



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ciaschi Rentals, Inc.

File: B-281497

Date: February 17, 1999

Edward C. Hooks, Esq., Harris, Beach & Wilcox, for the protester.
Lynn W. Flanagan, Esq., Department of Agriculture, for the agency.
Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably decided to take corrective action and resolicit for lease of office space to ensure a fair and impartial competition, where agency review of proposed award of lease disclosed that source selection was not documented and was based on unsupported evaluation conclusions, and where pricing information and other source sensitive information apparently had been disclosed to several offerors.

DECISION

Ciaschi Rentals, Inc. protests the cancellation of a solicitation for offers (SFO), issued by the Farm Service Agency (FSA), US Department of Agriculture (USDA), for the purpose of obtaining a 5-year lease for 6665 square feet of office space in Ithaca, New York, to serve as the new USDA Service Center for Tompkins, Schuyler, Chemung, and Seneca counties.

We deny the protest.

The SFO was issued by the FSA's Tompkins/Schuyler County Food and Agriculture Council (local FAC), which was also responsible for evaluating the offers received and awarding the lease, with the concurrence of the New York State FAC (state FAC). The local FAC was comprised of members of FSA and other locally based agencies which would occupy the leased office space. USDA Memorandum of Law at 1-2. Lease offers were to be evaluated on the basis of cost (the annual price per square foot) and technical merit (in accordance--after the space was determined to be in conformity with SFO requirements--with nine evaluation factors listed in descending order of importance). Price and technical merit were each to constitute 50 percent of the total evaluation score awarded. SFO at 8. After the successful offeror was determined on the basis of the cost and technical merit scoring, award was to be made "upon written notification, or execution of the lease" by the County Executive Director of the local FAC. Id. at 9.

The local FAC evaluated the six offers received with the following results:

<u>Offeror</u>	<u>Total Cost</u>	<u>Cost Score</u>	<u>Tech. Score</u>	<u>Total Score</u>
William Fransden #2	\$21.10/sq. ft.	39	47	86
ICS Development Partners	\$19.00	43	43	86
William Fransden #1	\$22.10	37	48	85
Ciaschi Rentals	\$17.00	48	33	81
Poalangeli Contractors	\$22.65	36	35	71
Center Ithaca TSDAssocs.	\$16.44	50	13	63

Technical Evaluation Scoring at 1-6; Cost and Technical Analysis at 1-2.

Based upon this evaluation, award of the lease to Fransden on the basis of its #2 offer was recommended. By letter of July 30, 1998, the local FAC forwarded the award recommendation to the state FAC. Memorandum from Local FAC to State FAC (July 30, 1998); FAC Minutes of July 29, 1998, at 1.

After the submission of the award recommendation, by letter of August 11, Tompkins County Soil and Water Conservation District protested to the state FAC the location and road safety of the site proposed by Fransden. Letter from Tompkins County Soil and Water Conservation District to State FAC (Aug. 11, 1998). By letter of August 19, the USDA Natural Resources Conservation Service requested the state FAC to further study what constituted a reasonable price for the lease. Letter from Natural Resources Conservation Service to State FAC (Aug. 19, 1998). By letter of August 20, USDA New York Rural Development contended that three of the offers received were nonresponsive and requested an explanation of why the Fransden lease was so beneficial as to merit the price. Letter from New York Rural Development to State FAC (Aug. 20, 1998). By memorandum of August 20, the state FAC requested the local FAC to reevaluate the market survey for the lease and to request clarifications from Ciaschi and Center Ithaca regarding their costs. Memorandum from State FAC to Local FAC (Aug. 20, 1998). Also, on August 24 and 25, respectively, Center Ithaca and Ciaschi responded to requests for clarifications. The local FAC informed the state FAC that realistic lease prices

could not be obtained without providing potential lessors with the agency's building specifications and that the parking available at Ciaschi's site could be inadequate. Memorandum from Local FAC to State FAC (Aug. 20, 1998). A lease market survey was completed in late August which showed that only one site (which was outside the area to which this lease had been restricted) was available at that time, and that the lease, if there were available sites, should cost from \$12 to 18 per square foot. Memorandum to State FAC (Sept. 2, 1998).

On September 9, the state FAC met to discuss the site location that would best meet the concerns of the parties that would occupy the Service Center and how Fransden's rent could be justified in view of the lower rent offered by Ciaschi. Minutes of State FAC Meeting, September 9, 1998. The state FAC selected Ciaschi's offer. Id.; Memoranda from State FAC to Local FAC (Sept. 10 and 18, 1998). The state FAC then directed the local FAC to award the lease to Ciaschi. Id. By letter of September 21, the County Executive Director advised Ciaschi that, in accordance with instructions from the state FAC, "this letter confirms the lease award to Ciaschi . . . We will contact you in the near future to arrange a time and date for you to stop to sign the lease agreement." Letter from Local FAC to Ciaschi (Sept. 21, 1998).

