

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of WALBERT PARTNERSHIP)
)
Under DGS RFP LA-5-92) Docket No. MSBCA 1633

April 24, 1992

Decision Summary:

Request for Proposal - Unexpressed Criteria - Appellant proposed an assemblage of property (parking and office space) in response to an RFP issued by DGS for office space and mandatory parking in an attempt to meet the geographic boundary requirements set forth in the RFP which required that the offered office space be specifically in an area bounded by North Avenue to the south.

None of the Appellant's assembled property was "specifically in" the area bounded by North Avenue to the south. However, DGS had an unwritten internal policy permitting consideration of property which "fronts on" the outer edge of a boundary street provided that the property has a post office postal address providing ingress and egress on such boundary street. Unexpressed criteria may not be considered in evaluating the acceptability of a proposal, nor may specific requirements or criteria (i.e., work statement) in an RFP be ignored by the evaluating agency. Here the Board found that the RFP unequivocally required that the offered property be "specifically in" certain boundaries and that Appellant's property was not specifically in the boundaries but, at best, could only be found to front on the outer edge of the southern boundary. The Board further found that the DGS unexpressed policy of considering proposals where the offered property "fronts on" the outer edge of a boundary was inappropriately applied to Appellant's proposal to initially determine whether Appellant's proposed property "fronts on" the North Avenue boundary. Appellant's proposal should have been rejected for failure to meet the boundary requirements since the "fronts on" policy is not set forth in the RFP.

APPEARANCES FOR APPELLANT:

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APPEARANCES FOR RESPONDENT:

Jeffrey Meyers, Esq.
Ass't Attorney General
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

Appellant timely appeals a Department of General Services (DGS) procurement officer's decision rejecting Appellant's offer relative to a Request for Proposals (RFP) for competitive sealed proposals for lease of office space in the northern section of Baltimore City for use by the Child Protective Services Agency of the Department of Human Resources.

Findings of Fact

1. The RFP was advertised on October 8, 1991, and initial proposals were due on November 18, 1991.
2. The RFP specified in relevant part as follows:

Specific Requirements

The State of Maryland requires real property for lease at a single location as follows:

a. Type and Amount

- (1) 41,000 net usable square feet of office space

b. Location: Baltimore City, Maryland specifically in the area bounded by:

- (1) North: Coldspring Lane

- (2) South: North Ave.

- (3) West: Garrison Boulevard, Clifton Avenue, Hilton Street

- (4) East: Harford Rd.

3. One of the several proposals submitted came from the Appellant. The office space proposed by Appellant was the Walbert Building whose postal address is 1800 North Charles Street. The Walbert Building is physically located approximately 175 feet south of North Avenue. North Avenue is the southernmost boundary of the boundary area set forth in the RFP.

4. Because the building proposed was outside of the solicitation area, Appellant was advised that its proposal would not be considered, and on January 2, 1992, Appellant filed a protest with the DGS procurement officer. The issue presented by the protest and appeal is whether a RFP (1) requiring office space within certain geographical boundaries and, also, requiring

parking spaces¹ to accompany the office space could be satisfied by supplying parking spaces within the boundaries and office space outside the boundaries through assemblage of office and parking space.²

5. On February 5, 1992 the procurement officer issued his final decision. The procurement officer found the proposal was not responsive (i.e., reasonably susceptible of being selected for award) because the building that was offered was outside of the boundary area set forth in the RFP and denied the protest. Appellant filed its Notice of Appeal from the final decision on February 13, 1992.

6. Appellant believes that its proposal should be considered because it has reached an agreement with the McDonald's franchisee whose property, the Payne property mentioned in

¹The parties disagree over whether parking is a mandatory requirement of the RFP. The RFP states that "the agency desires 107 parking spaces." An offeror's proposal may receive up to 30 favorable evaluation points out of 415 total points if certain parking is provided in the proposal. The Board finds that parking is a mandatory feature of the RFP at issue in this appeal.

²The RFP states under the heading "Specific Requirements" that:

- a. Type and Amount
 - (1) 41,000 net usable square feet of office space
- b. Location: Baltimore City, Maryland specifically in the area bounded by:
 - (1) North: Cold Spring Lane
 - (2) South: North Ave.
 - (3) West: Garrison Boulevard, Clifton Avenue, Hilton Street
 - (4) East: Harford Rd.

