

DECISION

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

FILE: B-214648

DATE: December 26, 1984

MATTER OF: I.E. Levick and Associates

DIGEST:

Where material changes occur after issuance of solicitation for leasehold interest in real property, agency is required to issue written amendments to solicitation so that offerors are properly apprised of these changes.

I.E. Levick and Associates protests the award of a lease to the Greater Erie Economic Development Corporation (GEEDC) pursuant to solicitation for offers (SFO) No. MPA 83222, issued by the General Services Administration (GSA). The SFO requested offers for 5,895 net usable square feet of office space in Erie, Pennsylvania, to house the Social Security Administration for a 10-year term, cancellable after the 5th year. In its protest, filed after the award of the lease to GEEDC, Levick contends that GSA erroneously calculated the competing price proposals that were submitted and therefore improperly awarded the lease to other than the low offeror, Levick. For the reasons that follow, we find that GSA failed to follow proper negotiation procedures in awarding the lease.

The solicitation, in paragraph D2 entitled "NEGOTIATION AND DETERMINATION OF LOW OFFEROR," provided as follows:

"Price evaluation will be made on the basis of the annual per square foot cost . . . plus the annualized cost of any items specified in these specifications which are not included in the rental. . . ."

Four offers were received in response to the solicitation. One was from the current lessor, Levick. After preliminary evaluation of the offers, GSA orally conducted negotiations, mostly by telephone, over the course of several months with the offerors. In evaluating Levick's

proposal after receipt of best and final offers, the contracting officer added \$.47 per square foot to the evaluated yearly cost to reflect several items of cost for a "new layout" which the contracting officer determined were not included in Levick's offered rental. This resulted in an evaluated cost of \$8.18 as compared to GEEDC's evaluated cost of \$8.04 (exclusive of moving costs). Consequently, GSA awarded the lease to GEEDC.

Levick contests the validity of the evaluation and, specifically, questions the propriety of the added cost factors. The following upward adjustments were made to Levick's offer by GSA:

Partitions

A. Remove 200LF [linear feet] x \$12.00	\$ 2,400
B. Install 293LF x \$35.00	10,255
Electrical outlets (39 x \$60.00)	2,340
Telephone outlets (59 x \$60.00)	3,540
Air Conditioning Alterations; Relocate Ductwork	1,400
Install window in Manager and Assistant Manager offices	640
Install office door and hardware (8 x \$350.00)	2,800
Relocate electrical switches (8 x \$50.00)	400

With estimated overhead and profit, these items increase Levick's square foot costs above those of the awardee.

GSA argues that these added cost factors were properly applied since Levick's offer failed to include relocation expenses for the required new layout. First, GSA notes that the solicitation's specifications required that the lessor construct 293 linear feet of partitions, but that Levick's best and final offer (in letter form) failed to mention installation of partitions. Only on February 3, after the closing date for receipt of best and final offers, did Levick send a telegram to the contracting

officer in which the firm requested that GSA "please add on to my offer . . . the removal or addition of any partitions needed." Second, GSA states that during negotiations, Levick was orally informed that the proposed offices had to be relocated, and Levick responded at the time by refusing to relocate the offices from their existing locations. GSA finally points out that Levick also did not address in its offer the other relocation expenses for which costs were added to Levick's evaluated price.

Levick argues that its current premises already contain all required telephone and electrical outlets and that since it offered to provide "utilities, heat, electricity, air conditioning per specs on same," the air conditioning alterations and the relocation of electrical switches in fact were included in its offer. Levick also argues that it was never adequately informed of the "new layout" requirements by GSA during negotiations. Specifically, Levick, the incumbent lessor, already had an office layout in place in its premises which included partitions, air conditioning and electrical and telephone outlets, and argues that it was never informed of new layout requirements.

Levick's best and final offer lists several items that it promised to provide under the lease, including carpeting, new door entrances, utilities, painting, and drapes, but Levick's offer did not address relocation costs at all. Thus, we find that Levick's offer did not unequivocally offer to provide GSA's requirements, as explained by GSA in its agency report.

Generally, where an offeror is orally informed of an agency's requirement during negotiations, notwithstanding its absence in the solicitation, the offeror is on notice of the requirement. Centennial Computer Products, Inc., B-212979, Sept. 17, 1984, 84-2 C.P.D. ¶ 295. However, it is also rudimentary that an oral change or modification to a solicitation should usually be followed by a written amendment verifying the oral advice given. See Informatics, Inc., et al., 56 Comp. Gen. 388 (1977), 77-1 C.P.D. ¶ 152. Further, we have held that an agency's failure to issue a written amendment confirming prior oral advice given to offerors constitutes a prejudicial procedural defect where an offeror denies having been orally advised of the agency's changed requirements. Id.; Porta-Fab Corporation, B-213356, May 7, 1984, 84-1 C.P.D. ¶ 511. Here, we find that GSA's failure to apprise Levick in writing of its changed requirements caused the offeror not to include the items in its offer.

B-214648

The new layout requirement and its associated items were not a part of the initial SFO. Specifically, there was nothing in the SFO to indicate that the incumbent lessor was not in compliance with its term. Rather, GSA, during months of negotiations and in piecemeal fashion, continuously and orally made material changes concerning its requirements, especially with regard to the incumbent lessor's premises. The record is replete with memoranda of oral messages ostensibly conveyed to the protester concerning the changed requirements during the several months that this procurement was in progress, and GSA relied solely on such oral communications to make known its changed requirements. In our view, it basically was this procurement approach that caused the confusion surrounding exactly what Levick had to offer and actually offered.

The benefits to be derived from issuance of written amendments are evident. Written amendments assure agency procurement officials that notice of all aspects of any material changes is in fact communicated to all competing offerors. The possibility of charges of fraud or favoritism is thereby eliminated or reduced. Also, the written amendment and acknowledgment of its receipt provide a firm basis for reviewing and justifying a challenged procurement action. Finally, the government is assured that the resulting contract embodies the new changed terms, rather than the old terms. See 49 Comp. Gen. 156, 162 (1969); Chrysler Motors Corp., B-186600, Sept. 29, 1976, 76-2 C.P.D. ¶ 294.

Since the inadequacy of Levick's offer can, in our view, be ascribed to GSA's failure to make timely and precise written amendments to its solicitation, we sustain the protest. In this regard, GSA informally requested that our Office review this protest despite the fact that we cannot recommend remedial action because the lease has already been awarded to GEEDC and does not contain a termination for convenience clause. Nevertheless, by separate letter we are recommending to the Acting Administrator of General Services that action be taken to prevent a recurrence of this procurement deficiency.

Milton J. Fowler
for
Comptroller General
of the United States