

Formica



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Greyback Concession
File: B-239913
Date: October 10, 1990

Tom Atchley and Mike Lee for the protester.
Allen W. Smith, Forest Service, Department of Agriculture,
for the agency.
John Formica, Esq., and John Brosnan, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. Procuring officials enjoy a reasonable degree of discretion in evaluating proposals for campground concessionaire operations, and General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the prospectus.
2. Protest that agency was biased in favor of the awardee in its evaluation of proposals for campground concessionaire operations is denied where there is no credible evidence showing bias, and the record supports the selection of the awardee.

DECISION

Greyback Concession protests the award to L&L, Inc., of special use permits for campground concessionaire operations of the Barton Flats and Heart Bar Complexes in the San Bernardino National Forest, California, under a prospectus issued by the Forest Service, United States Department of Agriculture.^{1/} Greyback argues that the Forest Service improperly evaluated the proposals and was biased in favor of the awardee.

We deny the protest.

^{1/} The Barton Flats Complex consists of five campgrounds and an amphitheater. The Heart Bar Complex consists of two campgrounds.

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BACKGROUND

The Forest Service issued the prospectus on February 28, 1990, inviting offerors to submit separate proposals for the two locations. The permits were for a 1-year initial period, with two 1-year options. The prospectus provided that award was to be made to the best qualified applicant with demonstrated ability to provide public camping services at a reasonable rate, and set out five evaluation criteria. The first three, in descending order of importance were: (1) financial ability to perform required services; (2) experience and qualifications in operating campgrounds and associated facilities; and, (3) kinds and quality of services. The remaining two criteria, which were weighted equally but less than the first three, were: (4) fees to be paid and potential savings to the government, and; (5) fees to be charged to the public for use of the camping facilities and services.

Three offerors responded to the prospectus by the closing date of March 29. The proposals were evaluated and L&L received the highest cumulative scores of 89 out of a possible 105 points on its proposal for the Barton Flats Complex, and 86 out of 105 points on its proposal for the Heart Bar Complex. Greyback received a cumulative score of 65 on its proposal for the Barton Flats Complex, and a score of 64 on its proposal for the Heart Bar Complex. Based on these scores, L&L was selected for award on both the Barton Flats and Heart Bar Complexes.

ANALYSIS

Greyback objects to the evaluation of its offers and those of the awardee as arbitrary and erroneous.

In reviewing protests like this against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate those proposals or to select a particular firm for award. ADT Facilities Management, Inc., B-236122.2, Dec. 12, 1989, 89-2 CPD ¶ 541. Rather, the determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion. Id. Consequently, we will question an agency's evaluation only when the record shows that it does not have a reasonable basis or is inconsistent with the criteria listed in the solicitation. Id.

We have reviewed the evaluation record in the context of all of the protester's arguments and for the reasons set forth

below, we find that the agency had a reasonable basis for its selection of L&L.^{2/}

Financial Ability

Greyback first challenges the agency's evaluation of the offerors' financial ability. The protester, which had working capital sufficient to meet the minimum financial requirements of the solicitation--working capital sufficient to cover anticipated expenses for one half of the operating season--received a lower score under this factor than the awardee, whose financial ability exceeded the solicitation's minimum requirements. Greyback first argues that each proposal should have received the same point score because each firm had the minimum financial ability necessary to be eligible for award. Greyback points out that proposals to operate these same complexes were evaluated in this manner in 1989 by the Forest Service. As far as the actual assessment of financial ability is concerned, Greyback argues that while L&L does have greater overall resources, they are spread out over a large number of contracts and concessions held by L&L, while all of Greyback's resources are applicable to the subject complexes. Thus, the protester concludes that L&L was overrated under this factor, contending that the agency should have divided L&L's total working capital by the current number of government contracts "for which these assets are listed."

The current evaluators need not be bound by the approach taken by the prior year's evaluators of awarding the total available points to offerors meeting the minimum standard. See, e.g., Interaction Research Inst., Inc., B-234141.7, June 30, 1989, 89-2 CPD ¶ 15. The current evaluators were free to establish the evaluation methodology and scoring system they felt appropriate, provided that the resultant evaluation is reasonable and consistent with the evaluation criteria listed in the solicitation. Id.

In this regard, we disagree with Greyback's view that under the current solicitation each proposal should have received the same point score for financial ability, regardless of its relative merits. The solicitation apprised offerors of the

^{2/} The scores received by Greyback and L&L under all of the evaluation factors were similar for both the Barton Flats and Heart Bar Complexes. Therefore, unless otherwise noted, the contentions and our analyses apply to both complexes.

agency's intent to evaluate financial ability^{3/}, and the agency was therefore not limited to determining whether a particular offeror satisfied or did not satisfy the minimum requirements for financial ability set forth in it. Ira T. Finley Invs., B-222432, July 25, 1986, 86-2 CPD ¶ 112.

We do not believe that the agency acted unreasonably in awarding L&L a higher score because of its greater overall financial resources even though it may currently hold a greater number of federal contracts. First, it is not at all clear that even if L&L's overall resources were divided among its other contracts that they would still not exceed those of Greyback. Second, we see nothing illegal or inconsistent with the terms of the solicitation--which did not seek information on an offeror's other government contracts--in the evaluation which measured the firm's overall financial status in terms of assets versus liabilities.

