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Decision

Matter of: The Metropolitan Square Associates, LLC

File: B-409904

Date: September 10, 2014

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Richard L. Moorhouse, Esq., Greenberg Traurig, LLP, for 1722 Eye Street Associates, L.P., the intervenor.

Michael P. Klein, Esq., and Edith L. Toms, Esq., General Services Administration, for the agency.

Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's determination that the protester's building was not entitled to a historic property price evaluation preference is denied where the record shows that the protester did not provide satisfactory documentation establishing that its proposed building qualified as a historic property under the solicitation's evaluation criteria for application of the preference.

DECISION

The Metropolitan Square Associates, LLC, of Washington, DC, protests the award of a lease to 1722 Eye Street Associates, L.P., of Washington, DC, by the General Services Administration (GSA), under request for lease proposals (RLP) No. 13-NCR_Oct2013, for the lease of office space in Washington, DC. Metropolitan challenges the agency's determination that its proposed building was not entitled to a historic property price evaluation preference.

We deny the protest.

BACKGROUND

The United States Department of Treasury currently occupies 81,088 square feet of space at the Metropolitan Square building at 655 15th Street, NW, Washington, DC,

which is leased from the protester. Because the lease expires on December 31, 2014, GSA sought to procure a new lease to fulfill Treasury's need for office space, which is expected to be approximately 54,771 square feet. Contracting Officer (CO) Statement at 1. To this effect, on September 30, 2013, GSA posted a notice on the Federal Business Opportunities (FedBizOpps) website announcing the agency's intent to satisfy the Treasury's requirement through the Automated Advanced Acquisition Program (AAAP).¹ See Agency Report (AR), Tab 25, FedBizOpps Notice, at 1.

The RLP sought to lease a minimum of 5,000 American National Standards Institute/Building Owners and Manager's Associations Office Area (ABOA) square feet² of contiguous office space within a specified area in Washington, DC for one of the following terms: (1) a 5-year term, (2) a 5-year term with one 5-year renewal option, or (3) one 10-year term, at the election of the government.³ See RLP §§ 1.02A and F.

The RLP advised that award was to be made to the lowest-priced, technically acceptable offeror. Id. § 4.03. The RLP also provided for the assessment of a price evaluation preference for properties located in historic districts, and for properties designated as historic. The price evaluation preference was to be applied by reducing the price of any offer qualifying for a preference by an applicable percentage set forth in the solicitation.

¹ The AAAP is a GSA on-line procurement vehicle that allows offerors to electronically offer space for lease to the federal government. Participants that register in the program are allowed to submit and update offers to lease space to the federal government within specified timeframes, in response to a standard RLP issued annually. See <http://www.gsa.gov/portal/content/168395>; AR, Tab 3, Decl. of AAAP Senior Project Manager, at 1. Under the process, GSA does not conduct negotiations with offerors. The agency only permits offerors to add missing information or to correct apparent mistakes. Participants agree to comply with GSA's standard lease terms, allowing for the evaluation of offers based on the same criteria with price being the only discriminator. Id.

² ABOA square feet refers to the area available for use by a tenant for personnel, furnishings, and equipment, and is generally synonymous with useable square feet. See Gordon & Soraya Diase Coffelt, B-408025, May 30, 2013, 2013 CPD ¶ 137 at 2 n.2.

³ The specified area was Washington, DC, no further east than 7th Street NW; no further south than Constitution Avenue NW; no further west than 20th Street NW; and no further north than L Street NW. See CO Statement at 3; AR, Tab 27, AAAP Property List, at 1.

As relevant here, with regard to historic properties, the evaluation preference was to be given to properties based on the total annual ABOA square feet as follows:

1. First to suitable Historic Properties within a Historic District, a 10 percent price preference.
2. If no suitable Historic Property within [a] Historic District is offered, or the 10 percent preference does not result in such property being the lowest price[d] technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within Historic Districts.
3. If no suitable non-Historic, developed, or undeveloped site within a Historic District is offered, or the 2.5 percent preference does not result in such property being the lowest price[d] technically acceptable offer, the Government will give a 10 percent price preference to suitable Historic Properties outside of Historic Districts.
4. Finally, if no suitable Historic Property outside of Historic Districts is offered, no historic price preference will be given to any property offered.

Id. § 2.05D.

