

Terry



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

Decision

Matter of: Kurt Eickhof
File: B-240128
Date: October 16, 1990

Kurt Eickhof for the protester.
Bruce A. Nelson, 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

Where solicitation provided that price and technical factors would be given equal weight in the evaluation, agency properly awarded a contract to higher-rated, higher-priced offeror where agency reasonably determined that superior technical rating of offeror was sufficiently significant to outweigh the cost difference.

DECISION

Kurt Eickhof protests the award of a contract to Cal Sorenson under a solicitation issued by the Agricultural Stabilization and Conservation Service, Department of Agriculture, for the lease of new office space for western Polk County, Minnesota. Eickhof contends that the rejection of its low-priced offer and the award of a contract to the highest-priced offeror was improper and not in the best interests of the City of Crookston, the seat of Polk County and where the office space is to be located.

We deny the protest.

The solicitation provided that price and "award factors" would receive equal weight in the evaluation. The contracting agency received 5 proposals in response to its solicitation for 6,705 square feet of net usable high quality, first floor office space in Crookston. The space is to be used to house local Agriculture offices under a 5-year lease with an option to renew for an additional 5 years.

The protester's proposal was based on converting to new office space the old, now-vacant, Crookston City Hall, also referred to by the protester as the former fire hall and

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police station. Sorenson proposed to build a new, one-story office building. As a result of the technical evaluation panel's review of the proposals, all offerors were requested to submit best and final offers (BAFOs). Eickhof's proposed annual rental rate of \$9.00 per square foot was the lowest received, for which he received full credit in the cost evaluation. Because of deficiencies the contracting agency perceived in his offered space, however, the protester received only 5 out of a possible 50 technical points. Sorenson's offered rate of \$13.75 per square foot was 65 percent higher than Eickhof's and his proposal was downgraded proportionately in the cost evaluation.^{1/} Sorenson's proposed newly-constructed building, however, so closely matched the contracting agency's requirements--significantly more so than any other offeror's--that it was awarded 47 out of 50 possible technical points. Sorenson's combined technical and cost score of 80 points was the highest; others' total scores varied from the mid-50's to the mid-60's, with Eickhof receiving 55 points. Sorenson's high score reflected the strength of his building proposal--which the agency describes as "far superior" to any other--and which outweighed its higher price. After considering the results of the evaluation, the agency decided to make award to Sorenson. Eickhof filed a protest in our Office after being notified of the award to Sorenson, arguing that the award to the highest offeror was arbitrary and capricious.

Essentially, the protester challenges the agency's determination that award to the higher technically-rated, higher-priced offeror was justified. Eickhof argues that "the evaluation process used by the federal agency in determining the most advantageous offer [was] inadequate," and that "[t]he needs of the City and community should also be major factors in the selection process." The protester also argues that the deficiencies in his proposal were not sufficient to justify the additional expense of leasing the awardee's newly constructed building.

To some extent, Eickhof's challenge concerns the propriety of the agency's evaluation formula, because it weighed technical and cost considerations equally, or because it did not properly account for the interests of the community in revitalizing downtown Crookston. In these respects Eickhof's protest is untimely. Protests based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1990).

^{1/} Other offers were in the range of \$10-13 per square foot per annum.

The remaining issue is Eickhof's challenge to the agency's tradeoff of cost and technical considerations. In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs properly may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the evaluation factors. IBI Security Serv., Inc., B-238661, June 25, 1990, 90-1 CPD ¶ 589. We will not disturb awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the agency has reasonably determined that the technical difference is sufficiently significant to outweigh the cost difference. United Technical Electronics, Inc., B-235774.2, Nov. 7, 1989, 89-2 CPD ¶ 433.

In reviewing protests against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. IBI Security Serv., Inc., B-238661, supra. Rather, the determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion in proposal evaluation. Id. Consequently, we will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria in the RFP. TIW Sys., Inc., B-222585.8, Feb. 10, 1987, 87-1 CPD ¶ 140.

A review of the proposals submitted by Eickhof and the awardee, in conjunction with the evaluation documents, clearly demonstrates that the technical evaluation and the cost/technical tradeoff were rational and consistent with the RFP's evaluation criteria. As we noted above, Eickhof's proposal received only 5 out of a possible 50 technical points. This was largely due to the fact that Eickhof failed to provide mandatory features in his proposed space, despite specific advice by the contracting agency that such noncompliance would result in a low technical score. As an example, Eickhof did not offer solely first floor space as required, but rather offered a multiple-floor office arrangement. The drawings he submitted show that not all of Agriculture's offices could be accommodated on the first floor of the old City Hall; as a result, the Farmers Home Administration offices would be located on the second floor. Additionally, not all of the space offered by the protester was handicapped accessible. Eickhof's proposal also was cited for deficiencies such as a poor location; the lack of available parking (most is located in a city parking lot over which Eickhof has

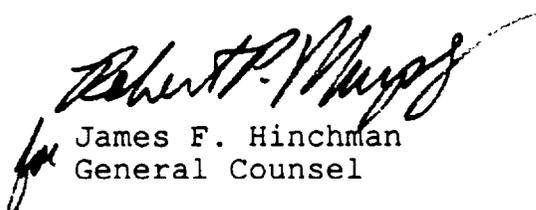
no control); the poor quality and physical characteristics of his building, due to its age and lack of maintenance; inconvenient layout; questionable structural safety, due to the building's age; and the fact that it is not located sufficiently near eating facilities. Sorenson's proposal, on the other hand, offered a newly constructed building which was adapted to the agency's specific needs.

Eickhof does not dispute that his proposed facility fails to meet all of the required features, rather, he contends that the "variance[s]" are not worth the additional expense to the government. Eickhof argues that he offered an excellent office facility with a newly renovated interior, at the most reasonable price. Eickhof also, for the first time in his comments on the agency report, states that the renovation would comply with the handicapped accessibility requirement because he would add an elevator--a feature not shown on the drawings Eickhof submitted with his proposal. Eickhof also disputes the agency's concerns regarding location, arguing that his building is in the center of Crookston and is central and convenient.

We view Eickhof's protest as essentially disputing the contracting agency's decision to award a contract to an offeror whose proposal is higher-priced, albeit higher technically rated, when the protester believes he offered an acceptable building at the lowest price. As we previously noted, however, the solicitation clearly provided that technical considerations would be equal in value to cost.

We find that the contracting officer reasonably determined not only that Sorenson's proposal offered clearly superior office space--a conclusion not even challenged by Eickhof--but also that the higher quality was sufficiently significant to justify the cost differential. The awardee's proposal, although the highest priced, was specifically tailored to meet the government's needs, while the protester's proposal, although low priced, did not even offer the minimum requirements of the RFP. Since the solicitation provided that technical considerations were equal to those of cost, the contracting officer reasonably concluded that award to Sorenson was in the government's best interest.

The protest is denied.


for James F. Hinchman
General Counsel