

Bk-Pearson



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lembke Construction, Co., Inc.

File: B-228139

Date: November 23, 1987

DIGEST

A protest against agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that the awardee submitted a technically superior proposal and, based on the solicitation evaluation formula, the awardee's proposal offered the combination of management, quality and price most advantageous to the government.

DECISION

Lembke Construction Co., Inc. protests the award of a contract to design and construct the Kirkland Medical Center Replacement Facility, KAFB, New Mexico, to the M.A. Mortenson Company, under United States Army Corps of Engineers request for proposals (RFP) No. DACA47-87-0003. Lembke contends that because its best and final offer was over \$800,000 less than Mortenson's, the evaluation scheme must have been ignored because its previous experience clearly outweighed what Lembke understood to be Mortenson's experience. Lembke states that its contention is supported by the fact that Mortenson was awarded higher rankings in the evaluated areas of business history, design team experience, and construction team experience, categories in which Lembke believes it should have been scored higher than Mortenson if the proposals were evaluated properly. Lembke additionally claims reimbursement for the costs of filing and pursuing its protest, including attorney's fees.

We deny the protest and the claim.

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The RFP was issued on May 15, 1987, by the United States Army Corps of Engineers, Albuquerque District, and provided explicit instructions for proposal preparation. The instructions stated that a pricing proposal and a management proposal were to be submitted in separate sealed envelopes. The proposals were to be evaluated on the basis of management merit and cost. The RFP established an award formula combining an offeror's management proposal scores with the offeror's price, resulting in a best and lowest ranking cost which would be most advantageous to the government. Proposals were to be measured against the following specific evaluation factors: business qualifications; project organization; design team experience; construction team experience; management plan; proposed schedule; completeness of proposal and certification and pricing proposal.

The solicitation stated the order of relative importance of these factors as follows: Construction team experience would be ranked higher than business qualifications, design team experience, management plan, and proposed schedule, which would be approximately equal. Certification and project organization would rank below the above items and would be approximately equal. The pricing proposal would not be assigned points for evaluation, but, as noted above, was to be considered under a formula to determine the best and lowest ranking proposal.

Fourteen proposals were timely received on July 17. Six evaluation teams were assembled and began examination and scoring of the proposals on July 27. Each management proposal was given an independent evaluation by each team according to the instructions as explained in the preproposal conference.

On July 30, the source selection committee and the contracting officer reviewed the evaluators' recommendations and agreed that all 14 firms were technically capable of designing and constructing the subject facility. All pricing proposals were then opened. A competitive range for purposes of conducting discussions and requesting best and final offers was determined. Six offerors, including Lembke, were sent letters on August 4 notifying them of their inclusion in the competitive range and of those areas in their management proposal that could possibly be improved. The letter further advised that any modifications in the price and/or management proposals were to be included in a best and final offer submitted no later than August 14. In this letter, Lembke specifically was advised that its acceptable management proposal could be improved by providing more specific information under design team experience, construction team experience, project organization, and

proposed schedule. The Army indicated the information generally needed.

The technical evaluation teams were again assembled to review the revised proposals on August 17. The same procedures employed in the initial review were utilized in scoring those areas which the offerors had revised. The proposals were also ranked by weighted score in accordance with the formula in the RFP which provided a best and lowest ranking cost for purposes of award. The results are as follows (only the awardee's and protester's names are specified):

<u>Firm</u>	<u>Best & Final Tech Score</u>	<u>Best & Final Price</u>	<u>Weighted Price</u>	<u>Final Ranking</u>
M.A. Mortenson	3585	\$ 13,021,800	\$8,699,344	No. 1
[Proposer]	3179	12,549,000	8,855,202	No. 2
[Proposer]	2888	12,301,435	9,011,908	No. 3
Lembke	2655	12,217,807	9,214,304	No. 4
[Proposer]	3210	13,462,628	9,461,266	No. 5
[Proposer]	1893	11,480,000	9,467,786	No. 6

The contracting officer accepted the selection committee's recommendation and the contract award to Mortenson was made on August 25. Upon notification of award to Mortenson, Lembke requested a debriefing, which was held on September 2. On September 9, Lembke formally protested the award to our Office. On September 11, Mortenson was issued a notice to proceed.

Initially, Lembke complains that it was unfairly hampered in presenting its protest because the agency failed to make available to it various evaluation documents, and that these withheld documents should be considered an admission by the Army that Lembke's protest is valid. The documents at issue were withheld pursuant to the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(f) (Supp. III 1985), which requires release of relevant protest documents to an interested party only if the documents would not give that party a competitive advantage and the party is otherwise authorized by law to receive them. The agency made a determination to withhold these documents under this authority, but made the documents available to our Office. We do review such documents in arriving at our decision.

Flight Systems, Inc., B-225463, Feb. 24, 1987, 87-1 CPD ¶ 210. We think that our bid protest decisions must be based on the full factual and evidentiary record regardless of the fact that privileged documents are withheld from a protester.

The evaluation and scoring of technical proposals is the function of the contracting agency and our review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Delany, Siegel, Zorn & Assocs., B-224578.2, Feb. 10, 1987, 87-1 CPD ¶ 144.

Lembke specifically protests the evaluation of its proposal in the areas of business history, design team experience, and construction team experience.