Subsequent to this notification, protests were filed by Center Ithaca and ICS challenging the selection decision. Memorandum of Law at 5. By letter of Oct. 19, 1998, the state FAC advised offerors that upon review of those protests, the September 21 notice of award to Ciaschi was cancelled and that the state FAC would shortly issue a new SFO and perform the technical evaluations. Letter from State FAC to Ciaschi (Oct. 19, 1998).

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. We do not believe that an agency must conclude that a protest is certain to be sustained before it may take corrective action; where the agency has reasonable concern that there were errors in the procurement, even if the protest could be denied, we view it as within the agency's discretion to take corrective action. See Main Bldg. Maintenance, Inc., B-279191.3, Aug. 5, 1998, 98-2 CPD ¶ 47 at 3. Moreover, we will not object to the specific proposed corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Id.

Center Ithaca's agency-level protest that challenged the award alleged that government personnel had disclosed procurement sensitive information to other offerors during the competition. Center Ithaca Protest Letter, Oct. 2, 1998, at 1. Center Ithaca's protest contained copies of local FAC evaluation documents including scores and ranking. ICS in its agency-level protest also argued that it should have received the lease based on its ranking and score. (Its protest letter contained its score and Ciaschi's.) ICS Protest Letter, Oct. 8, 1998. According to

Center Ithaca, it received the evaluation documents and prices in response to "requests under the Freedom of Information Act." Id. at 2. As a result, the state FAC was concerned that source sensitive information was improperly released. Further, it appears that Ciaschi may also have been provided agency estimates for utilities and other services obtained under the prior attempt to obtain this office space. The agency explains that Ciaschi's original offer under that SFO did not include the costs for utilities and other services. The local FAC used an estimated figure for these services for evaluation purposes. Ciaschi's subsequent revised offer was identical in cost to the estimated figure used by the agency for the evaluation. See Memorandum of Law at 1, 8. The USDA's Office of Inspector General has been asked to review the acquisition for possible procurement integrity violations. Id. Based on its concerns regarding the allegations of procurement irregularities in the local competition, the state FAC elected to cancel and resolicit. An agency may properly cancel a solicitation where that decision is reasonably based on agency concerns that the integrity of the procurement process appears to have been undermined by the improper conduct of an agency procurement official. See DGS Contract Servs., B-243647.2, Sept. 18, 1991, 91-2 CPD ¶ 258 at 2.

Moreover, during the course of this protest the agency identified an additional reason for canceling this lease acquisition and to resolicit. The agency reports that, in reviewing the state FAC's decision to award to Ciaschi, the agency found no documentation supporting the state FAC's apparent reevaluation of the offers that led to the reversal of the local FAC's decision. As the agency points out, there is no reference in the state FAC's meeting notes that the group used the evaluation scheme in the SFO in selecting Ciaschi. After reviewing the record, we have no basis to disagree with the agency's conclusion that the state FAC provided no adequate support for its determination to make award to Ciaschi, thus reversing the local FAC's decision to award to Fransden. For example, we note that although the local FAC determined, as part of its evaluation of offers, that the location of Ciaschi's office space was not suitable for the FSA's needs because of its layout, the need for extensive remodeling, and limited parking, the state FAC simply concluded that Ciaschi's location and parking were acceptable without providing any reasoning for this conclusion. See Technical Evaluation Worksheet for Ciaschi, undated. It is also not clear whether the state FAC evaluated the ICS offer, which was the second highest scored offer (after Fransden's #2 offer), and might arguably have been in line for award. Without adequate support for the state FAC evaluation, a proper award could not be made. Engineering and Computation, Inc., B-261658, Oct. 16, 1995, 95-2 CPD ¶ 176 at 3.

In view of the flawed evaluation and other possible procurement irregularities including disclosure of the technical evaluations, scoring, ranking and prices of the competitors, we think the agency's decision to cancel and resolicit constituted reasonable and appropriate corrective action.¹

The protest is denied.

Comptroller General
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¹Even assuming Ciaschi's contention that the September 21 letter constituted an award of the lease, Ciaschi's assertion that it is owed damages for the agency's breach of that lease concerns a dispute between Ciaschi and the agency that is not reviewable by our Office. See 4 C.F.R. § 21.5(a) (1998); Aero Realty Co., B-250985, Mar. 2, 1993, 93-1 CPD ¶ 191 at 4 n.6.