Experience

Greyback next challenges the agency's evaluation of experience. Greyback argues that the Forest Service failed to adequately consider in evaluating the proposals that Greyback's experience is largely in the operation of local campgrounds, while much of L&L's experience is in the operation of out-of-state campgrounds.

The relevant evaluation criterion neither emphasizes nor even mentions the importance or desirability of local campground experience. It simply states that experience in operating campgrounds will be evaluated. The protester does not dispute the agency's assertion that the awardee's overall experience in campground operation totals approximately ten times that of the protester. The evaluation record shows that Greyback was given credit for its experience in operating campsites in the area. In the evaluators' view this was more than offset by L&L's greater experience in general campground management. We have no legal basis upon which to interfere with the evaluators' judgment in awarding L&L a higher point score on that basis.

^{3/} The protester does not challenge the use of financial ability as an evaluation criterion. Such a criterion should be used only where special circumstances warrant. See Flight Int'l Group, Inc., B-238953.4, Sept. 28, 1990, 90-2 CPD ¶ ____.

Proposed Services

Greyback disputes the agency's assessment of its operating proposals. The evaluation record shows that the evaluators downgraded Greyback's proposal because they found it vague and lacking in detail as to the operation of the campgrounds in general, while noting specifically that the proposal was weak in the areas of employee training, fee collection, and law enforcement. Greyback does not specifically rebut the agency's determinations with regard to its operating proposals but points to L&L's proposals, and argues that since they are similar, the evaluators were inconsistent because L&L received a higher total point score.

To illustrate its argument, the protester points to the descriptions of law enforcement and employee training in its and L&L's proposals, and contends in effect that while the descriptions are the same or are very similar, various evaluation panel members expressed concern with these sections of Greyback's proposals, while complimenting these sections of L&L's proposals.

The protester's assertion that its and L&L's proposals include the same law enforcement training and overall law enforcement plan is simply not correct. L&L stated that its employees would be trained by law enforcement officers who had been trained by the Forest Service to ensure familiarity with the proper procedures for handling violations, and that such training would include the enactment of various scenarios requiring law enforcement intervention which could occur during campground operation. Greyback's plan did not describe who would conduct its law enforcement training, what that person's background or qualifications are, what training methods would be used, or what training activities would take place.

Further, Greyback's contention that its employee training plan is the equivalent of L&L's is not supported by the record. Again, as an example, L&L specified that it would train its employees for approximately 1 week at its headquarters with its employees receiving the same type of instruction and training as that received by the employees of such public service corporations as Marriott and Walt Disney. Greyback's training plan, on the other hand, did not specify the amount of time that its employees would spend in training, or how the employees would be trained. The lack of details regarding the training Greyback's employees would receive was expressly cited by the evaluators as a deficiency.

Finally, the protester argues that it was not given credit for the many extra services it proposed such as free maps, naturalist hikes, information leaflets on beavers and their

habitat, etc. The evaluation record does show that the evaluators considered these extras but concluded that they did not overcome the weaknesses in the other portion of the proposals.

In sum, based on our review of the record, we find that the agency acted reasonably in awarding Greyback a lower total point score for its operating proposals than it did for L&L.

Fees to be paid to the government

Greyback questioned the agency's evaluation of the proposals under this criterion. The agency reports that Greyback received the highest number of points available under this criterion based on its higher return to the agency. Greyback has not specifically refuted the agency's response, and we do not find that the agency acted unreasonably in not awarding the protester even more points because of its additional offer to reforest some of the sites.

Prices to be charged to the public.

Greyback challenges the agency's method of evaluating the offerors' proposed prices to be charged to the public. The agency, citing "historic camping patterns," evaluated the prices to be charged on the basis that 70-75 percent of campground use would be by families with more than one vehicle. Greyback proposed a camping fee of \$6 per family per vehicle, while L&L proposed charging a fee of \$7 per family for one vehicle, and \$3 per each additional vehicle. As a result of its lower overall charge for campground use by families with more than one vehicle, L&L was awarded a total of 14 points in this area while Greyback was awarded a total of 11 points.

Greyback claims that the agency is incorrect in its conclusion that 70-75 percent of campground use is by families with more than one vehicle, and contends that the majority of campground use is actually by families with one vehicle only. The protester therefore argues that its pricing structure actually results in the lowest overall fee to the public.

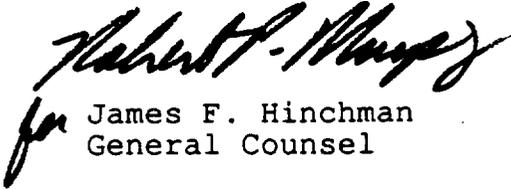
We need not resolve this dispute for even if the proposals were evaluated as Greyback suggests, any scoring change in this category, which is worth a total of 15 points, would have no effect on the relative standing of the offerors.

Bias

Finally, Greyback argues that the Forest Service may have been biased against it, and that the award was directed to L&L notwithstanding Greyback's superior proposal. We will

not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition and we find no credible evidence to support a claim of bias on this record. Facilities Eng'g & Maintenance Corp., B-233974, Mar. 14, 1989, 89-1 CPD ¶ 270. In our view, the record reasonably supports the selection of L&L notwithstanding the protester's views that its proposals were superior.

The protest is denied.


for James F. Hinchman
General Counsel