



The Comptroller General
of the United States

Washington, D.C. 20548

after

Decision

Matter of: Galloway, Inc.
File: B-226133
Date: June 1, 1987

DIGEST

1. Protest alleging that agency improperly evaluated awardee's price for lease of office space is without merit when, contrary to protester's assumptions, agency included price for janitorial services in its evaluation, and the offer included moving costs.
2. Protester's bare allegation of improper price disclosure, without probative evidence, is insufficient to carry its burden of affirmatively proving its case. The General Accounting Office will not attribute improper action to contracting personnel on the basis of the protester's speculation that a reduction in its competitor's best and final offer was caused by such disclosure.

DECISION

Galloway, Inc. protests the award of a lease for office space in Great Falls, Montana by the Forest Service, Department of Agriculture. The agency selected a building offered by A.V. Warehouse, also known as Buchanan Enterprises, Inc., under request for proposals (RFP) No. R1-86-25. Galloway believes that if the agency had properly evaluated offers, its own would have been low and thus entitled to award. The protester also contends that the agency improperly disclosed its price during discussions, leading Buchanan to decrease its best and final offer. We deny the protest.

The RFP, issued October 1, 1986, solicited offers for 18,070 square feet (plus or minus 5 percent) of office and related space for a 5-year term, with a 5-year renewal option. Offerors were to provide separate rates per square foot per year for office, warehouse, and wareyard space and, in addition, a composite rate for all space. Prices for janitorial services were to be broken out. Award was to be made to the offeror whose technical/cost relationship was most advantageous to the government. Price was more

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important than technical factors, which included (1) suitability of design, (2) environmental factors and safety, (3) accessibility and location, and (4) energy conservation.

Galloway initially offered space in the Forest Service's existing location, an historic 7-story building, at a composite rate of \$3.69 per square foot per year, stating that it would reduce its total price, \$68,225.85, by \$7,000 if janitorial services were not needed. Buchanan initially offered space in a newer, 1-story building at a composite rate of \$4.34 per square foot per year, or \$86,385, with an additional charge of \$700 a month for janitorial services. The agency held discussions with both offerors, pointing out, among other deficiencies, that each had offered more than the required amount of warehouse space, and requested best and final offers by November 26, 1986.

In its best and final offer, Galloway increased its composite rate to \$4.35 per square foot for a total, including janitorial services, of \$79,780.92. Buchanan, however, reduced its composite rate to \$4.10 per square foot, plus \$700 a month for janitorial services, for a composite total of \$4.55 per square foot. However, the agency recalculated Buchanan's composite rate, evaluating it at \$4.47 per square foot for a total, including janitorial services, of \$79,631.10.^{1/}

In the technical evaluation, the agency determined that the physical characteristics of Buchanan's building and the

^{1/} The basis for the agency's recalculation of Buchanan's composite rate is as follows. Buchanan's "Proposal to Lease Space" (form 1364) indicated that it was offering 9,743 square feet of office space. The cover letter to its best and final offer, however, noted a reduction in warehouse space and referred to an attached drawing. The form 1364 also referred to an attached floor plan that showed proposed office, storage, and garage space. These documents deleted not only warehouse, but also office space. The agency reviewed them and estimated that Buchanan had deleted approximately 875 square feet of office space in its best and final offer; it confirmed this by measuring the offered building, finding that the deleted space contained 883 square feet. According to the agency, this reduced the 9,743 square feet of office space originally offered by Buchanan to 8,860 square feet, which was within 5 percent of the 9,320 square feet of office space required. The agency confirmed the acceptability of the smaller space with the using activity and then recalculated Buchanan's price.

quality and design of the space, parking, and safety of visitors and occupants outweighed the \$.12 difference between the two offers. Specifically, the agency determined that Buchanan's building offered more efficient interior space and provided greater flexibility for organizational change than Galloway's. In addition the agency found that Buchanan's ground floor space, with little non-Forest Service traffic, in contrast to Galloway's sixth floor space, with a high volume of non-Forest Service traffic, provided a higher degree of safety and security, as well as accessibility for employees, visitors, and handicapped persons. The agency also found the public parking at Buchanan's building more desirable because it would be available primarily for the Forest Service, while that offered by Galloway would not. Accordingly, the agency considered Buchanan's offer the most advantageous to the government and, by letter dated December 15, accepted space that included the 883 square foot reduction in office space. Lease documents have yet to be signed.

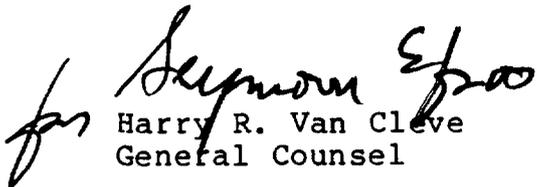
The protester first complains that Buchanan's offer did not include janitorial services and moving costs, maintaining that if these were evaluated, its own offer would have been low. Galloway's protest on this matter appears to be based on erroneous assumptions. Buchanan's best and final offer clearly indicates a \$700 monthly charge for cleaning and janitorial services. The abstract of offers includes a yearly cost of \$8,400 ($\$700 \times 12 = \$8,400$) that was added to Buchanan's offer for evaluation purposes. Additionally, the cover letter to the firm's best and final offer indicates that it includes the cost of moving Forest Service furniture and equipment from the present location. The agency reports that it did not consider the costs of moving the warehouse or the installation of a phone system because (1) the warehouse would have to be moved with either offer and (2) a planned new telephone system would be a new installation in either building. The protester also alleges that the awardee is getting an additional payment for remodeling. There is, however, no indication of this in the record. The protest against the allegedly improper evaluation is therefore without merit.

As for the alleged improper disclosure of Galloway's prices during discussions, the protester believes that Buchanan's reduced best and final offer can only be explained by such a disclosure. The protester further questions why offerors were given the opportunity to revise prices at all. The agency responds that only Forest Service personnel were present during discussions with the protester, and it denies any price disclosure.

The protester's bare allegation of improper price disclosure, without probative evidence, is insufficient to carry its burden of affirmatively proving its version of the facts. See Micro Labs, Inc. et al., B-193781, June 18, 1979, 79-1 CPD ¶ 430. We will not attribute improper action to contracting personnel on the basis of mere speculation. See Aviation Enterprises, Inc., B-223175, Sept. 24, 1986, 86-2 CPD ¶ 340. Price is a proper topic during discussions, and when best and final offers are called for, offerors are free to revise their proposals in any way, including price. Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 15.610, 15.611 (1986); Ron's Welding & Fabricating, Inc., B-216742, Oct. 23, 1984, 84-2 CPD ¶ 458. We further note that award could not have been made on the basis of initial proposals, as the protester apparently believes, since both offers as initially submitted exceeded the maximum amount of space required and contained other deficiencies. See FAR, 48 C.F.R. 15.610(a)(3); Automated Industries and Associates, Inc., B-225181.2, Dec. 3, 1986, 86-2 CPD ¶ 637. We deny this portion of the protest.

Finally, the protester implies that the awardee was improperly permitted to reduce its price after best and final offers. While the reduction in space, as indicated on Buchanan's drawing, caused a slight decrease in the awardee's composite rate, as recalculated by the agency, there was no reduction in its \$6.15 price per square foot for office space. Rather, the agency recalculated the total cost for office space at Buchanan's offered price. Thus, this is not a case where the agency permitted the awardee to reduce its price after best and final offers. See Mayden & Mayden, B-213872.3, Mar. 11, 1985, 85-1 CPD ¶ 290.

The protest is denied.


Harry R. Van Cleve
General Counsel