



Comptroller General
of the United States

532307

Washington, D.C. 20548

Decision

Matter of: William S. Anthony
File: B-258528
Date: November 28, 1994

DECISION

William S. Anthony, the incumbent lessor, owner of a building located in Hyannis, Massachusetts, protests the award of a lease to Chart House Trust, d/b/a Village Market Place, under solicitation for offers (SFO) No. 2PXE-2338, issued by the General Services Administration (GSA) for office and related space for use by the Internal Revenue Service. Anthony principally argues that award of the lease to Chart House at a very slightly lower price than Anthony's offer was not most advantageous to the government because GSA should have evaluated relocation costs and "downtime associated with relocating."

On June 6, 1994, GSA issued the SFO for approximately 3,305 net-usable square feet of office space within the city limits of Hyannis for a 10-year term, with the government retaining termination rights after 3 years. The SFO provided that award of the lease would be based upon "[t]he acceptable offer with the lowest per net usable square foot price." The SFO contained special requirements to be furnished at the offeror's expense, including delivery of a new telecommunications system, as well as installation of new carpet and freshly painted walls. The SFO also required that the leased premises be handicap accessible, including

¹Anthony states that its final offered price was \$14.90 per square foot; GSA awarded the lease at a price of \$14.86 to Chart House. Anthony estimates the savings to the government by awarding to Chart House as amounting to only \$396 during the course of 3 years. Anthony estimates the agency's relocation costs, including computer lines and telephone lines that will be incurred by awarding the lease to the non-incumbent, Chart House, at \$50,000. GSA estimates the relocation costs at approximately \$4,500.

requiring the installation of an elevator. The terms of the SFO did not contemplate the evaluation of relocation costs in any way.

Two rounds of best and final offers (BAFO) were requested and received. As stated above, Anthony was ultimately found not to be low by a few pennies per net-usable square feet. Award was made to Chart House on September 1, 1994. This protest followed.

To the extent that Anthony is arguing that the SFO should have provided for evaluation of relocation costs, and improperly failed to do so, its protest is untimely. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1) (1994). The primary purpose of these timeliness rules is to afford parties a fair opportunity to raise any objections they may have to the terms of a solicitation prior to the submission of offers, without unduly disrupting or delaying the procurement.

Here, Anthony, the incumbent, knew or should have known from the beginning of and throughout the procurement that the terms of the solicitation did not provide any advantage to the incumbent protester--that is, the solicitation simply did not provide for the evaluation of relocation costs. We think a prudent incumbent offeror, which reasonably believed that these relocation costs would be incurred and should be evaluated, would and should have filed a protest concerning these allegedly improper and disadvantageous solicitation terms prior to the closing date. Anthony did not do so but waited until after receiving the notice of award before filing its protest. The protest is untimely filed.

To the extent that Anthony is arguing that GSA failed to evaluate relocation costs, it is simply arguing, in essence, that GSA strictly followed the SFO's evaluation criteria.

This contention does not state a valid basis of protest.
See 4 C.F.R. § 21.3(m).²

The protest is dismissed.



Andrew T. Pogany
Deputy Assistant General Counsel

²Anthony also argues that it submitted three prices during the course of the procurement (\$14.50, \$16.90, and \$14.90 per square foot) after "prompting by GSA." The protester states that its initial proposal price of \$14.50 was low. The record shows that GSA had multiple discussions with the protester to clarify requirements which Anthony apparently did not understand. Anthony's final price was based on its own business judgment, and the agency never instructed the protester to offer any specific price. Additionally, contrary to the protester's argument in its comments that its lower initial proposal price should have been accepted, the agency states that the protester's perceived lack of understanding of SFO requirements led the agency to hold discussions despite the protester's initial price. In any event, an agency is not required to award on the basis of initial proposals; this contention, therefore, also does not state a valid basis of protest.