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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

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## Decision

**Matter of:** Hines Chicago Investments, LLC

**File:** B-292984

**Date:** December 17, 2003

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Richard J. Conway, Esq., and Robert J. Moss, Esq., Dickstein Shapiro Morin & Oshinsky, for the protester.

John S. Pachter, Esq., and Jonathan D. Shaffer, Esq., Smith, Pachter, McWhorter & Allen, for Higgins Development Partners LLC, an intervenor.

Carl E. Smith, Esq., and Ruth Kowarski, Esq., General Services Administration, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest that agency improperly failed to evaluate option pricing, as required under the solicitation, is denied where record shows that option pricing was in fact considered.
  2. Protest that award was improper because, contrary to solicitation requirement that offered space be vertically and horizontally contiguous, awardee proposed a vacant floor as expansion space, is denied where protester was informed during the procurement that agency's interpretation of requirement would permit offerors to propose a vacant floor for future expansion.
  3. Agency was not required to hold discussions regarding areas of protester's proposal that were weak, but acceptable, and that did not prevent the protester from having a reasonable opportunity for award.
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### **DECISION**

Hines Chicago Investments, LLC protests the award of a contract to Higgins Development Partners, LLC under solicitation for offers (SFO) No. GS-05B-17010, issued by the General Services Administration (GSA) for the construction and lease of a field office for the Federal Bureau of Investigation (FBI) in Chicago. Hines alleges several evaluation and other improprieties in the procurement.

We deny the protest.

The solicitation, which anticipated the award of a 14-year lease, with two 10-year option terms, provided for a “best value” award based on evaluation of (in descending order of importance) design concepts for building configuration and expansion; building systems; exterior and interior design; management plan; and price (which was significantly less important than the technical factors).<sup>1</sup> Following the submission and evaluation of initial proposals, multiple rounds of discussions, and the submission and evaluation of best and final offers (BAFO), Higgins’s proposal was rated the highest under the technical factors and offered the second lowest price, while Hines’s was rated the second highest under the technical factors and offered the lowest price. Higgins’s proposal was selected as the best value to the government and this protest followed.

Hines raises a number of arguments concerning the propriety of the evaluation and other aspects of the procurement. We have reviewed the record and find that Hines’s arguments are without merit. We discuss the most significant arguments below.

#### OPTION YEAR PRICING

The solicitation provided that the agency would perform a present-value price evaluation for the base and option periods based on the annual price per square foot of office area. Hines asserts that, in making the award decision, GSA considered only its \$0.80 base period cost advantage over Higgins.

This assertion is not supported by the record, which indicates both that the agency performed a present-value analysis of the offered prices for the base and option years for the offerors and that, in determining the best value proposal, the contracting officer based her conclusions on the present value for the base and option periods. In this regard, the contracting officer stated as follows:

Higgins’ offer was the second lowest, but included significant benefits judged against the lowest offer and therefore represents the greatest value to the Government. . . .

The price differential of the Higgins proposal compared to the lowest price proposal is [DELETED]<sup>2</sup> per occupiable square foot, per annum,

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<sup>1</sup> This procurement was conducted in two phases. This protest concerns phase II, in which the five most highly qualified offerors under phase I were invited to compete.

<sup>2</sup> The record shows that the actual differential was [DELETED], and that the [DELETED] differential included in the analyses was the result of a mathematical error. Statement of Contracting Officer, Nov. 26, 2003. This error made Hines’s price advantage seem greater than it was, and thus did not prejudice Hines.

Present Value calculation, considering all price components for the firm term including the renewal option periods.

Based on actual dollars, the price differential is [DELETED] per net rentable square foot based on the rental rate offered by the lower price proposal. This price differential is justified to select Higgins because of their far technically superior offer.

Price Negotiation Memorandum (PNM) at 57-58. Hines's argument seems to be based solely on the last portion of the quoted contracting officer finding. However, there is no basis for disregarding the rest of the statement and, reading it as a whole, it is clear that the agency did evaluate the present value of the prices proposed for the base and option periods, and did consider the differences in those prices when selecting Higgins for award.

#### MANDATORY SOLICITATION REQUIREMENT

The solicitation required the space offered to be vertically and horizontally contiguous. Hines protests that Higgins's proposal did not meet this requirement because Higgins proposed to leave one floor vacant for future expansion.

