

DECISION



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

FILE: B-214716.1, .2, .3 **DATE:** October 5, 1984

MATTER OF: Magnolia-Boyd Corporation
Osborne Enterprises, Inc.
Eccelston Properties, Ltd.

DIGEST:

1. Protest is sustained where record shows agency disregarded evaluation criterion in considering cost of expected overtime use of facilities to be leased.
2. Protests filed by other firms that are not prejudiced by agency's error in evaluating proposals are denied.

Magnolia-Boyd Construction Corporation, Osborne Enterprises, Inc., and Eccelston Properties, Ltd. separately protest award to any firm but themselves under solicitation for offers (SFO) VACO83-210 issued by the Veterans Administration to lease outpatient clinic space in Pensacola, Florida. A 20-year lease is proposed but no award has been made. We deny the protest filed by Osborne and Eccelston but sustain Magnolia-Boyd's protest.

Since no award has been made, VA has declined to identify the intended awardee for the parties or to tell them how offers were evaluated.^{1/} Nevertheless,

^{1/} Consistent with our settled practice in cases where parties are denied access to pertinent agency records, we have examined the record in camera to determine whether the award action VA proposes to take has a reasonable basis. RMI, Inc., B-203652, Apr. 20, 1983, 83-1 CPD ¶ 423, as further explained on reconsideration, B-203652.2, B-203652.3, June 18, 1984, 84-1 CPD 630.

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Magnolia-Boyd asserts on information and belief that VA incorrectly evaluated total rental price or ignored factors other than price that the SFO indicated VA would consider. According to Magnolia-Boyd, technical merit should have been given equal weight with price in selecting an awardee. Osborne and Eccelston, on the other hand, construe the SFO as requiring award on the basis of price alone and allege that VA may not have selected an awardee on that basis.

The VA indicates that it construes the SFO as requiring it to evaluate the technical merit of the proposals to determine whether minimum SFO technical requirements were met. However, award was primarily based on lowest evaluated price, according to VA. In this connection, VA points out that its intent was explained in a cover letter transmitted with the SFO. The letter reads:

"As stated in the Solicitation, price per net square foot will be the primary determining factor in the award of this lease. The basic effect of the Award Factors will be that where offers are received that are substantially equal in price, those offers which satisfy all the award factors will be favored over those that do not.

While the quoted language appears to support VA's interpretation concerning the weight to be given technical factors, this aspect of Magnolia-Boyd's protest is academic in view of our conclusion, explained below, that VA improperly evaluated price and should select Magnolia-Boyd on the basis of price.

Regarding the evaluation of price, the record shows that VA sought to take four cost factors into account:

1. Rent;
2. The cost of services included in rent but subject to an annual adjustment based on the consumer price index;

3. The cost of government provided services; and

4. The cost of any lump sum payment for preparing the premises for occupancy.

The VA then sought to comply with the price evaluation provision of the SFO by reducing these costs to an annual cost per square foot of usable space.

In this connection the SFO price evaluation provision states:

"For purposes of price evaluation, the initial term and renewal option(s) will be reduced to one composite annual square foot rate, as follows:

The annual cost per square foot of the initial term and renewal option(s), less the cost of operating expenses (if annual adjustments will occur) will be discounted annually at 7% and if the offer includes annual adjustments in operating expenses, the negotiated base operating expenses will be escalated at 4% compounded annually and discounted annually at 7%; and the cost of Government-provided services not included in the rental will be escalated at 4% compounded annually and discounted annually at 7%. The result is the present value cost per square foot. To this present value cost is added:

The annualized square foot cost of any items specified in this Solicitation which are not included in the rental, discounted annually at 7%; lump sum payments made at the beginning of the lease will not be [discounted]."

On its face, the SFO language set out above requires that prices be compared on a present value basis, using the

discount and escalation rates specified. The present value of several payments to be made over a period of time equals the sum of money that, invested at the prescribed rate, would be sufficient to allow each payment to be made when due, without money left over once the last payment is made. See Webster's Third New Int'l. Dictionary, 1974 (1966); see also ibid, 118, arithmetical discount. Obversely, the periodic payments to be made may be viewed as the equivalent of an initial payment plus an annuity payable at the end of each succeeding year.^{2/} Ibid, 88. The present value of an annuity may be calculated by applying the correct mathematical formula (see CRC Standard Mathematical Tables, 634 (21st ed., 1973), by using standard annuity tables (ibid, 651 et seq.), or by using a computer with a spread sheet or other software package, that is capable of performing present value computations.

