



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fisk/Sunset Partnership

File: B-230946

Date: July 29, 1988

DIGEST

1. Under solicitation for lease of office space which provided that cost to government for security services would be factored into evaluation of each offer, agency's method of evaluating security costs, which involved an assessment of security costs for each offer based on the specific characteristics of the space proposed in each offer, was reasonable.
2. Protest that agency should have applied lower energy costs in evaluating proposal for lease of office space is denied where proposal included no information on energy costs which agency could use to quantify those costs for the proposed office space. An evaluation must be based upon the information included in a proposal, so that no matter how advantageous an offer may be, an offeror runs the risk of losing the competition if it does not submit an adequate proposal.
3. Protest that agency should have given office space proposal greater credit for space use efficiency is denied since, although proposal included statement that a typical upper floor of proposed building achieves an 86 percent space utilization efficiency, there was no documentation in the proposal to support this assertion. Although protester argues that evaluation should have considered the space efficiency advantages of a single building and that agency should have requested and considered layout drawings, those factors were not listed in solicitation's evaluation criteria and if the protester objected to listed evaluation criteria, it was required to protest before initial closing date.
4. Agency's evaluation of offer for lease of office space which did not add costs for rearrangement of work stations within currently leased space was proper since solicitation

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only called for evaluation to include cost of agency relocation from currently leased premises.

DECISION

Fisk/Sunset Partnership protests the award of a lease to Elmwood Properties, Ltd. under solicitation for offers (SFO) No. DE-RP96-88P014150 issued by the Department of Energy (DOE) for office space. Fisk contends that in evaluating the proposals, DOE made errors relating to the costs of security services, electrical energy, space efficiency and relocation. We deny the protest.

BACKGROUND

The SFO solicited offers for approximately 100,000 square feet of office space and related space for a base term of 5 years, with three successive 5-year renewal options.

Under the solicitation, the lease was to be awarded to the offeror whose proposal was determined to be the most advantageous to the government, price and other factors considered. The other factors, listed in descending order of importance, were parking and location, physical characteristics such as character and quality of space, grounds and approaches, landscaping and main lobby decor; handicapped accessibility; use of renewable energy and availability of additional space for DOE supporting contractors. The solicitation specified that the low priced offer was to be determined by a comparison of the gross present value life-cycle cost per square foot of each offer. The SFO also indicated that the agency will provide security for the leased space under another contract and that, for purposes of the evaluation, the estimated cost to DOE of government provided services, including security, would be added to each offer. The solicitation also provided a formula for the consideration of space use efficiency in the evaluation and provided that DOE would add to each offer an estimate of the cost of relocating DOE workstations.

Fisk and Elmwood submitted the only offers. After discussions, the two firms submitted best and final offers (BAFOs). The per square foot rental for the full 20 year term before adjustment was \$271.7500 for Elmwood and \$347.3000 for Fisk. When the two offers were evaluated in accordance with the solicitation's price evaluation scheme, DOE calculated the gross present value life-cycle cost per square foot of the two offers as follows:

Elmwood	\$238.9410
Fisk	258.2756

These figures included adjustments for security services, electrical costs, space efficiency and relocation expenses. Award was made to Elmwood on January 6, 1988, as a result of its lower evaluated price. Fisk protested the selection of Elmwood to DOE. That agency denied Fisk's protest on March 31. Fisk filed its protest at this Office on April 6.

SECURITY COSTS

Fisk argues that DOE overstated the costs of security services in evaluating Fisk's offer and understated such costs in Elmwood's offer. The solicitation indicated at paragraph 11(B)(4)(a) that the government would provide security services under a separate contract and that for evaluation purposes the per square foot cost of security would be included in the price evaluation. DOE calculated its cost of security as \$471,477 per year for Elmwood's offer and \$360,817 per year for Fisk's offer.

Fisk argues that these amounts were inconsistent with the agency statements as to how security services would be evaluated. At a preproposal conference, two questions were asked relating to the cost of security. Those questions, and DOE's answers, which were later provided in writing to all prospective offerors, were as follows:

"Question 42: WILL THE LOWER SECURITY COST OF A SINGLE BUILDING OPERATION BE AN AWARD FACTOR?"

Yes. See solicitation Paragraph 11(B)(4)(a).

"Question 43: CAN WE GET AN ESTIMATE TELLING US WHAT THE GOVERNMENT IS CURRENTLY PAYING FOR SECURITY EITHER BY THE HOUR OR BY THE END OF THE YEAR FOR PUBLIC RECORD?"

Security is provided by Boeing Petroleum Services through a subcontractor. Security services at DOE's present location cost approximately \$261,000 per guard station per year for each of two stations."

The written questions and answers included the disclaimer that none of the answers provided constituted an amendment to the solicitation.

Fisk contends that in a follow-up conversation, the contracting officer said that the security costs quoted at the preproposal conference were accurate and would not vary by more than 5 percent. The protester maintains that in reliance on the preproposal conference answers and the

contracting officer's subsequent statement, it prepared its offer of a single building with one security guard station believing that it had a significant price advantage over any offer that Elmwood could submit since because of the space requirements Elmwood's offer would have to include two buildings with two security guard stations. Fisk argues that by answering the preproposal question on a per guard station basis contracting officials committed themselves to evaluating the cost of security on that basis. Thus, Fisk argues that since its offer included only one building with one guard station and Elmwood proposed two buildings with two guard stations, DOE should have added only \$261,000 per year for security to Fisk's offer and \$522,000 to Elmwood's offer. According to Fisk, had the correct amounts been applied to the two offers instead of the amounts used by DOE (\$360,817 for Fisk and \$471,477 for Elmwood) Fisk's offer would have been low and it would have been the awardee.

DOE explains that the cost of security services for a particular offer depends on the amount of space to be protected and unique features of that space such as the number of entrances and exits, continuity of the space, and the number of manned lobby guard stations. For example, DOE notes that the security cost for Elmwood's two building space would be lower than DOE's current space because, although both require two stations, Elmwood's two building space is easier to secure than the current two guard station three building configuration because it has fewer entrances.

Further, in this respect, DOE says that the security cost for the two buildings offered by Elmwood is not twice as much as the cost for Fisk's single building simply because of the number of guard stations. According to DOE, although Fisk's single building offer is more security cost efficient because it requires a lower number of protective force labor hours, both offers require the same number of labor hours for a site captain and supervisors despite the different number of guard stations.

Finally, DOE argues that the preproposal answer which Fisk relies on was simply a response to a question of what the agency was currently paying for security and that the written responses cautioned offerors that the answers did not constitute an amendment to the SFO. DOE argues that, in view of the solicitation provision that stated that security costs would be evaluated on a per square foot basis, Fisk's reliance on the \$261,000 per guard station figure was not reasonable. The contracting officer also states that he does not recall providing Fisk with a percentage of a dollar amount or a range of dollar values for security costs in a conversation before proposals were due.

The evaluation of proposals is primarily within the discretion of the contracting agency, not our Office. Sixth and Virginia Properties, B-220584, Jan. 14, 1986, 86-1 CPD ¶ 37. In reviewing protests against allegedly improper evaluations, we will not substitute our judgment for that of the agency evaluators, but rather will examine the record to determine whether the evaluation was reasonable and in accord with listed criteria. City of Nenana, B-214269, June 21, 1985, 85-1 CPD ¶ 708.

Although the solicitation indicated that the per square foot cost to the government for security would be a factor in the evaluation, it did not specify in detail how that cost would be determined. We think that the method used here--an assessment of security costs for each offer based on the specific characteristics of the space proposed--was reasonable. Although Fisk's proposed space includes only a single guard station and Elmwood's offer includes two guard stations, since the amount of space to be protected is approximately the same for both proposals, DOE's actual costs for security would not, as the protester argues, necessarily be doubled for Elmwood's space. Further, we have no reason to dispute the agency's judgment that the number of labor hours for a site captain and supervisors would be the same for a single guard station proposal and a two guard station proposal even though the latter proposal would require a greater number of protective force labor hours.

Moreover, Fisk does not challenge this judgment. Rather, Fisk argues that DOE was bound to apply a \$261,000 per guard station factor to each offer because that was the figure discussed in the agency's response to the preproposal conference questions. In our view, however, the questions asked and DOE's responses clearly referred only to the amount DOE was currently paying for security. Also, since the written responses to the preproposal conference questions included a disclaimer that those responses did not amend the solicitation, Fisk's total reliance on those responses in preparing its offer was unreasonable. See Coastal Electronics, Inc., B-227880.4, Feb. 8, 1988, 88-1 CPD ¶ 120.

With respect to the oral advice which Fisk says that it received from the contracting officer regarding security costs, we think the most reasonable interpretation of the alleged statement is that the contracting officer did not expect the costs for security in the context of the current space to vary more than 5 percent, not that the \$261,000 per guard station figure would not vary more than 5 percent no matter what the configuration of the space. Moreover, the solicitation contained a clause that specifically states

that oral explanations or instructions given by the agency will not be binding. Thus, even if Fisk was misled, it relied on that oral advice at its own risk. American Hospital Consultants Co., B-226166, Apr. 8, 1987, 87-1 CPD ¶ 386.

ENERGY EFFICIENCY

Fisk also argues that DOE charged excess electrical energy costs to its proposal. In this respect, although the SFO directed that the contractor should provide electricity in the leased space, both offerors proposed that DOE provide and pay for electricity under the lease. Thus, in accordance with paragraph 11(B)(4)(a) of the solicitation, DOE added the estimated cost of electricity to the proposed rental price of each offeror. As Fisk was informed in a debriefing, that cost was \$1.4015 per square foot per year for both offers.

Fisk maintains that it should have had a substantial advantage with respect to energy cost because it offered a recently renovated building with many energy efficient improvements. In the cover letter to its initial proposal, Fisk informed the agency that its building was being renovated including reconditioning of all electrical and mechanical systems and installation of ultra-efficient lighting, a new roof and energy efficient exterior glass. Fisk says that DOE should not have used the same electricity costs in the evaluation of both offers since the agency was informed of the energy efficiency of Fisk's building.

In response, DOE argues that Fisk was informed before it submitted its BAFO that the same amount would be used to evaluate energy costs in both proposals. Moreover, DOE says that it would have been improper to use a lower figure in evaluating the energy use of Fisk's building since Fisk did not include any information in its offer to demonstrate the energy efficiency of its building and Fisk did not suggest a figure which DOE should have used to evaluate electricity costs in its building. Further, DOE maintains that even if Fisk's building is 90 percent more energy efficient than Elmwood's, holding all other factors constant, Elmwood's offer would still be the lowest priced.

We agree with DOE. Although the cover letter to Fisk's proposal generally noted the energy efficiency of its renovated building, there was no specific information included in the proposal which the agency could use to quantify that efficiency and, even in its protest, Fisk does not suggest an amount that should have been added to its proposal instead of the figure supplied by DOE. An evaluation must be based upon the information contained in the

proposal, so that no matter how advantageous an offer may be, an offeror runs the risk of losing the competition if it does not submit an adequate proposal. Ira T. Finley Investments, B-222432, July 25, 1986, 86-2 CPD ¶ 112. In this respect, the evaluation of proposals to determine the most advantageous offer should be confined to matters that are not speculative and are quantifiable. Daggett Properties, B-227635, Oct. 22, 1987, 87-2 CPD ¶ 384. Although Fisk argues that DOE should have requested more information on energy efficiency, Fisk was informed of the amount that DOE was going to use to evaluate its proposal and it had the opportunity to dispute that figure or submit detailed information with its BAFO to demonstrate the energy efficiency of its building. It is an offeror's obligation to establish that its offer will best meet the government's needs and DOE could not credit Fisk with information it may have had but omitted from its proposal. W&J Construction Corp., B-224990, Jan. 6, 1987, 87-1 CPD ¶ 13.

SPACE EFFICIENCY

Fisk also maintains that DOE did not assign the correct cost to its offer for space efficiency since the evaluation did not take into account the effect of having all of the leased space located in one building and the agency did not obtain layout drawings to use in evaluating the Fisk building's space efficiency. In response, DOE notes that although Fisk's offer included a statement that a typical upper floor of its building achieves an 86 percent space utilization efficiency, there was no documentation in the proposal to support this assertion. In this respect, Fisk did not meet its obligation to establish that its offer would best meet the government's needs. W&J Construction Corp., B-224990, supra.

Moreover, the method to be used to evaluate space efficiency was set out in paragraph 11(c) of the SFO; under a formula in that provision, the evaluators were to consider the number of 135 square foot workstations which the proposed space could accommodate. The space use efficiency factor did not require evaluators to consider the advantages of a single building and did not require evaluators to request and consider layout drawings. If Fisk believed that those factors should have been considered by the evaluators, it should have protested before the initial closing date. Tower Corp., B-225617, Mar. 23, 1987, 87-1 CPD ¶ 329.

RELOCATION EXPENSES

Finally, Fisk maintains that DOE did not add the proper amount to Elmwood's offer for the cost of relocating DOE workstations. In this respect, the solicitation at

paragraph 11(B)(4)(c) stated that, in the evaluation, DOE would add to each offer the estimated cost of a "DOE move from any portion of its current leased premises."

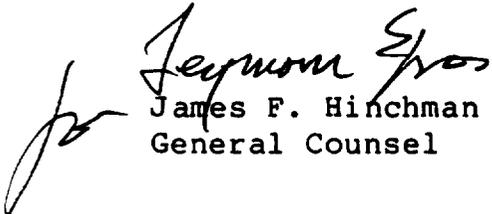
Since Fisk offered to bear the cost of DOE relocating to its building, nothing was added to the Fisk offer for relocation expenses. In Elmwood's case, DOE already occupies under other leases most of the space offered. However, since 158 DOE workstations would have to be relocated to the proposed buildings, DOE added a relocation cost to Elmwood's offer for those 158 workstations.

Fisk maintains that there are a total of 690 workstations and that it offered to pay the cost of relocating all workstations while Elmwood did not. Fisk argues that Elmwood proposed substantial renovations of its buildings so there will be some cost to DOE for moving workstations within the existing leased space and that cost should be charged to Elmwood's proposal.

We find no merit to this allegation. The SFO clearly indicated that relocation costs would only be included for a move from the currently leased premises. DOE explains that when the agency re-releases space that it already occupies, any internal rearrangement of workstations is handled by existing DOE personnel at no additional cost to the government. Thus, there was no provision in the SFO to add a charge for rearranging workstations within currently leased premises. Moreover, DOE notes that Elmwood would still have the lower price even if DOE had applied a relocation cost factor for all 690 workstations to Elmwood's proposal and Fisk does not dispute this contention. Thus, an adjustment of the evaluation on this factor alone would not result in an award to Fisk.

CONCLUSION

For the reasons set out above, we have no reason to disagree with DOE's evaluation and decision to award to Elmwood. The protest is denied.


James F. Hinchman
General Counsel