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DECISION



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

FILE: B-220584

DATE: January 14, 1986

MATTER OF: Sixth and Virginia Properties

DIGEST:

1. Protest will not be dismissed for failure to provide the contracting officer a copy of the protest 1 day after filing as required by GAO Bid Protest Regulations, since the 3-day delay in the agency's receipt of the protest did not delay proceedings.
2. Since contracting officials enjoy a reasonable degree of discretion in the evaluation of proposals, where solicitation for offers for the lease of office space required space in a "quality building," determination by contracting officials that the architectural structure of building does not impair its utility for the purpose intended will not be disturbed by GAO in the absence of a showing that the agency determination was arbitrary or unreasonable.
3. Protest filed after closing date for receipt of best and final offers, alleging, in essence, that offers were improperly evaluated is untimely and will not be considered on the merits, since method of evaluation used was as stated in the solicitation and, therefore, protest involves alleged solicitation defect which was apparent prior to closing.

Sixth and Virginia Properties (Westin), owner of the Westin Building in Seattle, Washington, protests the rejection of its offer and the award for the lease of office space to First and King Building Associates (King Associates), owner of the 83 King Street Building. The award was made under solicitation for offers (SFO) No. 10PEL-85-08 issued by the General Services Administration (GSA) for office space to be occupied by the National Park Service (NPS). Westin contends that the awardee's offer was nonresponsive to the solicitation and that the agency's price evaluation method was deficient. We deny the protest in part and dismiss it in part.

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GSA contends initially that the protest should be dismissed on the procedural basis that Westin failed to provide a copy of the protest to the contracting officer within 1-working day after the protest was received in the General Accounting Office, as required by our Bid Protest Regulations. 4 C.F.R. § 21.1(d) (1985).

Westin's protest was received in our Office on September 26, 1985. GSA states that the contracting officer did not receive a copy of the protest until October 1, 1985, which was 3 working days later, and that exhibits accompanying the protest to our Office (most of which consisted of prior correspondence between GSA and NPS) did not reach the contracting officer until 5 working days later. We note, however, that GSA's headquarters office and the regional office involved received telephonic notice of the protest the day after it was filed in our Office, and that the contracting officer's statement in full response to the protest was dated October 1, the same day he received his copy of the protest. Furthermore, the administrative report on the protest was filed 5 working days prior to the date it was due. The essence and purpose of the requirement for filing a copy of the protest with the contracting agency therefore was otherwise effected. Since the delay in the agency's receipt of the protest and accompanying exhibits did not result in a delay of the protest proceedings and no evidence has been presented by the agency to show that it was prejudiced by late receipt of the protest documents, the protest will not be dismissed under 4 C.F.R. § 21.3(f). Container Products Corp., B-218556, June 26, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ 727; Hewitt, Inc., B-219001, Aug. 20, 1985, 85-2 C.P.D. ¶ 200.

In September 1984, while the NPS was located in the Westin Building, the NPS expressed a need for an automated data processing (ADP) room, for which the Westin Building was not equipped. In view of the scheduled July 1986 expiration of the Westin lease then in effect, and the expense required to equip the area then occupied by the agency with an ADP room, GSA determined that it would be in the government's best interest to compete a new NPS lease which would include its requirement for an ADP facility.

In November 1984, GSA advertised the requirement for a 5-year lease of 25,600 to 28,300 square feet of office space. In response, eight potential sites were listed and approved by NPS during a market survey conducted in February 1985. The SFO was issued in March, with receipt of best and final offers requested by April 1985. After the issuance of

several amendments and an addendum stipulating that the government would accept occupancy prior to the expiration of the NPS lease then in effect, receipt of best and final offers was extended until September 5. On September 9, 1985, the lease was awarded to the low offeror, King Associates, at its evaluated price of \$13.45 per square foot (\$344,320 per annum), and Westin, whose evaluated price was the next low offer at \$16.53 per square foot (\$423,168 per annum) protested the award.

In its protest, Westin contends that the building offered by the awardee does not meet the solicitation requirements that the space be located in a "quality building" and ". . . have a potential for efficient layout" The protester argues that 83 King Street is not a quality building because it was originally built as a warehouse in 1904, and although it was placed on the List of Historic Structures in 1982 and renovated to meet modern safety requirements, each of its floors is characterized by 2-foot square vertical columns on 12-foot by 19-foot centers--a total of approximately 77 columns per floor. The protester also contends that because of this aspect of the building's structure, it has no potential for an efficient layout. The protester further suggests that 83 King Street is not a quality building because of the presence of certain steel cross braces which were installed to meet seismic safety standards. The contracting officer states that prior to its issuance of the solicitation, GSA personnel inspected the architectural design and layout of the space offered at the 83 King Street Building and determined that the columns and bracing would not significantly, if at all, impair the efficiency or productivity of the NPS.

The evaluation of proposals is primarily within the discretion of the contracting agency, not our Office. Since the agency must bear the burden of problems resulting from a defective evaluation, our review is limited to an examination of whether the agency's evaluation was fair and reasonable and consistent with stated evaluation criteria. TRS Design & Consulting Services, B-218668, Aug. 14, 1985, 85-2 C.P.D. ¶ 168; The City of Spartanburg, B-214161, Nov. 2, 1984, 84-2 C.P.D. ¶ 487.

We note that although the solicitation stipulates that the space offered must be located in a "quality building of sound and substantial construction," the solicitation does not define that requirement in terms of the architectural features of which the protester complains. The protester has not shown that these features render the building inadequate or unsuitable for use by the NPS, nor has the

protester shown that GSA's evaluation of the awardee's proposal was unreasonable. Since the protester's allegations are not, alone, sufficient to meet its burden of proof that GSA's determination was unreasonable, the protest is denied on this point. TRS Design & Consulting Services, B-218668, supra, 85-2 C.P.D. ¶ 168 at 7.

The protester also states that the 83 King Street Building is located in a high crime area of Seattle and is bordered on the west side by "an elevated double deck expressway" 60 feet from the building. Westin further states that the noise and distraction from the expressway traffic and the effect upon employee morale of the relocation to a "relatively unsafe area of the city" will result in a 15- to 20-percent loss in productivity. On the basis of these contentions, the protester challenges GSA's price evaluation based solely upon the rental cost. The protester also concludes that since GSA's projection of savings in the amount of approximately \$70,000 per year over the life of the lease represents 2.5 percent of the NPS employee's payroll, the award to King Street Associates is not cost effective.

This argument is essentially a challenge to the manner in which prices were evaluated, which was set forth in the solicitation, and, as such, constitutes an allegation of a defect in the solicitation that was apparent before the closing date for receipt of proposals. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation must be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1). Since Westin's allegations concerning the method of price evaluation was raised in its protest which was filed after award was made, they are untimely and will not be considered on the merits. William A. Stiles, Jr.; Piazza Construction, Inc., B-215922; B-215922.2, Dec. 12, 1984, 84-2 C.P.D. ¶ 658; affirmed in William A. Stiles, III--Reconsideration, B-215922.3, Feb. 19, 1985, 85-1 C.P.D. ¶ 208; see also, Rapid American Corp., B-214664, Dec. 26, 1984, 84-2 C.P.D. § 696.

The protest is denied in part and dismissed in part.

for Seymour Efron
Harry R. Van Cleave
General Counsel