None of the Appellant's assembled property (Walbert Building and Payne property) is "specifically in" the area bounded by North Avenue to the south. However, DGS for several years has had an unwritten internal policy permitting consideration of property which "fronts on" the outer edge of a boundary street provided that the property has a post office postal address providing ingress and egress on such boundary street. Unexpressed criteria may not be considered in evaluating the acceptability of a proposal, nor may specific requirements or criteria (i.e., work statement) in an RFP be ignored by the evaluating agency. See Section 13-105, State Finance and Procurement Article; COMAR 21.05.03.A. Here the Board finds that the RFP unequivocally requires that the offered property be "specifically in" certain boundaries and that Appellant's property is not specifically in the boundaries but, at best, could only be found to front on the outer edge of the southern boundary. The Board further finds that the DGS unexpressed policy of considering proposals where the offered property "fronts on" the outer edge of a boundary was inappropriately applied to Appellant's proposal to initially determine whether Appellant's proposed property "fronts on" the North Avenue boundary. Appellant's proposal should have been rejected for failure to meet the boundary requirements since the "fronts on" policy is not set forth in the RFP. However, the Board will consider the issue focused on by the parties (i.e., the "fronts on" issue) to expedite final review of the protest and appeal and ultimate award of a contract.

Footnote 2, has a postal address of 11 West North Avenue, allowing Appellant to utilize some of the Payne property for parking spaces. The Payne property fronts on North Avenue. However, a public street, Trenton Street, which may be used by both Appellant and Payne, separates the Payne property from the Appellant's property. See Exhibit A attached [Appellant's Exhibit 6].

7. At no time prior to the due date for receipt of proposals did Appellant protest the boundaries established in the RFP as required by COMAR 21.10.02.03 in order to preserve its rights to challenge the appropriateness of the boundaries.

Decision

The appeal presents the following issue: When the State puts out an RFP seeking office space located within certain geographical boundaries and the RFP also provides that the State requires parking spaces, can an offeror whose building is outside the boundaries satisfy the RFP's boundary requirements by providing parking spaces that are within the boundaries.³ The answer to this question is a qualified yes. The qualification is that the office building itself must have a post office postal address providing ingress and egress on the boundary line; a post office postal address for the parking facility on the boundary line alone will not suffice.

