



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Leslie Building Associates

File: B-229815

Date: April 19, 1988

DIGEST

1. Protester's offer to lease office space, which failed to meet required handicapped accessibility requirement for elevator, was properly rejected as unacceptable when protester, in best and final offer, confirmed it could not enlarge elevator cab to comply.

2. Allegation, based on speculation, that agency improperly had discussions with offeror after submission of best and final offers and that required certificate was submitted after closing date is denied where record shows all required documents were submitted on closing date and agency denies prompting offeror concerning need for certificate.

3. Under solicitation for lease of office space, contracting agency was not required to reject awardee's offer which took exception to occupancy date and failed to provide certain building features called for in solicitation since those features were not mandatory requirements; rather, under evaluation scheme in solicitation, the extent to which an offeror took exception to those features was to be considered in determining which offer was most advantageous to the government.

DECISION

Leslie Building Associates protests the award of a lease to 360 Twenty-Second Street Associates (Associates) pursuant to solicitation for offers (SFO) No. GS-09B-86844, issued by the General Services Administration (GSA). The SFO was for approximately 15,870 net usable square feet of office space in Oakland, California to house the Social Security Administration (SSA), for a 5-year period. Leslie complains that Associates offered space which does not comply with the SFO's requirements and is more costly than that proposed by Leslie without affording the SSA any worthwhile advantages. Leslie also alleges that GSA conducted improper discussions with and gave preferential treatment to Associates. We deny the protest.

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The SFO was issued on April 11, 1987, and initial proposals were due by April 30. GSA received proposals from only two offerors, Associates and Leslie, which offered 5-year leases at a price of \$2,237,018 and \$1,662,382, respectively. Although Leslie offered a lower price than Associates, on September 9, the contracting officer made award to Associates after considering all of the evaluation factors and determining that such award would be in the government's best interest. Leslie's lower-cost lease was not selected because its elevator design failed to meet the handicapped accessibility requirements. By letter dated September 9, GSA notified Leslie of the intended award to another contractor.

The SFO stated that award would be made to the offeror whose offer was most advantageous to the government with price being equal to the other factors. The other factors were listed, in descending order of importance, as follows:

- 1) Seismic safety
- 2) Handicapped accessibility
- 3) Cost of moving agency (\$56,399)
- 4) Ease of layout
- 5) Quality of Space
- 6) Accessibility/Visibility
- 7) Physical Characteristics
- 8) Delivery Date
- 9) Estimated overtime cost for heating, ventilation and air conditioning of Data Communications Room
- 10) Use of renewable energy (solar, wind, geothermal, etc.).

The first two factors were treated as follows in the SFO:

"ALL OFFERS RECEIVED IN RESPONSE TO THE REQUEST FOR (BEST AND FINAL) OFFERS WILL BE INITIALLY EVALUATED TO DETERMINE WHETHER THE OFFERS MEET THE SEISMIC SAFETY AND HANDICAPPED ACCESSIBILITY REQUIREMENTS OF THIS SOLICITATION. IF OFFERS ARE RECEIVED WHICH FULLY MEET BOTH SEISMIC SAFETY AND HANDICAPPED REQUIREMENTS, OTHER OFFERS WHICH DO NOT FULLY MEET THESE REQUIREMENTS WILL NOT BE CONSIDERED UNLESS THE CONTRACTING OFFICER REQUESTS A WAIVER OF HANDICAPPED REQUIREMENTS AND THE ADMINISTRATOR OF GSA GRANTS THE WAIVER IN ACCORDANCE WITH THE ARCHITECTURAL BARRIERS ACT OF 1968, AS AMENDED."

One of the handicapped accessibility requirements was that the elevator inside walls have a minimum measurement of 51 inches in depth and 68 inches in width. Leslie took exception to this requirement, and stated that the interior wall

dimensions of its elevator would be 64 inches deep by 58 inches wide, which was confirmed in its best and final offer as it noted its elevator shaft would not accommodate a larger elevator cab.

GSA therefore determined that Leslie was not fully compliant with the handicapped accessibility requirement and since GSA considered Associates to be fully compliant in these areas, GSA no longer considered Leslie a viable offeror. Based on the foregoing, we find GSA acted properly in no longer considering Leslie for award under the terms of the SFO.

Regarding Associates' proposal, Leslie argues that GSA continued discussions after the submission of best and final offers (BAFOs) and advised Associates of the need to submit its seismic safety certificate.

BAFOs were due on June 22. Associates submitted its BAFO on June 19, and its seismic certificate on June 22. While Leslie argues that GSA must have reviewed Associates' proposal and called to Associates' attention the lack of a certificate, the contracting officer reports that Associates informed GSA when it submitted its BAFO that the certificate would be submitted in a few days and that the BAFO was not reviewed until the closing date. A protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Bancroft Investors, B-219915, Nov. 18, 1985, 85-2 CPD ¶ 564. Since the only evidence of record indicates that all necessary documents were submitted by the closing date, Leslie has failed to carry this burden.

Leslie also argues that Associates' proposal should have been rejected, as was Leslie's proposal, because Associates failed to fully comply with the handicapped accessibility requirement regarding floor load. The SFO required the office areas to have a live load capacity of 50 pounds per square foot and storage areas to have a capacity of 100 pounds per square foot. Associates' proposal stated that its building met the 50 pounds requirement but not the 100 pounds requirement for storage areas. GSA has responded that SSA did not request any storage areas in the building and therefore the 100 pounds standard did not apply.

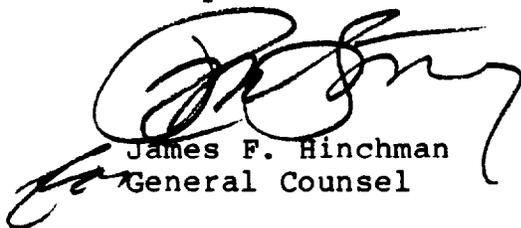
We agree and find that Associates' proposal was acceptable in this regard. Leslie argues that SSA, as does any office, has filing cabinets scattered throughout the offices and therefore the storage area requirement should be applied. However, to follow Leslie's interpretation of storage area would render meaningless the office area load capacity requirement of 50 pounds.

Next Leslie argues that GSA improperly accepted the proposal from Associates despite the fact that it took exception to the occupancy date and certain features regarding the heating and air conditioning system and the restroom fixtures. We disagree. Our review of Associates' proposal confirms that it did not offer those features. However, none of these was mandatory in nature, unlike the handicapped accessibility requirement Leslie failed to meet. Rather, they were nonmandatory features listed in the RFP as factors to be considered, along with price, in determining which offer was most advantageous to the government. The extent to which an offer included those features thus was to be considered in the evaluation; there was no requirement, however, that GSA reject an offer for failing to provide all the features.

Leslie also protests that the award to Associates was made at an unreasonable price. A determination concerning the reasonableness of price is a matter of administrative discretion involving the exercise of business judgment which we will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. Devres, Inc., B-228909, Dec. 30, 1987, 87-2 CPD ¶ 644. Here, the contracting officer found Associates' price to be reasonable following an appraisal and comparison of other rents for comparable buildings in the area. We have no basis to disturb this determination.

Finally, while Leslie protests that it was not promptly notified of the rejection of its proposal or the reasons for such rejection, we have held that such failure is only procedural in nature and does not affect the validity of an otherwise properly awarded contract, as here. SITEK Research Laboratories, B-228084, Dec. 28, 1987, 87-2 CPD ¶ 630.

The protest is denied.



James F. Hinchman
General Counsel