DECISION **THE COMPTROLLER GENERAL OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-206642; B-206642.2 **DATE:** October 29, 1982

MATTER OF: Albert J. Haener;
E. H. Ladum

DIGEST:

1. Where protester's allegations are shown by agency to be grounded on inaccurate assumptions of fact, protest concerning alleged zoning deficiency in competitor's technical proposal and alleged improper waiver by contracting officer of Economy Act maximum rental limitation is denied.

2. Award of negotiated contract need not be made to the offeror proposing the lowest cost unless the solicitation so indicates.

3. Procurement officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Cost/technical tradeoffs may be made and the extent to which one may be sacrificed for the other is governed only by tests of rationality and consistency with established evaluation factors. Further, determination of relative merits of proposals is responsibility of agency.

Albert J. Haener and E. H. Ladum protest the Forest Service's award of a lease to Landmark Development under solicitation No. R1-82-5, which requested offers to lease office, warehouse, and wareyard space for the supervisor and staff of the Nezperce National Forest. We deny the protests.

The Ladum Protest

Ladum's protest is based on the following contentions: (1) Landmark failed to meet the solicitation's requirements concerning zoning of the proposed property; and (2) the contracting officer improperly evaluated the successful proposal on cost criteria different than those imposed on other offerors inasmuch as he selectively waived the provisions of the

023810

Economy Act, 40 U.S.C. § 278a (1976), in favor of the successful offeror.

Concerning its first ground of protest, Ladum initially maintained that the site proposed by Landmark was not properly zoned for its intended use as required by the solicitation, rendering Landmark's proposal "nonresponsive." The agency pointed out in its report to our Office, however, that the location of Landmark's proposed site has no zoning requirements and therefore no zoning information was necessary from Landmark in connection with its proposal. Further, an independent appraisal confirmed that "no zoning of record" existed.

Ladum now argues that the term "zoning" can be construed to include the availability of water and sanitation facilities and that Landmark's proposed property is located outside the sewer and water zone of the nearest city, Grangeville, Idaho. Landmark, according to Ladum, was unable to provide its site with water and sewer service until the city of Grangeville agreed to an extension of its sewer facilities, which occurred only after a series of city council meetings attended by Forest Service personnel who urged this "variance" to the city's "sewer zoning plan." In this connection, Ladum asserts that a septic tank system could not be used as an alternative to the sewer line connection due to county and state requirements. Ladum further alleges that Landmark could not comply with the solicitation requirement that buildings be ready for occupancy by July 22, 1982, since Landmark did not obtain sewer permits in time, in Ladum's view, to permit construction completion and occupancy by then.

In response, the agency asserts that water and sewage were never a problem. It notes that two options were always available for disposal of sewage: (1) agreement with the city of Grangeville for hook-up to its sewer system, which Landmark preferred because of lower initial and maintenance costs; and (2) construction of a suitable septic disposal system, which Landmark already had designed, and which had been approved by the County Environmental Health Specialist. As for water supply, drilling of a well on the proposed site was discussed during negotiations with Landmark as an option if approval could not be obtained to purchase municipal water from the city.

The protester has not shown that the use of a septic system was not a viable alternative for sewage disposal if that became necessary or that a well was not feasible--it has only made an unsubstantiated allegation to this effect. We therefore do not believe it is necessary to consider further the actual meaning of the term "zoning" in the context of this procurement since Landmark's offer thus is acceptable even under Ladum's definitions.

Concerning the alleged time for occupancy, the contracting officer reports that the occupancy date of July 22 was modified in a letter dated December 23, 1981, prior to receipt of best and finals, permitting offerors to propose their own schedule for occupancy. Landmark proposed a period of time which would have allowed occupancy within five months from the commencement of construction. Since construction was to begin approximately April 1, Landmark's facility would have been completed by September 1. On the other hand, Ladum offered its facility to be ready "approx. October 15, 1982." These dates were the basis for evaluation of the competing offerors, and we therefore find no merit to the protester's complaint.

Next, Ladum maintains that the contracting officer improperly waived the provisions of the Economy Act in favor of Landmark because Landmark's proposal exceeded the statutory rental limit of 15 percent of fair market value of the premises being leased. Ladum explains that Landmark's proposal with an offered rental of $240,049 represents a 16 percent return on its investment. Had Ladum known that the provisions of the Economy Act would not be imposed, Ladum states that it could have submitted a lower priced proposal.

The agency reports that although it received notification that Congress rescinded the 15 percent rental limitation of the Economy Act after the date set for receipt of proposals, it nevertheless elected to continue to apply the limitation to its leasing program. The agency explains that Ladum's calculations concerning Landmark's proposal are in error. The $240,049 was simply a figure used in the agency's value analysis during evaluation which was obtained by multiplying the rental rate offered by Landmark by the exact amount of square footage specified in the solicitation for office and warehouse space. This calculation was done for comparison purposes only since Landmark in fact offered five percent more space than called for by the solicitation. The actual annual rental proposed by Landmark was $224,002.80, which is less than 15 percent of the property's appraised value of $1,500,000. In addition, we fail to see how the 15 percent limitation (which in effect establishes a ceiling) affected Ladum's ability to offer a lower price. We therefore find no merit to this allegation.