The VA attempted to compute present value using tables. Typically, when the table method is used, a multiplier is obtained that is equal to the present value of a series of \$1 annual payments. This number multiplied times the annual rent equals the present value of the rent that will be paid, which then may be reduced to an "annualized" price per square foot by dividing by the length of the term (20 years) and by the usable space offered (in square feet).

^{2/} As we interpret the SFO language, payments are discounted annually, starting with payments after the first year. Concerning the calculation of discounts on an annual basis, we note that the SFO price evaluation clause is inconsistent with the SFO provisions concerning payment of rent. Rent is due on a monthly basis, payable at the end of the month. Adjustment of the price paid for included services subject to readjustment is to be performed annually, on the anniversary of the lease, and may not coincide with the date of occupancy. Moreover, the price differential resulting from escalation is paid monthly. VA's failure to write the SFO evaluation criteria to reflect the effect of monthly payments necessarily introduces error in the calculation of present value. As noted later, the error is not sufficient to affect our decision. Moreover, no offeror filed a protest concerning the solicitation evaluation clause. A protest concerning an apparent solicitation defect would have to have been filed prior to the closing date for receipt of proposals to be timely. (See 4 C.F.R. § 21.2(b)(1) (1984).)

By comparison, the method of handling costs that are included in rent but are subject to the CPI adjustment is slightly more complex because the SFO provides for annual escalation at a 4 percent rate. The effect of a 4 percent upward CPI adjustment and a concurrent 7 percent discount is a net discount rate equal to 1.04 divided into 1.07, or 1.0288 (i.e., 2.88 percent). Again, as in computing the present value of rent, a multiplier can be obtained, which can then be used to compute present value.

The evaluated price of a proposal is the sum of all of these values calculated on a square foot per year basis, plus the following: (1) the present value of government provided services that are included in the rent; and (2) the contribution of any lump sum payment payable at the outset of the lease.

Having performed this analysis to check VA's calculations, we have found that VA used an incorrect set of multipliers and, consequently, evaluated prices incorrectly. However, the evaluated prices VA did calculate bear the same relative relationships to each other as do the relative prices we calculated. Both analyses show Magnolia-Boyd's offer to be somewhat lower than the others in price.

Nevertheless, VA did not select Magnolia-Boyd because, the record shows, VA made an additional adjustment to the composite annual square foot cost calculations to account for overtime charges. For purposes of this calculation, VA assumed that the outpatient clinic typically would operate overtime 10 hours per week and, evidently without actually computing the present value of overtime charges, decided that the proposed awardee's lower overtime charges presented a significant cost advantage.

We think VA's treatment of overtime charges was improper.

The SFO permitted offerors to state charges for overtime use of heating and air conditioning. However, under the SFO price evaluation criteria quoted earlier,

such charges would have to be considered as a cost for a required item that was not included in rental. This is because such charges are stated separately from rental and are not government-provided services. Had VA applied the SFO criterion for evaluation of a cost for a required item not included in rental, it would have found that Magnolia-Boyd's price remained low. The SFO provides that such costs, like rent, are to be evaluated by applying an annual 7 percent discount rate. So evaluated, the cost of overtime charges amounts to only a few cents per square foot per year--not enough to displace Magnolia-Boyd.^{3/}

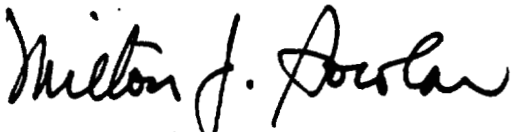
We deny the protests filed by Osborne and Eccelston. As stated, both offerors contend that VA was required to make award to the offerors whose proposal was evaluated as lowest in price. While these protesters appear to be correct in their contention, their proposals were not low in evaluated price. Also, their ranking for purposes of award does not depend on evaluation of overtime rate. Regardless of whether estimated overtime usage is considered, they were not, therefore, prejudiced by VA's evaluation.

On the other hand, Magnolia-Boyd's protest is sustained because VA, in concluding without applying the SFO evaluation criterion that the proposed awardee's proposal was substantially lower than the protester's proposal in price, disregarded the evaluation criteria set out in the SFO. We recommend that VA correct its evaluation of proposals and make award as appropriate by applying the evaluation criteria established in the SFO cover letter quoted earlier in this decision.

^{3/} Our calculations indicate that this result is reached whether the evaluation is performed on an annual basis or monthly (see discussion in footnote 2).

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In view of the foregoing, the Osborne and Eccelston protests are denied. The Magnolia-Boyd protest is sustained.

for 
Comptroller General
of the United States