This argument is without merit. GSA asserts, and Hines does not dispute, that during discussions in June 2003 the contracting officer informed Hines that it interpreted this requirement to allow offerors to propose a floor of vacant space for future expansion. Agency Report (AR) at 12. Not only was Hines thus aware that a vacant floor would be permitted for expansion, but Hines itself proposed leaving a vacant floor as an alternate expansion plan, with no indication it believed this constituted a deviation from the solicitation requirement.<sup>3</sup> Hines BAFO, Expansion Plan Alt. 2.

#### DISCUSSIONS

Hines protests that GSA did not hold meaningful discussions with it because, among other things, GSA did not inform Hines that its proposed expansion plan was considered a significant weakness in its proposal.

While discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgment. Our role in reviewing the adequacy of discussions is to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award; an agency is not required to afford offerors all-encompassing discussions, or to discuss every

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<sup>3</sup> Since the solicitation did not specifically permit alternate proposals for future expansion, the agency did not evaluate Hines's alternate plan.

aspect of a proposal that receives less than the maximum score, and is not required to advise an offeror of a weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6. Nor is an agency required to identify weaknesses in a proposal that is technically acceptable, but presents a less desirable approach than other proposals received. Development Alternatives, Inc., B-279920, Aug. 6, 1998, 98-2 CPD ¶ 54 at 7.

The discussions were unobjectionable. GSA did consider Hines's expansion plan weak, and in identifying the differences in Hines's and Higgins's proposals, termed it a significant weakness. PNM at 32. Notwithstanding the use of that term, the weakness was only one of a number of weaknesses noted in Hines's proposal under the design concepts subfactor, PNM at 44-45, and Hines's proposal was considered fully acceptable under this subfactor and, in fact, was evaluated in the excellent range. Source Selection Evaluation Board Final Report at 34. In the final analysis, the weakness in Hines's expansion plan had no bearing on the award decision; rather, the agency found that Higgins's proposal offered enough advantages to make it the best value to the government. PNM at 55-58.<sup>4</sup>

## EVALUATION

Hines complains that GSA unfairly and improperly applied different standards in evaluating its and Higgins's proposals. For example, Hines notes that its building design was evaluated as lacking architectural cohesiveness between the main building, the annex and the parking garage; after being advised of this finding during discussions, Hines changed its design at significant additional cost. Hines maintains that Higgins's design also lacks architectural cohesiveness, but that the agency did not downgrade Higgins's proposal on this basis.

This argument is without merit. GSA explains that it found that Higgins's design has architectural cohesiveness because all structures were to be clad in architectural precast concrete with the same color and finish, all detailing and finishes for windows and/or exterior doors on all three structures were to have similar finishes in terms of color and materials, and windows and glass were to be the same color.

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<sup>4</sup> Hines also argues that GSA improperly provided Higgins with more comprehensive discussions than it provided Hines, since, while it did not tell Hines that its proposed expansion plan was a weakness, it did tell Higgins that its expansion plan was a deficiency because it was not developed or defined. Protester's Comments at 16-17. However, since GSA had found that Higgins's expansion plan was unacceptable, rather than just a weakness as with Hines's plan, this matter had to be brought to Higgins's attention. See Textron Marine Sys. B-255580.3, Aug. 2, 1994, 94-2 CPD ¶ 63 at 23 n.22.

Hines disputes GSA's conclusion, arguing, for example, that Higgins's main office building will have a glass façade with a thin concrete grid, while the annex will have no glass or grid. However, Hines has not provided any authoritative evidence that the feature it points to indicates a lack of cohesiveness or, more generally, that its interpretation of architectural cohesiveness as applied to this project, rather than the agency's, is the only correct one. Hines also has not argued or established that the agency applied a different standard of architectural cohesiveness in evaluating the two firms' designs. Accordingly, Hines has done no more than demonstrate disagreement with the agency evaluation, which is not a basis for finding the evaluation unreasonable. Korreck Optical, B-281800, Apr. 9, 1999, 99-2 CPD ¶ 4 at 4.

The protest is denied.

Anthony H. Gamboa  
General Counsel