

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Barnesville Development Corporation

File: B-400049

Date: June 30, 2008

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DIGEST

Protest challenging rejection of offer for the lease of office space is denied where the record shows that the offer failed to meet solicitation requirements pertaining to floor space dimensions; protester's argument that the agency should be regarded as having waived the floor space dimension requirements by including in the solicitation another, allegedly inconsistent requirement regarding layout of space is without merit given that the solicitation provisions at issue can be read in a manner that gives effect to both provisions.

DECISION

Barnesville Development Corporation protests the rejection of its offer under solicitation for offers (SFO) No. 7FL2052, issued by the General Services Administration (GSA) for the lease of office space for the Social Security Administration (SSA) in Melbourne, Florida. The protester contends that the agency improperly rejected its offered building for failing to comply with an allegedly ambiguous solicitation requirement pertaining to floor space dimensions.

We deny the protest.

BACKGROUND

The solicitation sought offers for the lease of a minimum of 18,508 square feet of office space. Of relevance to this protest, the solicitation advised prospective

offerors that “the overall building floor-plate cannot exceed a 2:1 ratio (space should be no more than twice as long as it is wide),” SFO § 1.4;¹ the solicitation further instructed that all of the space was to be on the same floor.² The SFO also set forth a series of internal space requirements (square footage and special requirements pertaining to particular rooms to be located in the space), and advised that the actual dimensions of the internal spaces would be shown on the government design intent drawings to be provided to the lessor after award.³ Offers were due by December 14, 2007.

The protester, which is the incumbent lessor, submitted an offer on December 11, 2007. The offer was accompanied by a sketch depicting a plan for adding on to the protester’s existing building to meet the required square footage, which had increased since award of the preceding lease. The offer included the following explanation of relevance to this protest:

As the incumbent Lessor, the main objective of this proposal is to expand the existing building in such a way as to minimize any disruption to the current activities of this facility while meeting the

¹ This requirement was reiterated in section III (General Design Requirements) of attachment 3 to the SFO (Special Requirements for the Social Security Administration), which provided as follows:

It is a requirement that overall dimensions of the space shall have a maximum length to width ratio of 2 to 1. Preference will be given to blocks of space that allow maximum flexibility for furniture placement, i.e., few or no columns or other obstructions, rectangular in shape, no curves or off-sets, and with large open areas. . . .

SFO, att. 3 at 2.

² The section setting forth this requirement provided more fully as follows:

Street-level, contiguous (same floor) space is preferred. Contiguous upper-floor space on one floor which meets GSA lease criteria and has handicapped accessible elevator service is an acceptable alternative. We prefer that the storage and/or multipurpose rooms be located contiguous with the main office space. However, these rooms only, and their associated square footage, may be separated from the main office area by a public corridor. . . .

SFO, att. 3 at 2.

³ Required interior spaces included a manager’s office and an assistant manager’s office; a reception area; and storage, interview, interactive video training (IVT), multipurpose, and automatic data processing (ADP) rooms.

requirements of the SFO 1.4, in particular the SSA's requirement that the building floor plate be no more than 2 time[s] [as] long as it is wide. Reviewing Section III of [attachment 3 to the SFO,] it is clear that the intent of this unique requirement is to allow for the maximum flexibility for furniture placement with rectangular space and with a large open area.

This proposal clearly meets the intent of the requirement in the following ways:

1. The SFO prefers the multipurpose room and storage room to be located contiguous to the main office space. This plan complies with that requirement.
2. By relocating the Manager's and Assistant Manager's offices to the new addition, along with the Interview room and IVT room we free up a large open area providing an efficient layout for the placement of work stations. . . .
3. The open work space created by this arrangement is approximately 90 feet wide and 180 feet long which complies with the "intent" of the 2:1 requirement for efficient furniture layout.

* * * * *

. . . We submit that the deviation contained herein is minor in nature in that it clearly meets the stated "intent" of the 2:1 requirement and would be advantageous to the government in that it will permit the SSA to stay in its current space so the cost and disruption of relocating is eliminated. . . .

Protest, exh. B, Barnesville's Proposal, Item 19 Attachment.

By letter dated January 18, 2008, the agency's representative notified Barnesville that its offer required revision to be determined acceptable. In particular, the letter notified the protester that its offer needed to demonstrate compliance with the requirements of section 1.4 and attachment 3 pertaining to the 2:1 ratio for building floorplate dimensions. The letter invited Barnesville to submit a revised offer by January 31.

The protester responded with a letter in which it recognized that its proposal did not "strictly meet the 2:1 requirement if the 'floorplate' is used as the sole criterion" because of its proposed relocation of the offices and other rooms, and reiterated why it considered its approach to be a "superior option." Protester's Letter to GSA Real Estate Broker, Jan. 28, 2008, at 1.

