



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Halse Enterprises

File: B-271757

Date: July 22, 1996

Kristie Kirby for the protester.

Allen W. Smith, Department of Agriculture, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly awarded contract to furnish office space to firm that failed to offer cleaning and snow and ice removal services as required by the solicitation is denied where the agency included a cost factor for the services in the evaluated cost of the awardee's proposal, and retained protester's proposal in the competitive range notwithstanding several deficiencies; by disregarding deficiencies in both proposals, agency treated both offerors equally.

DECISION

Halse Enterprises protests the award of a contract to Wiggin Construction under solicitation for offers (SFO) No. R1-96-2, issued by the Department of Agriculture, Forest Service, to lease office, shop, storage and wareyard space in Sheridan, Montana. Halse, the incumbent contractor, argues that Wiggin failed to offer cleaning and snow and ice removal services as required by the solicitation, and that its offer therefore could not be accepted for award.

We deny the protest.

As amended, the solicitation requested offers to enter into a 10-year lease, with two 5-year option periods, for 2,200 square feet of office space in compliance with The Americans with Disabilities Act Accessibility Guidelines (ADAAG), 1,875 square feet of warehouse, garage and pesticide storage space, and 6,000 square feet of secured, fenced and paved wareyard space in Sheridan. The SFO required the lessor to furnish: (1) designated off-street visitor parking for five vehicles, including one space sized and designated for handicapped parking and one pull-through space of sufficient size to accommodate recreation vehicles and truck/trailer combinations and permit ingress/egress without backing up; (2) janitorial services and supplies; and (3) snow and ice removal services. The solicitation generally provided for award to be made to the offeror whose technically acceptable proposal offered the

"technical/cost relationship [that] is most advantageous to the Government." The SFO listed four specific technical evaluation factors: (1) potential for efficient layout; (2) energy efficiency; (3) location; and (4) physical characteristics, environment and safety.

Two proposals--Halse's and Wiggin's--for a total of three sites were received by the closing time; all were included in the competitive range. Following discussions, Agriculture requested best and final offers (BAFO).

Based on its evaluation of BAFOs, the agency determined that Wiggin's proposal of a new building at its site No. 1 offered the best value to the government. Specifically, the evaluated annual cost of Wiggin's site (\$53,405.75 based on requested space, including a \$3,000 evaluation factor added to account for Wiggin's failure to offer the required janitorial services and supplies and snow and ice removal) was \$3,356.75 lower than the annual cost of Halse's proposed site (\$56,762.50, including a \$2,000 evaluation factor added to account for its offer of only 4,000 square feet of wareyard space instead of the 6,000 square feet required). In addition, Wiggin's site received a "good+" rating, while Halse's building (currently occupied by the agency) received only a "fair" rating.

Halse argues that it was improper for Agriculture to accept Wiggin's proposal inasmuch as it failed to comply with the solicitation requirement for the lessor to furnish janitorial services and supplies and snow and ice removal.

As noted above, however, Halse's proposal likewise failed to comply with a solicitation requirement--for 6,000 square feet of wareyard space--and the agency, as it did for Wiggin's proposal, added an evaluation factor to account for the cost to the agency of the missing item rather than simply reject the proposal as unacceptable. In addition, Halse offered on-street visitor parking that failed to comply with the SFO requirement for five off-street visitor parking spaces, including one handicapped accessible and one pull-through space for recreation vehicles and truck/trailer combinations. Further, Agriculture reports that Halse's building does not comply with the disabled access provisions of the ADAAG.

Since Agriculture treated the offerors equally with regard to the technical deficiencies in their proposals by retaining their proposals in the competitive range and considering them in the best value cost/technical tradeoff, notwithstanding the proposals' deficiencies, and since the agency's minimum needs are actually being satisfied by the award, there is no basis for sustaining Halse's protest concerning the agency's waiver of the requirement for the lessor to furnish janitorial services

and supplies and snow and ice removal. See C3, Inc., 70 Comp. Gen. 313 (1991), 91-1 CPD ¶ 230; Integral Sys., Inc., 70 Comp. Gen. 105 (1990), 90-2 CPD ¶ 419; Intelligent Env'ts, B-256170.2, Nov. 28, 1994, 94-2 CPD ¶ 210; O.V. Campbell & Sons Indus., Inc., B-236799 et al., Jan. 4, 1990, 90-1 CPD ¶ 13; Emulex Corp., B-236732, Dec. 27, 1989, 89-2 CPD ¶ 600.

Halse also maintains that the agency could not reasonably find Wiggin's proposal more advantageous than Halse's proposal.

This argument is without merit. Halse bases its position on the assumption that the total cost of its proposal was lower than the cost of Wiggin's when the cost of furnishing the janitorial services and supplies and snow and ice removal not offered by Wiggin is considered. However, although Halse estimated in its proposal its annual cost of providing janitorial services and supplies as \$4,600 and the cost of snow and ice removal as \$7,248, for a total cost that was \$8,800 more than the \$3,000 evaluation factor applied to Wiggin's proposal, we find that the record supports the agency's determination that Halse's estimate was significantly overstated. In this regard, we consider it significant that the current annual cost to the agency for snow removal is only \$250.¹ Accepting this as the likely future cost to the agency for snow and ice removal, Wiggin's proposal remains low even using Halse's estimated cost for cleaning services and supplies.

Further, Halse has not shown that Agriculture's conclusions with respect to its own building were unreasonable. Again, Halse's proposal, unlike Wiggin's, did not offer the required 6,000 square feet of wareyard space or the required off-street and designated handicapped visitor parking, and the floor plan for Halse's building did not indicate the required compliance with the ADAAG. In addition, unlike the flexibility afforded by Wiggin's proposed space, the efficient use of Halse's space would be disrupted by the presence in the middle of the space of two offices that would not be included in the lease. Furthermore, while Wiggin offered a new, energy-efficient building, Halse would not commit itself in writing to replacing or upgrading the existing heating, ventilation and air conditioning system, which the agency had found to be expensive to operate and inadequate as to heating/cooling capacity. Also, the agency considered the proposed stucco and brick facade of Halse's building to be less consistent with the Forest Service's traditional image than the wood siding proposed by Wiggin.

¹We further note that Agriculture reports, and Halse has not disputed, that Halse currently pays only \$3 per day for janitorial services.

Given the evaluated technical and cost advantages of Wiggin's proposed building, the agency reasonably determined that Wiggin's proposal would be most advantageous to the government. The award therefore was proper.

The protest is denied.

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