



Decision

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Matter of: Dr. Rishi Saxena

File: B-416500

Date: August 30, 2018

David A. Rose, Esq., The Rose Consulting Law Firm, LLC, for the protester.
Deborah K. Morrell, Esq., and Donald C. Mobly, Esq, Department of Veterans Affairs, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of proposals and source selection for award of a lease is denied where record shows agency found that protester's offered building failed to meet a material solicitation requirement such that it was ineligible for award, and protester has not argued or demonstrated that the agency's conclusion was incorrect or unreasonable.

DECISION

Dr. Rishi Saxena, of Nashville, Tennessee, protests the award of a lease to Brown Cat Development, LLP, of Valdosta, Georgia, under request for proposals (RFP) No. VA248-17-R-0564 issued by the Department of Veterans Affairs (VA) for the lease of a building to house a community-based outpatient clinic in Valdosta, Georgia. The protester argues that the agency miscalculated proposals and made an unreasonable source selection decision.

We deny the protest.

The RFP anticipates the award, on a best-value tradeoff basis, of a lease for a 10-year base period (a 5-year firm period¹ and an additional 5-year period) and an additional 5-year option period, considering price and the following non-price considerations, in

¹ The RFP provided that, after performance of the initial 5-year period of the lease, the agency retained termination rights any time thereafter. RFP at 4.

order of importance: quality of location, quality of building/layout design, and past performance. RFP at 4, 16-17. The RFP advised that proposals would be assigned technical and risk ratings, and that the non-price considerations were collectively significantly more important than price. RFP at 16. As is relevant to this decision, the RFP required offerors to propose buildings that had a minimum of 13,165 contiguous net usable square feet (NUSF) of space. RFP at 3.

The agency received a number of proposals in response to the solicitation and established a competitive range of two, consisting of the protester and the awardee. The agency engaged in discussions with the offerors and solicited, obtained, and evaluated final proposal revisions. On the basis of that evaluation, the agency selected Brown Cat, concluding that the building offered by the protester did not meet the solicitation's requirement for a minimum of 13,165 contiguous NUSF of space. Agency Report (AR) exh. 8, Price Negotiation Memorandum (PNM) at 6-7.

The agency advised the protester of its selection decision on February 22, 2018. After requesting and receiving a debriefing, the protester filed an agency-level protest with the contracting officer. In response to that protest, the agency advised that it would review its evaluation of proposals. The agency revisited its evaluation of proposals and concluded that there were some minor errors in the assignment of risk ratings to the protester's proposal, but ultimately concluded that none of those minor errors affected the agency's selection decision. AR, exh. 8a, Addendum to the PNM. After being advised of the agency's affirmation of its selection decision and requesting and receiving a debriefing, Dr. Saxena filed the instant protest.

In his initial protest, Dr. Saxena took issue with several of the weaknesses found in his proposal and identified in the agency's debriefing letter, and also argued that the cost premium associated with award to Brown Cat was not justified. The agency filed its report with our Office, and in response to that report, Dr. Saxena's comments focused on a number of findings identified in the individual evaluators' score sheets that were provided as part of the agency report. However, Dr. Saxena has not challenged the agency's fundamental finding that his proposed building does not meet the solicitation's minimum requirement for a building that has at least 13,165 contiguous NUSF of space.

As noted, the record shows that Dr. Saxena's proposal was found by the evaluation team to be unacceptable because it did not meet the requirement for 13,165 contiguous NUSF of space. AR, exh. 6, Source Selection Team Consensus Evaluation Report, at 2. The record further shows that this was a basis for finding that Dr. Saxena's proposal was eliminated from further consideration. Specifically, the PNM states as follows:

While Dr. Saxena's proposed rates were the lowest of the two offers, it is [a] concern, which is reflected in the SST [source selection team] evaluation of Dr. Saxena's proposal, that his building can provide the 13,165 contiguous NUSF required by the VA. Dr. Saxena's building is a multi-tenant building, with three floors subject to common area space such

as stairs, elevators, ducts, shafts, vestibules, public corridors or public toilets. While most of the square footage needed for the clinic would be on the 1st floor, the Lessor noted that additional square footage is available on the 3rd floor of the building. [Brown Cat's] building is offered as a single tenant building, with a gross, contiguous NUSF of 17,772, more than required by the RLP [solicitation]. On November 3, 2017, the CO [contracting officer] issued a request for final proposal to both offerors and received concurrence of no change in either of the two proposals. Therefore, the CO determined that Dr. Saxena's proposal did not meet the space requirements of this action in terms of square footage. Given the above facts, the CO determined that [Brown Cat's] proposal is the only remaining responsive offeror.

AR, exh. 8, PNM, at 6-7.

The record also shows that, after taking corrective action in response to Dr. Saxena's agency-level protest, the VA made minor changes to the numeric risk scores assigned to his proposal. However, those minor changes were essentially clerical rather than substantive in nature and did not reflect different or new underlying findings on the part of the agency in terms of the acceptability of the proposed building. In particular, the contracting officer explained that several of the risk point scores assigned to Dr. Saxena's proposal had been incorrect, and the correct scores resulted in a change to the total risk point score assigned to the proposal from 215 points to 218 points. Nonetheless, the agency made no change to its earlier finding that Dr. Saxena's proposed building did not meet the solicitation's requirement for 13,165 contiguous NUSF.

It is axiomatic that a proposal that fails to meet one or more material solicitation requirements cannot properly form the basis for the award of a contract. Galen Medical Associates, Inc., B-288661.4, B-288661.5, Feb. 25, 2002, 2002 CPD ¶ 44 at 2. Here, as discussed, the record shows that the VA found that Dr. Saxena's proposed building did not meet the minimum requirement of having at least 13,165 contiguous NUSF. Despite being afforded an opportunity to review the evaluation record in detail, Dr. Saxena has not argued or demonstrated that the agency's finding about the acceptability of his building was incorrect or unreasonable. We therefore conclude that the agency properly could not make award of the lease to the protester. We also need not consider any of the protester's remaining challenges in connection with the

evaluation of proposals or the source selection decision, since even if these allegations were correct, the protester's building still would be unacceptable and ineligible for award.²

The protest is denied.

Thomas H. Armstrong
General Counsel

² The protester has argued that he was required to represent whether his building contained asbestos, but that the awardee did not make a similar representation, so that the VA cannot be sure that the Brown Cat building also is asbestos free. The protester is mistaken. The awardee specifically represented as follows:

“Having been constructed in 1997, **no asbestos containing materials were used** during construction per local, state, federal, and ANSI codes and standards. No asbestos containing materials have ever been used or located in this building.” AR, exh. 5.1, Brown Cat Final Proposal Letter, at 2 (emphasis in original).