With regard to the Army's evaluation of the business history factor, Lembke asserts the Army's evaluation to be inconsistent based on the evaluation points assigned to Mortenson. Under this factor, Lembke averaged 25.6 points and Mortenson averaged 35.4 points. Both Lembke and Mortenson received maximum points in the sub-category of business form and history. As to "current government projects," Lembke indicated only one current project at a contract value of \$1,461,000. Mortenson listed 21 current government projects valued in excess of \$362,000,000. As to "contracts completed within the last 5 years," Lembke listed 22 projects with an approximate contract value of \$61,000,000. Mortenson listed 65 projects valued at approximately one-billion dollars. Lembke noted that it had nine current projects in progress valued at \$4.7 million. Mortenson identified forty current projects in progress with an approximate contract value of \$900 million. Lembke is qualified to do business in four states while Mortenson is qualified in 29 states.

With respect to "financial strength," the evaluators found Lembke to be "weak," with questionable resources to handle a project of such magnitude; an average debt-equity ratio; and limited cash on hand. The evaluators found Mortenson to be of "superior" financial stability, with a debt-equity ratio more than three times as liquid as Lembke's ratio, and sufficient cash on hand to handle any project. Based on this record, especially the differences in the firms' project volume, contract values, and general financial resources, we cannot find the agency's evaluation under this factor was reasonable.

Under the design team experience factor, the Army gave 16.9 average points for Lembke's revised proposal, and scored Mortenson's offer at 24.1 average points. The evaluators downgraded Lembke because its stated design experience was limited to one completed medical facility over 100,000 square feet, a smaller facility than involved here. The evaluators found that Lembke has listed design experience in only 10 clinical related projects. Also, the key personnel proposed by Lembke for the KAFB project had no "design/build" experience, and the resumes in Lembke's revised proposal were not specific as to related major medical work or to the size and dates of listed projects. On the other hand, the evaluators rated Mortenson higher because its experience included 14 medical projects and three major hospitals over 100,000 square feet. In addition, the Mortenson proposal detailed experience in fast track (accelerated) design techniques and provided specifics on design personnel and their related hospital work. Based on these differences in design team experience, especially medical building design, we find the scoring was reasonable.

Concerning construction team experience, the evaluators were concerned again with Lembke's ability to manage a project as large as KAFB. Lembke's proposed construction team listed seven medical projects, only one of them comparable to KAFB. While the construction team management seemed adequate, it was found lacking in medical experience except for two small medical projects. Lembke's mechanical construction team did not indicate any medical experience and no project list was included for review. The electrical construction team had a marginal project list with the largest project totalling \$900,000. The revised proposal added resumes only, with no further elaboration. Mortenson's proposal listed 25 medical projects with an aggregate contract price of over \$200 million within the last 5 years. The project manager had completed five medical projects, and design/construct expertise was shown. The superintendent listed eight medical projects completed. Both mechanical and electrical construction teams listed more than one subcontractor and they both had completed six medical projects. Lembke received an averaged score of 21.7, and Mortenson an averaged score of 31.1. Given Lembke's failure to show any extensive medical facility construction work, we conclude the evaluation for construction work was reasonable.

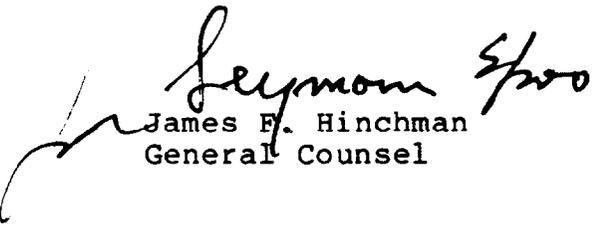
Our review of the evaluation indicates that the technical area which, according to the solicitation, was of paramount importance was in fact determinative in the selection of Mortenson. The management proposal of Mortenson was generally deemed superior to the other proposals. With respect to cost, the evaluation team adjusted each offeror's best and final price to determine a "weighted price" for

purposes of ranking and award. While our review shows that Lembke's best and final price was lower than that of Mortenson, we find the Army reasonably concluded that Mortenson's proposal offered the greatest value to the government in terms of price and technical merit, particularly in the evaluation areas discussed above.

The basis for Lembke's allegation concerning improper evaluation is essentially the agency's decision to select Mortenson for award despite the submission by Lembke of an adequate technical approach at a lower cost. The protester's responsive comments to the agency report give much weight to the proposition that it "understood" Mortenson's experience to be "clearly outweighed" by the relevant experience of Lembke. Our review of the record indicates that the Army adhered to the stated RFP evaluation criteria and that Lembke's proposal reasonably was not as highly technically rated as Mortenson's proposal. In this connection, we have recognized that the fact that the protester objects to the evaluation, and perhaps believes its own proposal was better than as evaluated by the agency, does not render the evaluation unreasonable. PE Systems, Inc., B-218961, Aug. 28, 1985, 85-2 CPD ¶ 238; Honeywell, Inc., B-181170, Aug. 8, 1974, 74-2 CPD ¶ 87.

The protest is denied.

Lembke has requested reimbursement for the costs of filing and pursuing its protest, including attorney's fees. Such costs can only be recovered, however, if the government has unreasonably excluded the protester from the procurement. 4 C.F.R. § 21.6(e) (1987). In view of our conclusions above, the claim is denied.


James F. Hinchman
General Counsel