



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Realty Ventures/Idaho
File: B-226167
Date: May 18, 1987

DIGEST

1. Contracting agency reasonably rejected best and final offer for the lease of office and related space because of informational deficiencies when it omitted items that were specifically required by the request for proposals and that had been raised during discussions. Protester's oral statement during discussions of its intent to meet solicitation requirements, without verification, is not a binding offer.

2. When contracting officer advises all offerors, in writing, of the government's changed requirements, the essential elements of an amendment are present, whether or not the writing is numbered and designated as a formal amendment. Agency's letter to offerors, listing additional solicitation requirements as well as topics for discussion, meets this test.

DECISION

Realty Ventures/Idaho protests the award of a lease for an office building in Coeur d'Alene, Idaho by the Forest Service, Department of Agriculture, under request for proposals (RFP) No. R1-86-27. Although the agency included Realty Ventures' initial proposal in the competitive range, it rejected the firm's best and final offer because it failed to incorporate terms and conditions that had been orally agreed to during discussions. The protester maintains that its agreement was understood by all parties and that it was entitled to award as the lowest offeror.

We deny the protest.

The RFP, issued on October 15, 1986, solicited offers for approximately 60,000 net usable square feet of office and related space for a 5-year term with 3 renewal options. It contained detailed specifications concerning the type of

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building, space, and maintenance services required and provided for award to the offeror whose technical/cost relationship was the most advantageous to the government. Price, which was more important than technical factors, was to be determined on the basis of the composite rate per square foot per year for the total amount of space offered. Technical factors, in order of importance, were energy conservation, accessibility and location, suitability of design, and environmental factors and safety.

On the November 24 due date, the agency received three proposals, including one from Par III Associates for space in the Forest Service's existing location and one from Realty Ventures for new construction. After initial review of the proposals and site visits, the agency included all three firms in the competitive range and notified each, by letters dated December 12, of items for discussion. The letters also included additional requirements relating to utilities (telephone and electric) and a computer room.

The agency documented its discussions with the protester by letter dated December 24 in which it requested the firm to verify the items summarized in the letter, make any revisions or modifications, and to submit a best and final offer by January 5, 1987.

The agency subsequently rejected the protester's proposal on grounds that it omitted certain requirements that had been discussed and failed to acknowledge the requirements that had been added by the letter of December 12. The agency maintains that Realty-Ventures' intent to comply was in doubt, and there could be no enforceable agreement. For example, although the solicitation required the lessor to provide garbage collection and lawn and landscape maintenance, Realty Ventures failed to include either in its best and final offer; in fact, although the solicitation required the offeror to provide, as well as maintain, appropriate landscaping, the protester's drawings showed none. Similarly, the solicitation required vinyl and ceramic tile in certain areas; however, the protester's best and final offer provided only for carpeting. The protester also failed to provide information on its proposed heating system. All these things had been discussed, the record indicates.

As for the requirements added by the letter of December 12, the agency contends that while during discussions the protester stated its intent to comply, its best and final offer did not acknowledge or provide for these items, which included electric and telephone outlets for each 100 square feet of office space and an emergency disconnect switch for the computer room.

Because of the omissions and uncertainties, the agency determined Realty Ventures' best and final offer was technically unacceptable. Of the remaining offerors, the Forest Service determined that the higher-ranked technical proposal was not worth its higher price. On January 21, it therefore awarded the lease to Par III Associates. This protest followed.

Realty Ventures maintains that its best and final offer "automatically" encompassed all solicitation requirements, including those added by the letter of December 12. The protester apparently believes that its intent to provide the omitted services and comply with the added requirements, as expressed during discussions, along with the agency's letter of December 24 summarizing discussions, was sufficient for a binding offer. Additionally, the protester complains that the letter of December 12 was not a formal amendment. It also alleges that when it inquired, both before and after submission of its best and final offer, regarding the necessity for additional information, the contracting officer responded that nothing further would be needed.

We find the Corps' rejection of the protester's proposal -- reasonable. In evaluating proposals, including best and finals, agencies may reasonably reject a proposal for "informational" deficiencies if these are so material that major revisions and additions would be required to make the proposal acceptable. RCA Service Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563. The record indicates that Realty Ventures' best and final offer, which modified the proposed price per square foot previously offered, included only the following other additions: a statement that parking would be provided as required by the IFB; a copy of the partnership agreement setting up the firm; a Clean Air and Water certification; and an acknowledgment of the single amendment to the RFP. There was no acknowledgment of the letter summarizing these discussions, and no other verification of the items therein.

A basic principle of negotiated procurement is that a technical evaluation is made on the basis of the proposal as submitted. Comten-Comress, B-183379, June 30, 1975, 75-1 CPD ¶ 400. Accordingly, we agree with the agency that the protester's oral statements of intent to provide the omitted items and to meet the added requirements cannot be viewed as a binding offer. The agency's letter of December 24, documenting oral discussions, was simply the agency's record of the discussions; without the protester's written acknowledgment or changes in its proposal, there was no assent by the protester.

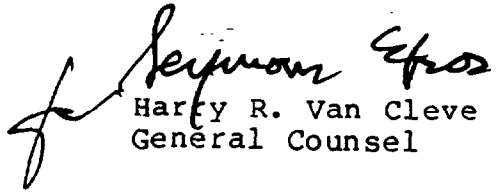
Further, we do not find the lack of a formal amendment listing the additional requirements dispositive. The Federal Acquisition Regulation, 48 C.F.R. § 15.606(a) (1986), generally provides that an agency shall issue a written amendment to the solicitation when, either before or after receipt of proposals, the government changes, relaxes, or otherwise modifies its requirements. However, when a contracting officer has advised all offerors of the government's changed requirements in writing, the essential elements of an amendment are present, whether or not a letter such as the one here is designated as a formal, numbered amendment. IBIS Corp., B-224542, Feb. 9, 1987, 87-1 CPD ¶ 136.

As for the protester's contention that it was misled by oral advice that no additional information was necessary, we believe the protester should have understood that no information on points other than those discussed was necessary. Certainly the protester was not free to ignore the agency's request for verification of the December 24 letter. Moreover, after discussions and a request for best and finals, an agency is not required to help an offeror by conducting successive rounds of discussions until omissions are corrected and the proposal brought up to an acceptable level. See Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640.

The protester also complains of award to a higher-priced offeror, alleging that there was an approximately \$47,450 a year difference between its own offer and that of the awardee. The contracting officer, however, states that after an evaluation that included, as specified in the solicitation, factors for utility services if not provided by the offeror and for relocation expenses, the difference was only about \$15,000. In any event, an unacceptable offer is of no value to the government notwithstanding its price. Aqua-Tech, Inc., B-210593, July 14, 1983, 83-2 CPD ¶ 91.

Finally, the protester argues that the awardee's proposal also failed to meet all RFP requirements and that the agency improperly waived some. The agency responds that all items discussed were not incorporated into the awardee's best and final offer, but that it evaluated only those items that were. We note that discussions with the awardee focused on improvements to the existing facility such as carpet replacement, rather than actual solicitation requirements, and we find this basis of protest without merit.

The protest is denied.


Harry R. Van Cleve
General Counsel