The Haener Protest

Albert J. Haener advances numerous contentions as to why its proposal should have been selected for award. Since Haener had submitted an offer solely for a portion of the Government's requirements, that is, warehouse and wareyard space, its proposal was evaluated in conjunction with offers for office space to provide a basis for comparison with the "all or none" offers received. While Haener's offer in combination with Landmark's offer of office space only was the lowest received (by approximately six percent), it would have entailed having the Forest Service's office and warehouse space at two different sites. In the judgment of the evaluators, the advantage of having both buildings on one site outweighed the cost savings represented by Haener's offer for a separate site. Savings in gasoline costs, vehicle parts and increased security at a combined facility were also factors considered by the evaluators.

Haener nevertheless alleges that its proposal, as the lowest received, should have been selected for award. However, an award of a negotiated contract need not be made to the offeror proposing the lowest cost if the solicitation indicates otherwise. 50 Comp. Gen. 110 (1970); Pioneer Contract Services, Inc., B-201143, April 9, 1981, 81-1 CPD 273. Here, the solicitation listed cost as only one of nine factors to be considered with a relative weight of 35 percent. The Forest Service, after an evaluation under the guidelines set out in the solicitation, concluded that Landmark's proposal, for many reasons, would be the most advantageous despite the extra cost. In a negotiated procurement, procurement 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 may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325.

Where the agency procurement officials have made a cost/technical tradeoff, the question is whether the determination to make the award was reasonable in light of the solicitation's evaluation scheme. Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD 365. In view of the relationship of cost to other factors to be considered in the evaluation of proposals, the fact that Landmark scored highest in every evaluation criteria except cost, and in view of the negligible difference in cost and the stated advantages which were determined to be gained by making award to an offeror proposing a "one-site" facility, we find that the Forest Service's determination to award to Landmark was consistent with the solicitation's evaluation scheme.

Haener's remaining allegations concern the judgment of the evaluators as to the relative technical merits of the competing proposals. Specifically, Haener alleges that its proposal offered: (1) better energy conservation features than Landmark's; (2) more efficient utilization of space; (3) more convenient employee parking space; (4) minimal impact on the environment; (5) greater accessibility to the warehouse; (6) earlier occupancy date; (7) ample room for expansion; (8) adequate health, safety and sanitation services; and (9) a proposed site which was not "prime farm land" as prescribed by the terms of the solicitation.

The agency, in turn, has specifically rebutted every allegation made by the protester. For example, concerning energy conservation, the agency explains that, except for Haener's statement about better energy conservation, there was no explanation in Haener's proposal as to the manner in which this would be accomplished. Haener's offer included these statements only: "Install insulation and weatherstrip overhead doors; Install additional insulation where needed; and Install circulation fans in rooms with high ceilings." On the other hand, the Landmark design utilized energy saving features such as insulated glass and insulated block walls. Further, the "Lessor's Annual Cost Statement" which was required to be submitted with each offer shows a cost of $4,811 for heat and electricity for Haener's building and only $2,800 for Landmark's proposed warehouse. This represents an estimated $10,000 savings on energy costs by making award to Landmark.

As another example, the agency identified virtually no difference between the competing proposals with respect to employee parking except that it was determined by the evaluators that "one-site" parking was preferred. The agency also found that the proposed location of the Landmark building was much more accessible to its employees and the public than the warehouse proposed by Haener. The Forest Service was also unaware of any health, safety and sanitation factors in either proposal that would be detrimental to the public or its employees.

Thus, although Haener has provided technical arguments in support of his protest, we are unable to conclude on the basis of our examination of the record that the Forest Service's evaluation was unreasonable. The determination of the relative merits of proposals is the responsibility of the agency that solicited them, and requires weighing competing subjective considerations and exercising sound discretion. WASSKA Technical Systems and Research Company, B-189573, August 10, 1979, 79-2 CPD 110. Our Office therefore will not disturb an agency's determination unless it is shown to be arbitrary or to violate procurement statutes or regulations. Tracor, Inc., 56 Comp. Gen. 62, 74 (1976), 76-2 CPD 386; Ads Audio Visual Productions, Inc., B-190760, March 15, 1978, 78-1 CPD 206. Haener has not made such a showing here. Although the record evidences disagreement between the protester and the agency concerning the relative merits of proposals, we cannot conclude that the Forest Service evaluations were improper. For the most part, the evaluative conclusions to which Haener objects are precisely the type of subjective judgments reserved to contracting officials, not our Office. While Haener obviously does not agree with the Forest Service's evaluation of its proposal, there is nothing in the record to indicate that acceptance of Landmark's proposal was anything other than the reasonable judgment of the agency's technical experts.

The protests are denied.

Milton J. Socolar

Acting Comptroller General
of the United States