The RLP provided definitions that were to be used to determine the applicability of the preferences. A determination of eligibility was defined as “a decision by the Department of Interior that a district, site, Building, structure, or object meets the National Register criteria for evaluation although the Property is not formally listed in the National Register.” Id. § 2.05B.1. The solicitation defined a historic district to mean “a geographically definable area . . . possessing a significant concentration, linkage, or continuity of sites, Buildings, structures, or objects united by past events or aesthetically by plan or physical development [and] may also comprise individual elements separated geographically but linked by association or history [and t]he District must be . . . determined eligible for inclusion in the National Register of Historic Places (NRHP).”⁴ Id. § 2.05B.2. A Historic Property was defined as “any prehistoric or Historic District, site, Building, structure . . . included in or . . . determined eligible for inclusion in the NRHP maintained by the Secretary of the Interior.” Id. § 2.05B.3.

⁴ NRHP is the national register of districts, and sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture that the Secretary of Interior is authorized to expand and maintain under the National Historic Preservation Act. RLP § 2.05B.4.

To qualify for a preference, the offeror was required to provide satisfactory documentation that its proposed building qualified for that preference. Id. § 2.05G. The RLP indicated that if an offeror claims a historic preference, it must provide the following documentation: (1) a letter from the National Park Service stating that the property is listed in the NRHP or eligible for listing, with a date of the listing/decision; (2) a letter from the relevant state historic preservation office stating that the property is listed in the NRHP; or (3) on a statewide register, or eligible for inclusion, with a date of the listing/decision, or the NRHP identification number and date of listing available from the NRHP database. Id. § 3.06F

Metropolitan submitted an offer to provide the building at 655 15th Street (the building under lease for the incumbent requirement). In its proposal, the protester identified the building as a historic property located within a historic district. Protest at 8. The AAAP senior project manager, who is responsible for identifying the lowest-priced offeror within the AAAP inventory meeting the RLP requirements, requested that Metropolitan submit the required documentation to support the historic price evaluation preference. AR, Tab 3, Decl. of AAAP Senior Project Manager, at 2. Metropolitan submitted two NRHP nomination forms:⁵ (1) a 1978 form for the National Metropolitan Bank Building at 613 15th Street, and (2) a 1978 form for the Chase's Theater and Riggs Building, 1426 G Street NW and 615-27 15th Street NW, Washington, DC. AR, Tab 7A, Metropolitan Bank Nomination Form; Tab 7B, Chase/Riggs Building Nomination Forms.⁶

Based on the offers received in response to the RLP, the AAAP senior project manager found that the awardee's proposed building at 1722 Eye Street NW, Washington, DC, was the lowest-priced acceptable offer, with a net present value of

⁵ A nomination form is a legal document submitted by a state, federal, or local government or a private party to the National Park Service (NPS) to have a specific property considered for inclusion in the NRHP. See 36 C.F.R. part 60. The form, among other things, includes a description of the present and original physical appearance of the property being nominated for inclusion in the NRHP, and is used by the Secretary of Interior to add properties to the NRHP. Id. § 60.1(b).

⁶ As discussed below, the protester contends that the historic property designation for the 613 15th Street building applies to the 655 15th Street building, into which the facade of the former building was incorporated; the protester does not specifically make a similar claim with respect to the 1426 G Street and 615-27 15th Street building, which were also incorporated into or are now encompassed within the 655 15th Street building. In any event, we conclude that GSA reasonably rejected the protester's claim that the 655 15th Street building was entitled to the historic property designation based on the documentation submitted concerning the 613 15th Street and the 1426 G Street and 615-27 15th Street buildings.

\$[deleted] ABOA square feet--if Metropolitan did not receive the full 10 percent price evaluation preference. CO Statement at 4. Metropolitan had the next lowest-priced offer without the full price evaluation preference, with a net present value of \$[deleted] ABOA square feet. Id.

The CO, who was responsible for evaluating whether an offeror was entitled to a historic preference, determined that the nomination form for the 613 15th Street building was not applicable to the current Metropolitan Square Building at 655 15th Street. In this regard, the agency explains that it understood that the 613 15th Street building detailed in the 1978 nomination form had been a 7-story building that was approximately 46,700 square feet, and that this building had been demolished, with the exception of its facade. AR at 8. In contrast, the agency understood that the 655 15th Street building is a modern 12-story office tower comprised of 598,491 rentable square feet that was built in the early 1980s, and that incorporates the facade of the former 613 15th Street building. Id.

