was inadequate when it indicated that it was unable to furnish the required estimate of labor hours for moving FTC’s high-density shelving and for the packing and

unpacking of areas; according to the protester, “MOR’s proposal lacked OMI’s proposal by man-hours associated with the above items only.” Protest at 4. Further, the fact that MOR proposed the same staffing for each move irrespective of the number of employees to be moved offers no basis for confidence in the reliability of its staffing estimates. In any case, we find no basis for concluding that it was unreasonable for FTC to evaluate OMI’s larger proposed staff as a benefit to the agency, such that it warranted according OMI’s proposal a relative strength in this regard.

Under these circumstances, and in view of MOR’s failure to propose sufficient crates and to furnish a detailed staffing plan responsive to the characteristics of each move, we find that FTC reasonably determined that OMI’s proposal indicated a superior understanding of the requirements. In addition, MOR has not rebutted FTC’s determination that OMI proposed a more detailed, superior schedule and approach, and had superior experience with moving computers. Accordingly, the agency reasonably evaluated OMI’s proposal as technically superior to MOR’s.

MOR asserts that consultants retained by FTC in connection with the procurement were biased against MOR. However, in order to establish bias, the protester must show both that the procurement official in question specifically intended to harm the protester, and that this translated into action that unfairly affected the protester’s competitive position. NLX Corp., B-288785, B-288785.2, Dec. 7, 2001, 2001 CPD ¶ 198 at 10 n.3; Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 12. Where, as here, the record establishes that the evaluation was reasonable, there is no basis to conclude that the protester’s competitive position was affected by any alleged bias.

The protest is denied.

Anthony H. Gamboa
General Counsel