

Ms. Perry



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Realty Executives

File: B-237537

Date: February 16, 1990

C. William Mulligan, III, Esq., Callahan, Gorman, Woodford & Mulligan, for the protester.
Robert R. Brown, Department of Agriculture, for the agency.
Anne B. Perry, Esq. and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In assessing the relative desirability of proposals and determining which offer should be accepted for award, the contracting agency enjoys a reasonable range of discretion, and the General Accounting Office has no basis to question the agency's selection of an offeror other than the protester, the incumbent, where the protester submitted a sketchy technical proposal which only summarily addressed the solicitation's evaluation criteria.

DECISION

Realty Executives protests the award of a contract to Gold Nugget Realty under request for proposals (RFP) No. 02-00-9-094 issued by the Farmers Home Administration (FmHA), Department of Agriculture, for exclusive real estate brokerage services for the area served by the Mesa, Arizona, FmHA county office, south of Phoenix. Realty Executives challenges the agency's evaluation of the proposals.

We deny the protest.

The solicitation, issued September 2, 1989, sought the services of a real estate broker for the period beginning on the date of award until September 30, 1990. Offerors were instructed to submit separate price (commission) and technical proposals, and were cautioned that the government may award on the basis of initial offers received, without discussions, so that each initial offer should contain the offeror's best terms from a cost and technical standpoint.

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The evaluation criteria to be used in determining the eligibility of all offerors were as follows:

| <u>Criteria</u> | <u>Points</u> |
|---|---------------|
| A. Experience with FmHA Sales and Loan Procedures | 5 |
| B. Member of Multiple Listing Service (MLS) | 5 |
| C. Knowledge of Local Real Estate Market | 20 |
| D. Convenience of Office Facilities | 20 |
| E. Availability of Broker/Agents | 20 |
| F. Advertising Plan | 5 |
| G. Innovations to be Utilized | 5 |
| H. Broker Qualifications | <u>20</u> |
| Total points | <u>100</u> |

The solicitation also stated that cost, while not weighted, would be an important evaluation factor. For purposes of evaluation, offerors were to assume that an estimated quantity of 14 properties with an average value of \$50,000 would be sold during the contract period. Offerors were to enter their commission percentage and the resulting total amount of the commission to be paid.

The two offerors who responded to the solicitation each offered the identical six percent commission on the sale of a home, or an evaluated \$42,000 in commissions for each offeror. The technical evaluation panel reviewed the proposals and determined that, generally, Gold Nugget's proposal was better than Realty Executives' in that it was detailed enough to be implemented into a firm contractual commitment. Specifically, for example, the contracting officer noted that, in its proposal Gold Nugget discussed a marketing plan, a commitment to employ an agent in the East Valley area (the location of the Mesa office), and a detailed management plan. On the other hand, the technical evaluators' review of Realty Executives' proposal revealed that its proposal was not submitted in proposal format, only summarily addressed the evaluation criteria, and did not provide a clear commitment to the government that could readily be implemented into a contract. For example, while the protester's proposal mentioned that it had 18 realty agents in its office, it did not state how many would be

working on the contract. In addition, the evaluators found Realty Executives' marketing innovations particularly weak.

Since both offerors offered an identical cost, and Gold Nugget's proposal was determined to be superior, the contracting officer decided that it was in the best interests of the government to make award to Gold Nugget on the basis of initial proposals without discussions. Realty Executives filed a protest in our Office challenging the contracting officer's award to Gold Nugget on the basis that it was arbitrary and capricious because the technical evaluation of the proposals was incorrect.

At the outset, we note that it is not the function of this Office to evaluate technical proposals. Rather, we will examine the agency's evaluation only to insure that it was fair and reasonable and consistent with the evaluation criteria revealed in the RFP. Pan Am World Serv., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283. The determination of the merits of the proposals, particularly with regard to technical considerations, is primarily a matter of administrative discretion which we will not disturb unless it is shown to be arbitrary. Id. A protester's disagreement with the agency's judgment is itself not sufficient to establish that the agency acted arbitrarily. Id.

Both offerors are located in the Phoenix area. The protester is the incumbent contractor for these services and its office is closer to Mesa than the awardee's, although the awardee's president, who has primary responsibility for the project, is herself a resident of the East Valley area and has committed to employing and assigning to this project an agent who also is a present resident in East Valley.

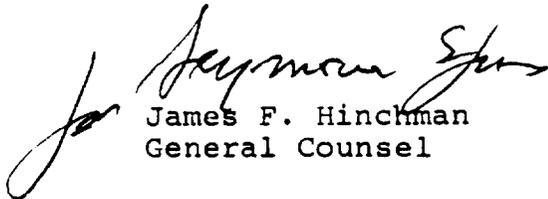
Realty Executives alleges that the technical scoring of the two proposals was improper insofar as it failed to give sufficient weight to the protester's local experience, presence in the area to be served, and past performance. With respect to its deficiency in the "innovations to be utilized" category, Realty Executives admits that its proposal fails to address this technical evaluation factor in detail, but states that it is, in its opinion, the least significant factor since it merely deals with "puffing about proposed plans that may or may not be successful." Overall, Realty Executives argues that, as the incumbent, it has proven it is best qualified and should have received award.

We disagree. There is no legal basis for favoring a firm with presumptions on the basis of past performance; rather, an offeror must demonstrate capabilities in its proposal

that were required in the RFP to be addressed. Laser Power Tech., Inc., B-233369; B-233369.2, Mar. 13, 1989, 89-1 CPD ¶ 267. Moreover, it is well established that an offeror runs the risk of being rejected or downgraded if it does not submit an adequately written proposal. Id.

Our review of the individual proposals, as well as the comments of the technical evaluators and the contracting officer, reveal that the proposal submitted by Realty Executives was sketchy at best, and did not address RFP requirements in nearly as detailed and specific a manner as did Gold Nugget's proposal. The fact that the overall point scores of the two proposals were close demonstrates that considerable consideration was given to Realty Executives' past experience with FmHA. In light of the cursory treatment of the proposal to the solicitation requirements by Realty Executives, and the detailed plan provided by Gold Nugget, we find that the technical evaluation was not arbitrary.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel