



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tower Corporation
File: B-225617
Date: March 23, 1987

DIGEST

1. Contention, not raised until after contract award, that specifications unduly restrict competition in that they do not permit consideration of innovative and distinctive offers is untimely under Bid Protest Regulations.
2. Agencies must adhere to evaluation criteria stated in a solicitation. When a solicitation contemplates the leasing of only office and related space, the agency properly evaluates prices for such space, without considering either the monetary value of hotel and meeting rooms also included in a protester's proposal or the alleged cost savings that would result from accepting the proposal.

DECISION

Tower Corporation protests the General Services Administration's (GSA) award of a lease (No. 65-08P-12796) to Denver Place Associates for office space in Denver, Colorado under solicitation for offers No. 86-161. Tower generally contends that GSA, in evaluating proposals, failed to consider all relevant factors necessary to determine which offer was most advantageous to the government. We dismiss the protest in part and deny it in part.

BACKGROUND

GSA issued solicitation No. 86-161 on August 12, 1986, seeking leased quarters for the Small Business Administration's (SBA) Region 8 Office. The SBA currently occupies space in Executive Tower, a facility managed by the protester, Tower Corporation. The lease for this space expires on March 31, 1987.

The solicitation specifically provided that offers were to be for a minimum of 8,040 square feet and a maximum of 8,440 square feet of office and related space, plus 3 inside designated parking spaces, within certain geographic limits.

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The term of the lease was to be 5 years, of which only the first 3 were firm. Occupancy was required by March 20, 1987.

The solicitation also provided that the lease would be awarded to the offeror whose proposal was "most advantageous to the Government," price and other factors included in the solicitation considered.^{1/} Price evaluation was to be based on the annual per square foot cost plus the annualized cost of any items specified in the specifications which were not included in the rental. Additionally, \$.28 per square foot was to be added to all offers that would require the SBA to move from its existing leased location.

Based on this formula, GSA determined that Denver Place had submitted the low offer. Denver's offer was for 8,440 square feet of usable office space at an annual cost of \$90,730. Including the \$.28 per square foot moving cost, Denver's offer corresponded to a price of \$11.03 per square foot. In comparison, Tower's offer was \$11.10 per square foot, based on an annual charge of \$91,040 for 8,200 square feet of space.

On December 11, 1986, Tower filed an agency-level protest challenging the proposed lease. Generally, Tower argued that GSA had failed to consider the innovative and distinctive nature of its offer, which allegedly would have resulted in substantial savings. Tower had included in its offer, allegedly at no additional charge to the government, three guest rooms per month per 1,000 square feet of occupied space, plus meeting rooms that it asserted were worth \$400 a month. Tower holds existing leases with GSA that similarly include such facilities, allegedly at no charge to the government. In its protest to GSA, Tower contended that the annual charge for the lease of only office and related space would be \$74,144, or \$9.04 per square foot. Consequently, Tower concluded, it should have been selected for award as the offeror whose proposal was "most advantageous to the government."

GSA, by letter dated December 23, 1986, denied this agency-level protest. Reiterating what it had previously informed Tower during negotiations, GSA stated that the government did not need the hotel and meeting rooms offered, and, accordingly, that it would not consider them during the evaluation process.

^{1/} The other factors, not at issue here, were, in descending order of importance, handicapped accessibility and the use of renewable energy in the offered building. In addition, a preference was to be given to space in historic buildings.

DISCUSSION

Tower, in its subsequent protest to our Office, initially contends that the solicitation unduly restricted competition in that it did not allow GSA to consider innovative and distinctive offers, such as its own, which would have resulted in substantial savings to the government. Tower continues that the solicitation was inconsistent with the intent of the Competition in Contracting Act of 1984, 41 U.S.C. § 253a (Supp. III 1985), that agencies describe their needs as broadly as possible.

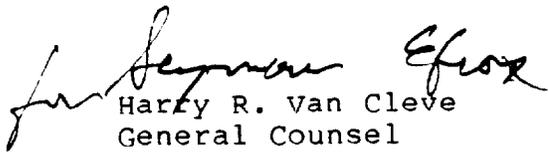
We find this basis of protest untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), provide that protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals must be filed by that date. The facilities required, and the basis on which offers to lease them would be evaluated, were clearly set forth in the solicitation, and if Tower believed that these should be more broadly described, it should have protested earlier. Tower, however, first raised this basis of protest after the award to Denver Place. Therefore, we dismiss this basis of protest.

Tower next raises essentially the same contention that provided the basis for its agency-level protest. Tower again alleges that GSA improperly failed to consider during evaluations the substantial savings to the government directly attributable to the gratuitous inclusion of hotel and meeting rooms in its proposal. In view of the fair market value of these additional facilities, Tower states that the actual annual cost of the office and related space it proposed was considerably less than the price proposed by the awardee. Tower concludes that its proposal was thus most advantageous to the government, and therefore it should have been selected for award.

It is well settled that once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to these criteria. Umpqua Research Co., B-199014, Apr. 3, 1981, 81-1 CPD ¶ 254. GSA's solicitation in this case contemplated the leasing of only office and related space. The agency was thus required to evaluate proposals strictly in terms of their prices for those facilities, and it properly did not consider the monetary value of the hotel and meeting rooms offered by Tower or the alleged savings resulting from this offer. Additionally, GSA could not, as inferred by Tower, evaluate its offer for office space exclusive of its offer for hotel and meeting rooms; Tower's proposal did not break out or allow for independent consideration of the various facilities.

Under the stated evaluation criteria, Tower's proposal clearly was not the most advantageous to the government, as its per square foot cost for office and related space was not low. GSA's rejection of Tower's offer and the selection of Denver Place was thus proper. Moreover, to the extent that GSA historically may have considered Tower's offer for hotel and meeting rooms, these past practices do not justify repetition in the instant case. See Intex Insulating Co., B-216583, Oct. 11, 1984, 84-2 CPD ¶ 401. Accordingly, this basis of protest is denied.

The protest is dismissed in part and denied in part.


Harry R. Van Cleve
General Counsel