



## Decision

**Matter of:** Melbourne Commerce, LLC

**File:** B-400049.2

**Date:** January 9, 2009

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Gregory Politis for the protester.  
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General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging rejection of offer for lease of office space is denied where offeror failed to furnish required evidence of a conditional commitment of funds in an amount necessary to prepare the space.

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### DECISION

Melbourne Commerce, LLC of Clearwater, Florida 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 argues that the agency erred in rejecting its offer based on the firm's failure to furnish evidence of a conditional commitment of funds in an amount necessary to prepare the space.

We deny the protest.

The SFO contemplated the award of a 10-year lease for a minimum of 18,508 square feet of office space. Of relevance to this protest, the solicitation required offerors to submit with their offers satisfactory evidence of at least a conditional commitment of funds in an amount necessary to prepare the space. The commitment was required to be signed by an authorized bank officer and, at a minimum, state the amount of the loan, its term in years, the annual percentage rate, and the length of the loan commitment.

Melbourne submitted its offer by the December 14, 2007 closing date. By letter dated January 18, 2008, the real estate brokerage firm that conducted this acquisition on behalf of GSA notified the protester that a number of the forms required to be

submitted as part its offer were either missing or incomplete. The letter specifically advised the protester that “a complete offer” was required to include the above-mentioned evidence of a conditional commitment of funds. Broker’s Letter to Protester, Jan. 18, 2008, at 1. The protester responded by furnishing some, but not all, of the requested items; one of the items that it failed to furnish was a conditional commitment of funds letter.

On March 6, the GSA broker sent Melbourne a letter requesting a final proposal revision (FRP). Like the letter of January 18, this letter advised the protester that a number of items were missing from its revised proposal and that they needed to be completed and returned with its FPR for Melbourne’s offer to be considered fully compliant. The letter again specifically advised the protester that “a complete offer” must include evidence of at least a conditional commitment of funds in an amount necessary to prepare the space. Broker’s Letter to Protester, Mar. 6, 2008, at 1. Melbourne again responded by furnishing some, but not all, of the items identified by the agency--and again, one of the items not furnished was evidence of a conditional commitment of funds.

By letter dated April 2, another firm that had submitted an offer in response to the SFO at issue here was notified that its proposal had been determined unacceptable. This company, Barnesville Development Corporation, protested to our Office on April 7, and the procurement process was suspended while the protest was pending. We denied Barnesville’s protest on June 30. Barnesville Dev. Corp., B-400049, June 30, 2008, 2008 CPD ¶ 132.

Upon receipt of notification that we had denied Barnesville’s protest, the GSA broker proceeded with final analysis of the other offers. On September 8, the contracting officer, who had reviewed the broker’s findings, awarded a lease to Rutherford & Strickland Elkton, Inc. The agency notified the protester that its offer was “deemed non-responsive to minimum requirements of the SFO.” Contracting Officer’s Letter to Protester, Sept. 19, 2008. In response to the protester’s request for clarification of the basis for the agency’s determination, the contracting officer explained that several required items were missing from its proposal, and that of greatest concern to her was the protester’s failure to submit the commitment of funds letter.<sup>1</sup> On October 16, Melbourne protested to our Office.

The protester first complains that the agency failed to notify it promptly that its proposal had been excluded from the competition. According to the protester, at all

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<sup>1</sup> The other missing items identified by the contracting officer were scaled floor plans; seismic acknowledgment; compliance with zoning; evidence of contractor experience, competency, and performance; and a copy of a license or certification to practice in the state of Florida for the individual and/or firm providing architectural and engineering services.

times during the solicitation process, it was “in full belief” that it had satisfied all solicitation requirements. Protest at 3.

There is no evidence in the record that the protester suffered any prejudice as a result of the timing of the agency’s notification that its offer had been excluded from the competition—the protester was given the same opportunity to protest the rejection of its offer that it would have received had it been notified of the rejection earlier in the process. See Carriage Abstract, Inc., B-290676, B-290676.2, Aug. 15, 2002, 2002 CPD ¶ 148 at 3 n.1. With regard to the protester’s argument that the agency effectively misled it to believe that it had satisfied the solicitation’s requirements, the record does not support this assertion. Rather, the record shows that the agency twice notified the protester that it needed to submit evidence of a conditional commitment of funds for its offer to be considered complete, and neither time did the protester respond by furnishing evidence of such a commitment; accordingly, we fail to see a reasonable basis for the protester’s apparent belief that its offer fully complied with the requirements of the SFO.

Next, Melbourne argues that it was unreasonable for GSA to reject its offer for failing to include the required commitment of funds letter. We disagree.

As noted above, the contracting officer rejected Melbourne’s offer on the ground that it was “nonresponsive” to the SFO requirements. Notwithstanding the contracting officer’s characterization, the requirement at issue concerns the offeror’s responsibility, not the technical acceptability of its offer. In this regard, as indicated by the heading under which the requirement was listed—“Evidence of Capability to Perform,” SFO ¶ 3.16—the requirement concerns the offeror’s ability to perform the contract, rather than the acceptability of its offer. Acquest Dev. LLC, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 5; Tomasz/Shidler Inv. Corp., B-250855, B-250855.2, Feb. 23, 1993, 93-1 CPD ¶ 170 at 6. An offeror who is found nonresponsive is not eligible for award. FAR § 9.103; Specialty Marine, Inc., B-292053, May 19, 2003, 2003 CPD ¶ 106 at 3. We will not question an agency’s nonresponsibility determination unless the record shows that it lacks a reasonable basis. Aulson & Sky Co., B-290159, May 21, 2002, 2002 CPD ¶ 87 at 5.

Here, Melbourne argues that it was unreasonable for GSA to reject its offer for failing to include the required commitment of funds letter given that it had furnished a commitment of funds letter in connection with a concurrent GSA procurement handled by the same contracting officer for the lease of space for the Internal Revenue Service (IRS). The protester argues that GSA should have recognized based on its submission of the commitment of funds letter for the IRS procurement that it had the financial capability to perform the contract here.

We disagree. The SFO here required evidence of at least a conditional commitment of funds in an amount necessary to prepare the space solicited—thus, clearly, the letter of commitment needed to demonstrate the conditional availability of funds for this project. The letter that Melbourne furnished in connection with the IRS

procurement did not demonstrate the availability of funds for the SSA project-- rather, it specified that the bank had approved a \$2 million loan to finance the IRS Melbourne project. Thus, given that the firm failed to furnish the evidence required by the SFO regarding commitment of funds for the project at issue, we see no basis to question the agency's decision to reject Melbourne's offer.

Finally, the protester complains that the agency incorrectly calculated its price per rentable square foot. The contracting officer explained in response to this argument that while she had misstated the protester's price per rentable square foot in her post-award communications with the protester, the misstated figure was not the one that the broker had used in his present value price evaluation. As a consequence, the alleged error in rentable square foot price had no impact on the evaluation and the protester suffered no prejudice as a result of it.

The protest is denied.

Gary L. Kepplinger  
General Counsel