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PK-11
MS. Kelly



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194701 *DL 6 02898* DATE: September 28, 1979

MATTER OF: Cassidy Cleaning, Inc.

*[Protest Alleging That the Discount Offered in Initial Proposal
Should Have Been Considered
in Evaluations]*

DIGEST:

Contracting officer erroneously concluded that offeror had withdrawn discount provided in initial proposal where contracting officer merely negotiated for purpose of obtaining better price without any specific reference to the offeror's discount and protester reaffirmed its initial price. There was no reason for contracting officer to conclude on the basis of this negotiation that firm's voluntary offer in initial proposal to hold open its price and discount for 90 days had been withdrawn.

Cassidy Cleaning, Inc. (Cassidy), has protested the award of a contract to another firm under request for proposals (RFP) No. 03C90668, issued on April 5, 1979 by the General Services Administration (GSA). For the reasons stated below, the protest is sustained.

(The RFP was for a three-month interim contract (with a potential one month extension), beginning ~~May 1, 1979~~, to provide janitorial services) at Federal Building Number 3, Silver Hill Road, Suitland, Maryland. Offerors were to submit bids consisting of a base price for the first three months and a separate price for the potential one month extension.) The RFP was submitted to 13 firms on April 5, 1979, and initial offers were received by the closing date of April 13 from nine offerors, including Cassidy and Nash Janitorial Services, Inc. (Nash).

Cassidy's initial price was low. It quoted a base price of \$154,815.21 and in accordance with the

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form furnished by the Government it separately inserted an unqualified five percent discount, resulting in a net price of \$147,074.45. Nash's bid for \$154,619.96 (no discount was offered) was the second lowest.

GSA then established a competitive range, informed four companies including Cassidy and Nash that they fell within that range, and by telephone on April 18 requested from them best and final prices which offerors were to confirm in writing. Nash reduced its price to \$149,338.76 but Cassidy merely restated its original price. Apparently no specific reference to the discount was made during the oral request for best and final offers and Cassidy's confirming letter made no mention of it.)

The contracting officer made award to Nash because its best and final price was lower than Cassidy's base price without consideration of the discount. (Because Cassidy did not reconfirm the discount previously offered in its initial proposal, the contracting officer concluded that the discount had been withdrawn.)

Cassidy argues that the discount offered in its initial proposal should have been considered in the evaluation of its best and final offer, in which event its offer would have been low. In this regard, Cassidy states that it was requested by telephone to confirm (or reduce) only its price, and that GSA should have considered the discount offered separately in its initial written offer submitted on the form provided by the Government. Alternatively, Cassidy argues that even if it should have restated the intended discount in its final offer, the contracting officer was on constructive notice of Cassidy's mistake and should have sought verification of the offer. Finally, Cassidy alleges that it has been arbitrarily and capriciously discriminated against as a minority business.

While we find no basis for concluding that Cassidy has been discriminated against because of its status as a minority business concern, we believe the contracting officer acted precipitously and unreasonably in concluding that Cassidy had withdrawn its discount.

Cassidy's base price remained the same in its initial and final offers. Moreover, it appears that the contracting officer made no attempt to negotiate except to obtain a better price. Cassidy agreed in its initial offer to hold open its price and discount for 90 days from the date of opening, which was only 5 days prior to the request for best and final offers. We also note that Cassidy voluntarily inserted a 90 day limit on its initial offer in lieu of the standard 60 days otherwise required by the Government. In these circumstances and inasmuch as Cassidy did not vary from its initial price, we think it was unreasonable for the contracting officer to conclude that Cassidy had withdrawn its discount.

We note that the agency report takes the position that, in the circumstances, the contracting officer should have verified Cassidy's final offer. Although we conclude that Cassidy intended to stick by its original offer, we agree that, at a minimum, the contracting officer should have sought a clarification rather than reject the proposal on the basis that it was not low.

We sustain Cassidy's protest, but cannot recommend relief because performance under the erroneously awarded contract is complete. However, we are bringing this matter to the attention of the agency and recommend that it take appropriate action to preclude a recurrence of the error.

R. F. K. 1/12
Deputy Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-194701

September 28, 1979

The Honorable R.G. Freeman, III
Administrator of General Services
Washington, D.C. 20405

Dear Mr. Freeman:

Enclosed is a copy of our decision of today sustaining the protest of Cassidy Cleaning, Inc. (Cassidy) under GSA request for proposals No. 03C90668.

We held that the contracting officer acted unreasonably in concluding that Cassidy had withdrawn from its final offer the discount included in its initial proposal. We suggest that the decision be brought to the attention of your office's procurement personnel in order to avoid similar problems in future procurements.

Sincerely yours,


Comptroller General
of the United States

Enclosure

cc: The Honorable Allie B. Latimer
General Counsel
General Services Administration
Washington, D.C. 20405