The AAAP senior project manager subsequently requested that Metropolitan provide additional support for its assertion that the modern 12-story office tower should be considered a historic property within a historic district. AR, Tab 3, Decl. of AAAP Senior Project Manager, at 4-5. Metropolitan submitted three additional documents: (1) a DC real property tax bill for the 655 15th Street building with a mailing address at 613 15th Street, (2) a certificate stating that 613 15th Street was listed in the NRHP as of September 13, 1978, and (3) a certificate stating that 613 15th Street is in the Fifteenth Street financial historic district, and was listed in the NRHP as of October 12, 2006. See AR, Tab 10A, Tax Record and Map for 613 15th Street; Tab 10B, Historic Building Certificate for 613 15th Street (Sept. 13, 1978); Tab 10C, Historic Building Certificate (Oct. 12, 2006). Metropolitan also informed the agency that the offered building had received a historic building evaluation preference in non-GSA procurements. CO Statement at 5.

After consulting with agency counsel and the GSA Director for the Center for Historic Buildings, the CO concluded that the building Metropolitan offered was not entitled to a price evaluation preference as a historic building. Id. at 5. Specifically, the CO found that in the time since the original historic designation was given to the building at 613 15th Street, and to the other historic buildings which had been incorporated into the building at 655 15th Street, the original buildings were demolished with only a portion of the facades remaining as attachments to that building. Id.; AR, Tab 4, Decl. of GSA Director for the Center for Historic Buildings, at 2-4; Tab 17, CO's Memorandum to File (undated), at 1-2. In this regard, the CO found the single modern 12-story tower at 655 15th Street was much larger than the original buildings, including 613 15th Street, both in footprint and height, and that it was unlikely that the modern building would receive designation as a historic building. CO Statement at 5-6. The CO also found that only a portion of the 655 15th Street building was located within the historic district, but the resolution of whether Metropolitan should be entitled to receive a percentage of the preference

was not material because Metropolitan would only be low in the circumstance where it received the full 10 percent evaluation preference for offering a historic property. Id.

On May 27, the CO executed the lease with 1722 Eye Street. This protest followed.

DISCUSSION

Metropolitan argues that GSA's determination not to apply the price evaluation preference to its proposed building was unreasonable and not in accord with the terms of the RLP. Metropolitan contends that its proposed building should have been treated as a historic property because the legal address of the building is still 613 15th Street, because the same 613 15th Street address and building was certified to be a historic building in a historic district by the NPS, and because notwithstanding that 655 15th Street is a modern 12-story building, 613 15th Street has been incorporated within 655 15th Street and should have been regarded as eligible to be included in the NRHP as a historic building as contemplated by the RLP criteria. For the reasons discussed below, we find no basis to sustain the protest.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester bears the burden of proving that an evaluation was unreasonable, and mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Wash., Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Metropolitan argues that the information it provided, as contemplated by the RLP, demonstrated that 655 15th Street was entitled to the historic property price evaluation preference. As discussed above, to obtain the preference the RLP required an offeror to provide satisfactory documentation that its building qualified as a historic property. RLP § 2.05G. To determine that the building was a historic property, the RLP required an offeror to provide a determination by the Department of Interior that its building was either in the NRHP or otherwise eligible for inclusion in the NRHP to show that its building was entitled to the preference. Id. §§ 2.05B.1, B.3. To claim the preference, the RLP required an offeror to submit one of the following: (1) a letter from the National Park Service stating that the property is listed in the NRHP or eligible for listing, with a date of the listing/decision; (2) a letter from the State Historic Preservation Office stating that the property is listed in the NRHP; or (3) on a statewide register, or eligible for inclusion, with a date of the listing/decision, or the NRHP identification number and date of listing available from the NRHP database. Id. § 3.06F.

Although Metropolitan proposed to provide the building at 655 15th Street, the record shows that the protester did not provide evidence of a determination by the Department of Interior that this building was either in the NRHP or otherwise eligible for inclusion in the NRHP. Instead, all of the evidence cited by the protester concerning the historical designation that the CO considered pertained to 613 15th Street. Because none of the evidence in Metropolitan's proposal, or other evidence, reflected that the Secretary of Interior had determined the modern building at 655 15th Street to be in the NRHP or eligible to be included in the NRHP, we find the CO's determination that the protester's offer was not entitled to a price evaluation preference was reasonable and in accord with the criteria. That is the record here shows that the protester's proposal did not contain satisfactory documentation that their property qualified as a historic property for purposes of receiving a price evaluation preference.

Next, Metropolitan argues that GSA should have considered the historic property designation for 613 15th Street to have applied to the modern building at 655 15th Street. As discussed above, to support applying the preference on this basis, Metropolitan submitted two nomination forms, a DC real property tax bill, and two certificates certifying that 613 15th Street is a historic property in a historic district. Based on these documents, Metropolitan argues that the CO should have viewed the 613 15th Street building to be the same historic building as the 655 15th Street building that incorporated it. Based on our review of the record, we conclude that the CO reasonably determined that the historic property designation for the 613 15th building should not apply to the 655 15th Street building.

