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

FILE: B-215595 **DATE:** October 11, 1984

MATTER OF: Brizard Company

DIGEST:

1. When offerors are advised of changes in the government's requirements, offerors have actual notice of the changes regardless of any inconsistency between the changes and the solicitation and regardless of the procuring agency's failure to formally amend the solicitation to incorporate the changes.

2. Allegation that procuring agency relaxed requirement that all office doors swing outward is denied when review indicates that solicitation does not require that all office doors swing outward.

3. Protest that procuring agency improperly permitted low offeror to reduce its otherwise low price after the receipt of best and final offers is denied because low offer submitted was determined to be acceptable and most advantageous to government at time reductions were received. Further, there is no evidence that the procuring agency lessened the contract requirements in any way in permitting these reductions.

Brizard Company (Brizard) protests the award of a lease to Robert A. Dunaway (Dunaway) pursuant to solicitation for offers (SFO) No. GS-09B-38441 issued by the General Services Administration (GSA). The SFO solicited offers for approximately 6,400 net usable square feet of office space in Arcata, California, to house the National Park Service for a 5-year period, with two 3-year options. Brizard contends that GSA has relaxed certain solicitation requirements; that this relaxation has a substantial impact on Brizard's offered price; and that, as a result, GSA should be required to reopen negotiations. In addition, Brizard alleges that GSA improperly conducted discussions with Dunaway and Brizard after the receipt of best and final offers and that, as a result, GSA should permit both offerors to submit best and final proposals.

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We deny the protest.

The SFO, issued in August 1983, called for initial proposals by September 26, 1983. Offers were received from Brizard and Dunaway. On November 8, GSA issued SFO amendment 1 which increased the square footage requirements and called for best and final offers by November 21. Both offerors responded. Subsequently, on February 1, 1984, GSA issued a second amendment. This amendment deleted an air-conditioning requirement from the lease, added a requirement for additional telephone wiring, and added a "historic preference" clause to the solicitation. Offerors were required to submit their best and final offers by no later than February 9, 1984. Thereafter, both proposals were evaluated and both were found to be acceptable. Award, however, was recommended to Dunaway, the lowest priced offeror.

Brizard discovered that GSA intended to award the contract to Dunaway. Brizard contacted GSA and on March 22, 1984, met with GSA representatives. At that meeting, Brizard contends that it learned for the first time that certain modifications to its building, which Brizard allegedly thought were necessary in order to ensure full compliance with the specifications, would in fact not be required. Brizard argues that in formulating its proposal, it considered the additional cost of installing a chilled water fountain, of modifying the size of a sink, and of reversing the swing of all office doors in the building. Brizard contends that these modifications, particularly the cost of reversing the swing of the office doors, would be very costly. Brizard argues that had it known that GSA would waive these particular requirements, it would have reduced its offered price by approximately 10 percent. Brizard requests that it be given an opportunity to revise its offer to take into account the "relaxed" requirements.

Also, Brizard argues that GSA improperly reopened negotiations with Dunaway after the receipt of best and final offers and permitted Dunaway to revise its offer. Specifically, Brizard contends that GSA permitted Dunaway to reduce the "percentage of government occupancy" in his building and allowed Dunaway to reduce his "escalator base rate" and overtime rate. Brizard argues that, as a result, GSA was obligated to also afford Brizard an opportunity to revise or modify its offer.

GSA states that it had previously advised Brizard that it would not have to install a new drinking fountain and that the existing sink was acceptable without any further modifications. This advice was given to Brizard in May 1983 in connection with GSA's initial advertisement for lease of space. That SFO also included these requirements and Brizard, the incumbent lessor, was informed that its building was adequate even though it did not meet those requirements. That SFO was canceled and the readvertisement, the SFO involved in this protest, included the same provisions. Also, GSA states that the solicitation did not require that all office doors swing outward and that Brizard's assumption in this respect was erroneous. Concerning the alleged discussions with Dunaway, GSA admits that Dunaway made the price reductions in question, but insists that the reductions were made in response to GSA's need to "clarify minor uncertainties." Further, GSA insists that the clarifications in no way affected the acceptability of the Dunaway offer. As a result, GSA contends that it did not conduct discussions with Dunaway and that it was under no obligation to permit both offerors to submit additional best and final offers negotiations.

We have often pointed out that when an offeror is informed of an agency's requirements during negotiation, it is on notice of them notwithstanding their absence from, or inconsistency with, what is in a solicitation. Drexel Heritage Furnishings, Inc., B-213169, Dec. 14, 1983, 83-2 C.P.D. ¶ 686. Accordingly, even though the solicitation required a drinking fountain on each floor and a sink of a certain size, GSA's failure to formally amend the solicitation was not significant. The record reflects that GSA informed Brizard that the existing sink in Brizard's building was acceptable and that Brizard would not be required to install an additional drinking fountain. As GSA states:

> "GSA's May 2, 1983, letter had advised protester that the only items which he needed to correct when making an offer to the Government to satisfy the continuing space needs of the NPS were as follows: 1) The blinds needed to be cleaned; 2) the carpet throughout the space needed to be cleaned; and, 3) a six inch square of carpet missing from the xerox room had to be patched to match the remaining carpet . . .. And, a May 17, 1983, telephone conversation with the realty specialist advised protester that the Government would not require any modifications to the

> facility . . .. In other words, the Government considered the physical condition of the protester's facility on an 'as-is' basis."

Thus, since Brizard had previously been informed of these "relaxed" requirements, we find that Brizard was not prejudiced.

Furthermore, with respect to the alleged requirement that all office doors swing outward, we think that Brizard simply read the original specifications too strictly. The solicitation merely required that exterior doors open outward, but did not impose this requirement with respect to interior office doors. Accordingly, we find that GSA's interpretation of the specification as not requiring all office doors to swing outward is not unreasonable. Brizard's allegation that the requirement is ambiguous does not make it so, and we find nothing in the solicitation which supports Brizard's argument in this respect.

We find nothing improper in GSA's acceptance from Dunaway--after best and final offers--of a lower escalator base rate and overtime rate. Dunaway submitted the low, acceptable best and final offer even prior to these reductions. Brizard notes that we have held that the government may not accept a late price modification where the offeror's proposal has not been determined to be most advantageous to the government in circumstances where further negotiations were required. Harris Corporation, B-204827, Mar. 23, 1982, 82-1 C.P.D. ¶ 274. It is GSA's position, however, that Dunaway's proposal had been determined to be acceptable and most advantageous at the time--subsequent to the conclusion of negotiations--when the price reductions were submitted, and there is no evidence that GSA lessened the contract requirements in any way in permitting these reductions. In these circumstances, a procuring agency may properly permit the low, acceptable offeror to reduce its otherwise low price after best and final offers have been received. Cf. 45 Comp. Gen. 228, 232 (1965), where we observed that the government may generally accept the benefit of a voluntary reduction in price from the low acceptable bidder.

In addition, Brizard's allegation that Dunaway reduced its percentage of government occupancy is not supported by the record. Our review indicates that Dunaway has not changed the percentage from that which was placed in its initial offer. Accordingly, we find no merit to this allegation.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States