By letter dated March 6, the agency's representative notified the protester that its revised offer still did not meet the required 2:1 ratio, and that if the protester's final offer did not meet the ratio, the government would have no alternative but to consider the protester's offer unacceptable.

The protester responded by challenging the agency representative's conclusion that its failure to demonstrate compliance with the requirement that the building floorplate not exceed a 2:1 ratio rendered its offer unacceptable. Barnesville maintained that the "floorplate criteri[on]" was "void on its face" because the specifications clearly permitted the storage and multipurpose rooms to be separated from the main office area. Protester's Letter to GSA Real Estate Broker, Mar. 14, 2008, at 2. The protester reasoned that since the specifications permitted the storage and multipurpose rooms to be separated from the main office area, the square footage encompassed by these rooms should not be considered in determining whether the space offered complied with the 2:1 ratio. The protester asserted that if the square footage associated with these rooms were not considered, its proposed space would comply with the 2:1 ratio.

By letter dated April 2, the contracting officer notified the protester that its proposal had been determined unacceptable. On April 7, Barnesville protested to our Office.

ANALYSIS

The protester argues that since the solicitation allows for the multipurpose and storage rooms to be separated from the main office area by a public corridor, GSA must consider designs that do not meet the 2:1 ratio. The protester's argument, as we understand it, is that the agency has effectively waived the requirement that the space be no more than twice as long as it is wide by permitting the storage and multipurpose rooms to be located noncontiguous to the rest of the space. We disagree.

In interpreting the language of a solicitation, we read the solicitation as a whole and in a manner that gives effect to all its provisions. SRI Int'l, Inc., B-250327.4, Apr. 27, 1993, 93-1 CPD ¶ 344 at 6 n.5. The protester's argument rests on the assumption that permitting some of the space to be separated from the remainder by a corridor is somehow inconsistent with requiring that the overall space fit within a 2:1 footprint. The two provisions are not inconsistent, however; they may be read in a manner that gives full effect to both--i.e., the storage and multipurpose rooms are permitted to be separated from the remainder of the space by a corridor so long as the overall dimensions of the space still comply with the 2:1 ratio. In any event, even assuming that the storage and multipurpose rooms could be excluded for purposes of determining compliance with the 2:1 ratio, the proposed space layout that Barnesville submitted with its offer does not demonstrate compliance with the required ratio. That is, the protester's drawing does not demonstrate that the proposed space will comply with the requirement that it be no more than twice as

long as it is wide even when the two rooms in question are excluded from the calculation.

Next, the protester argues that it satisfied the intent of the requirement that the space be no more than twice as long as it is wide by proposing a plan for subdividing the space that provides for a large open space of the required rectangular shape. It is the role of the agency, not the lessor, to determine how the interior space will be subdivided, however. See SFO § 5.17. Moreover, the requirement is that the overall space be no more than twice as long as it is wide, not that it be possible to subdivide the space in a manner that results in a large open area meeting the 2:1 requirement.

The protester further argues that the 2:1 ratio requirement has been ambiguous from the outset. We will not consider this argument because it was not raised in a timely manner. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of proposals be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (2008). Here, the requirement that the leased space be no more than twice as long as it is wide was included in the SFO at the time it was issued. Accordingly, to be timely, any protest of the requirement would have had to be raised prior to the closing time set for receipt of initial offers on December 14, 2007. See Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 15 at 6 n.6.

The protester also complains that the agency failed to furnish it with a debriefing. An agency's failure to provide a debriefing is not a matter that we will consider. This is because the scheduling of a debriefing is a procedural matter that does not involve the validity of an award. The Ideal Solution, LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2; Canadian Commercial Corp., B-222515, July 16, 1986, 86-2 CPD ¶ 73 at 5.

Finally, in its comments on the agency report, the protester raised the argument that the real estate brokerage firm that conducted this acquisition on behalf of GSA had a conflict of interest in that it stood to benefit financially from the selection of a higher-priced offer. The protester points out in this connection that the broker's commission typically is a specified percentage of the rent paid the lessor, meaning that the broker will receive more compensation if it selects a higher-priced lessor to receive the award.

We will not consider this argument because it too is based on information that was provided to offerors in the solicitation, and thus, to be timely, should have been raised prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1). In this connection, the SFO notified offerors that:

For the purposes of this SFO, The Staubach Company (the Broker) is the authorized real estate broker representing GSA. . . . The government expects the Lessor to pay a commission to the Broker. . . . The commission will be negotiated between the Lessor and the Broker

and will be based on a lease term not to exceed the firm term of the lease contract. . . .

SFO at 9. Given that the SFO made clear that the successful offeror was required to pay a commission to the broker and that the amount of the commission was to be negotiated between the offeror and the broker, offerors were on notice of the procedure regarding the broker's commission, and any challenge to the procedure should have been filed before the closing time for receipt of proposals.

The protest is denied.

Gary L. Kepplinger
General Counsel