With regard to the 1978 nomination form for the building at 613 15th Street, the description of that building does not describe the features of the 655 15th Street building. See AR, Tab 7A, Metropolitan Bank Nomination Form Nominating Form. The record further shows that since the issuance of this document, the 613 15th Street building was demolished, except for its facade, which was incorporated into the 655 15th Street building. AR, Tab 4, Decl. of GSA Director for the Center for Historic Buildings, at 2; CO's Memorandum to File (undated), at 1-2. As the agency notes, the 613 15th Street building was approximately 46,700 square feet and 7 stories tall, whereas the 655 15th Street building offered by Metropolitan is a modern 12-story building completed in the early 1980s, with 598,491 rentable square feet. CO Statement at 4.

Metropolitan concedes that 613 15th street was completely incorporated into the 655 15th Street building, but nonetheless contends that the 613 15th Street building still exists because the facade foundation bricks, and other architectural elements were retained. Protester's Comments at 19. Given the drastic changes to the property, we find that the CO reasonably concluded that the 613 15th Street building no longer exists as a separate building, and reasonably rejected the notion

that the former 46,700 square feet and 7-story building described in the 1978 nominating form is the same as the much larger 12-story building that exists today.

For similar reasons, the certificates concerning the 613 15th Street building also do not demonstrate that the 655 15th Street Building qualified as a historic property for price evaluation purposes. The first certificate, which listed the 613 15th Street building in the NRHP, was issued in 1978--prior to the demolition of that building in the 1980s. The other certificate stated that the 613 15th Street building was located in a historic district. We find that these certificates are not relevant to the issue of the preference under the RLP, as the record shows that the only remaining portion of the 613 15th Street building is its facade, which was incorporated into the much larger 655 15th Street building. Therefore, we also find that the contracting officer reasonably concluded that the certificates, like the nomination forms, did not establish the 655 15th Street building to be a historic property eligible for a price evaluation preference.⁷

As to the DC real property tax bill, Metropolitan contends that the tax bill shows that the legal address of the 655 15th Street building is 613 15th Street. See AR, Tab 10A, Tax Record and Map for 613 15th Street. The protester argues that the tax bill demonstrates that the modern building is the same as the historic building--notwithstanding the demolition of the older building and its incorporation into the modern 655 15th Street building. See Protest at 8; Comments at 19. We, however, are not persuaded that the address where the DC taxing authority sends the tax bill to the owners of the 655 15th Street building is particularly relevant, in light of the specific criteria set out in the RLP for determining whether an offeror's building should receive a preference as a historic building. On this record, we conclude that the CO reasonably found that the DC real property bill did not establish that Metropolitan's proposed building was entitled to receive the historic property price evaluation preference.

Finally, Metropolitan argues that the evaluation was unreasonable because, as indicated above, two other federal agencies, the Millennium Challenge Corporation, and the U.S. Chemical Safety Board, have found 655 15th Street to be a historic property for purposes of applying a historic property evaluation preference. Protester's Comments at 20. However, our Office has long recognized that different evaluation panels may reasonably reach different conclusions regarding the quality of an offeror's proposal given the subjective judgment necessarily exercised by

⁷ Metropolitan also argues that the District of Columbia Historic Preservation Office is "arguably the best judge of whether the property is historic." Protester's Comments at 5. As discussed above, however, the solicitation required determinations to be made by the Department of Interior regarding a building's historic property status, and did not mention the District of Columbia Historic Preservation Office. RFP §§ 2.05B.1-B.3.

evaluators. See Next Tier Concepts, Inc., B-406620.3, B-406620.4, Nov. 13, 2012, 2013 CPD ¶ 5 at 4. Thus, how other agencies have determined the applicability of a historic property evaluation preference to the protester's property is not controlling and, therefore, does not establish that the agency's judgment was unreasonable under the price evaluation criteria here.

In sum, Metropolitan has not cited any provision in the RLP, or any other legal authority, to support its position that GSA was required to grant a historic property price evaluation preference to the 655 15th Street building based on the documents provided concerning the historic property designation granted to the 613 15th Street building. Similarly, none of the information provided by the protester to the agency or cited during the protest demonstrates that GSA unreasonably found that the 655 15th Street building is not the same as the 613 15th Street building which received a historic property designation.

The protest is denied.

Susan A. Poling
General Counsel