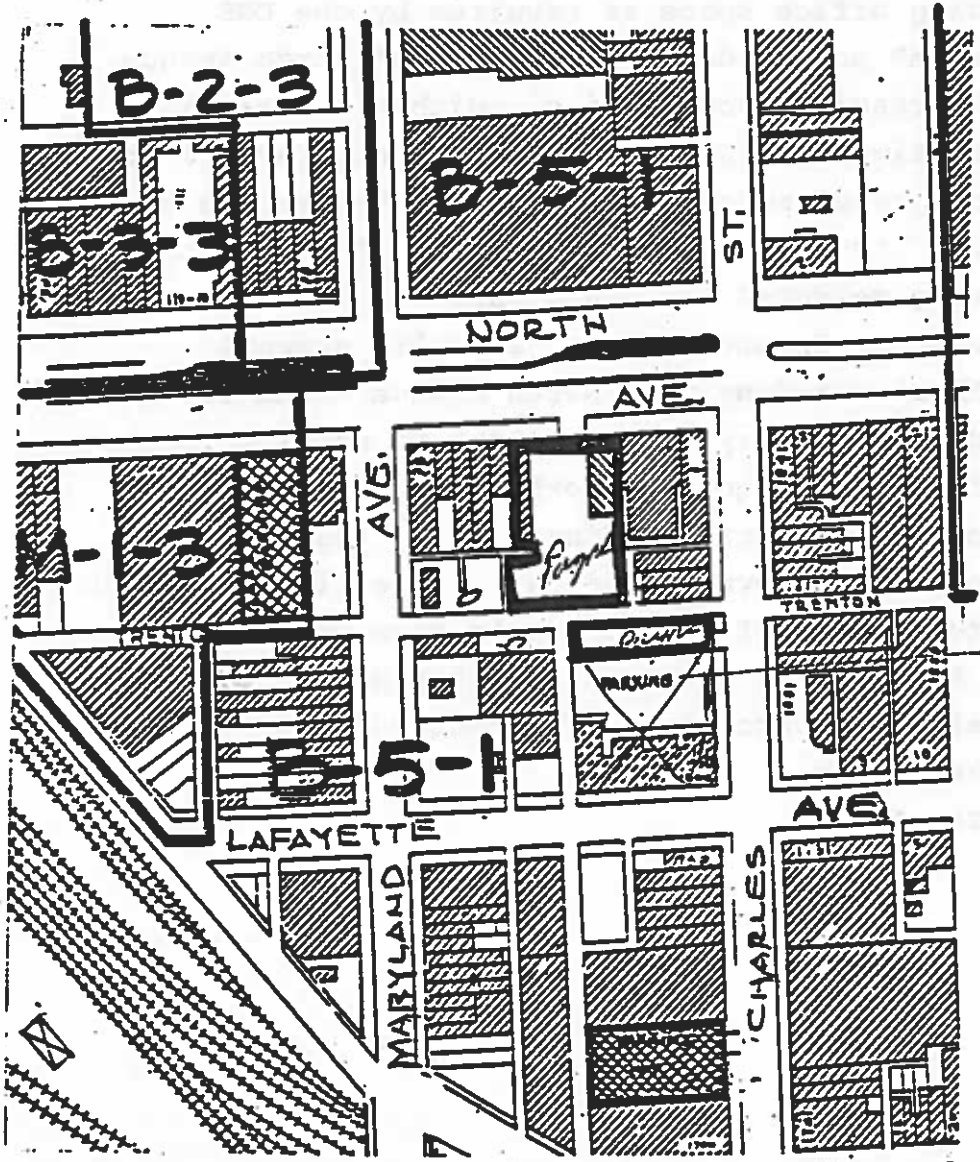
In the instant appeal the Payne property parking area fronts on the southern side of North Avenue, and such property consisting of parking spaces offered in Appellant's proposal is contiguous with the Walbert Building parking area and the Walbert Building. Thus, Appellant has proposed an assemblage of property which does "front on" a boundary line. However, the office space offered, i.e., 41,000 feet in the Walbert Building, does not have a post office postal address on North Avenue. The Walbert

³The Board has already indicated its belief above that the unexpressed policy of DGS in considering property that "fronts on" a boundary is inappropriate and may not be used to consider whether Appellant's offer is acceptable; and that Appellant's appeal should thus be denied.

Building post office address is on Charles Street. Therefore, the Walbert Building office space as required by the DGS unwritten "fronts on" policy does not "front on" North Avenue. If Appellant could readily archive (i.e., within a reasonable amount of time relative to a prompt award of a contract) a North Avenue post office postal address with ingress and egress to the building therefrom, its proposal might be said to be reasonably susceptible of being selected for award pursuant to COMAR 21.05.03.03B. However, Trenton Street, a public street, separates the Walbert Building from North Avenue. The record reflects it would be necessary for Appellant to acquire Trenton Street in order for it to acquire a North Avenue post office postal address for the Walbert Building. This, the record reflects, could not be achieved, if at all, in a timely fashion relative to eventual award of a contract to some offeror. Accordingly, the Appellant's proposal is not reasonable^y susceptible of being made acceptable for consideration for award. The appeal is thus denied.

Dated: April 24, 1992

SHEET NO. 45 OF THE ZONING DISTRICT MAP OF
ARTICLE 30 OF THE BALTIMORE CITY CODE 1976
EDITION (1983 REPLACEMENT VOLUME)

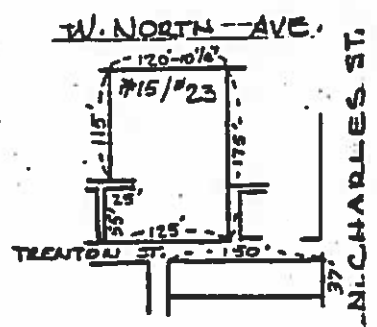


→ WALBERT Bldg

SCALE
 1" = 200'

AREA OUTLINED IN RED TO BE USED FOR A
DRIVE-IN RESTAURANT WITH A DRIVE-
THROUGH WINDOW

FOR:
BROADWAY-PAYNE, INC.
11 W. NORTH AVE.
BALTIMORE, MD. 21201



1300

T. M. M...
 City MAYOR
Charles H. B...
 PRESIDENT CITY COUNCIL

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