



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of:       Daggett Properties  
File:             B-227635  
Date:             October 22, 1987

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### DIGEST

1. Contracting agency properly selected a higher-priced proposal to lease a facility where the evaluation criteria provided that award would be based on the technical/cost relationship most advantageous to the government, and the agency reasonably determined the proposal had technical advantages that were consistent with the evaluation factors and worth the extra cost.
2. Contention that protester was placed at a competitive disadvantage under a solicitation to design, construct and lease a building because the agency waived for a competitor a requirement that exterior walls have a specified insulation value is denied where the requirement had no apparent effect on the competition.
3. Where agency was evaluating designs for a building to be constructed and leased, the agency properly did not evaluate utility costs to be paid by the agency where offerors failed to submit the necessary data; the data was speculative in any event; and all offerors were evaluated on an equal basis.

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### DECISION

Daggett Properties protests the award of a contract to Seaside Associates, Ltd. under request for proposals (RFP) No. R6-86-143P, issued by the Forest Service, Department of Agriculture, to design, construct and lease approximately 15,000 square feet of office space and other facilities near Enterprise, Oregon. Daggett complains that Seaside proposed to construct buildings which do not comply with the RFP's requirement that exterior walls have a certain insulation value. Daggett also contends generally that Seaside's proposed facilities are more costly than those proposed by Daggett without affording the Forest Service any worthwhile advantages. We deny the protest.

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The RFP explained that the facilities will be used as the primary visitor information center as well as the headquarters for the Hell's Canyon National Recreation Area and two ranger districts, and would also house other Forest Service offices. The RFP advised offerors that heavy visitor traffic was anticipated, and an extraordinary design effort was required to project a host image; the design should, among other things, reflect and/or complement the "western ranch" flavor of the local area. The RFP also stated the design should blend the use of building materials common to the area, such as wood products, timber and stone. The RFP contained many building requirements and specifications, including the requirement that exterior walls have a minimum insulation value of R-19.

Offerors were required to include in their proposals the plans for their facilities. Such plans did not need to be complete, but needed to demonstrate the overall design concept, including elevations and profiles of the buildings sufficient to show their design and architectural features. Regarding energy conservation, RFP clause L-2.18 required that the outline plans contain detailed information about external and internal architectural, mechanical, electrical, and energy conservation features proposed to meet energy consumption standards established by The American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE). The RFP provided that the government would be responsible for the payment of utility costs, and projected energy consumption data for the buildings thus was required.

The section of the RFP relating to evaluation provided that selection of a contractor was to be based on a determination of the technical/cost relationship most advantageous to the government, where the critical factor in making any cost/technical trade-off would be whether the significance of a difference between technical scores for proposals was worth the additional cost. For the purpose of evaluating cost, this section stated that offered prices would be evaluated based on their price per square foot of usable space, to which the pro rata cost of government-provided services would be added.

The technical factors--listed in descending order of importance, including adjective descriptions of their importance--were as follows:

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|---------------------------|----------------|
| 1) Design                 | Most important |
| 2) Handicapped Facilities | Most important |
| 3) Location               | Very important |
| 4) Environment and Safety | Important      |
| 5) Community              | Important      |

The Forest Service received proposals of 18 different sites submitted by six offerors. Both the protester and the awardee proposed alternate sites. The protest only concerns, however, the relative merits of the "Wise" site proposed by Seaside for a 10-year lease at a total price of \$2,258,833 (\$7.54 per square foot), and the "Daggett" site proposed by Daggett for the same term at a total price of \$2,024,728 (\$6.69 per square foot). With the addition to each offer of an identical amount representing government operating costs, the total evaluated cost of the Seaside site was \$2,430,791 (\$8.12 per square foot), while the cost of the Daggett site was \$2,196,687 (\$7.26 per square foot). Daggett's other sites were more costly than Seaside's Wise site.

After conducting discussions and requesting best and final offers, the Forest Service determined that technical strengths of Seaside's proposal were worth the \$234,105 difference in price. In particular, the Forest Service determined that Seaside's design for the visitor center and office building was extraordinary and best projected the desired host image. The design was for a log cabin resembling a lodge with several gables and a surrounding deck, whereas Daggett's design was perceived to be for two plain, modern, single-level buildings with broad and bat siding. Daggett also offered log siding as an alternative. In addition, Seaside's proposed site was found to afford the best location, based on its proximity to Enterprise and its access to the main highway. Daggett's site was farther from Enterprise and was considered the least desirable site. Finally, the Forest Service noted that energy savings may be expected from Seaside's design, which provided for solar gain in the winter through southern windows and doors and for protection from solar penetration in the summer by an overhanging roof.

Daggett terms Seaside's design "inferior," and argues that Seaside's proposal should not have been selected for award because its design fails to meet the insulation requirements for exterior walls and will result in a greater cost premium than the government estimated; Daggett maintains that Seaside's proposal could result in greater energy costs by as much as \$6,000 per year. Daggett also contends that the Forest Service overestimated by more than \$4,500 the evaluated cost to the government of phone services for the Daggett site.

In a negotiated procurement, as here, there is no requirement that award be made on the basis of lowest price. Rather, the contracting agency has discretion to make cost/technical tradeoffs consistent with the RFP's stated

evaluation scheme<sup>1/</sup> and to select a higher-priced, technically superior proposal, if doing so is deemed to be worth the extra cost to the government. Our Office will not question the agency's decision regarding the significance of the difference in technical merit unless the decision is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. See Bell Technical Operations Corp., B-225819, et al., May 21, 1987, 87-1 CPD ¶ 534.

The perceived technical advantages of Seaside's proposal are supported by our review of the proposals and are consistent with the RFP's evaluation factors. In this regard, the RFP specifically stated that physical appearance and use of wood products in construction and finish would be design subfactors (design itself was a "most important" evaluation factor), and that a single site within easy proximity to the main highways and public services would be location subfactors (location was a "very important" factor). The perceived aesthetic advantages of the Seaside design are largely subjective considerations, and as such necessarily are within the ambit of the contracting agency. Again, we have reviewed the proposals and the agency's conclusions are not contradicted by the record, Daggett's own subjective judgments notwithstanding. Thus, we find no basis to question the reasonableness of the agency's determination that Seaside's proposal afforded advantages in appearance and location that were worth the additional cost.

Seaside's proposal of a log building did take exception to the requirement that exterior walls have a minimum insulation value of R-19; the proposal stated that the R-value for exterior walls would vary but would meet or exceed the requirements of the Uniform Building Code and ASHRAE standards (both incorporated by reference in the RFP and not as stringent as the specified insulation value). When the agency relaxes its requirements, it generally must issue a written amendment to afford all offerors an opportunity to revise their proposals. See Federal Acquisition Regulation, 48 C.F.R. § 15.606 (1986). Our Office will not sustain a protest based on the government's failure to do so, however, absent a showing that the protester was prejudiced in that it would have altered its proposal to its competitive advantage if given the opportunity to respond to

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<sup>1/</sup> In this case, since the RFP did not explicitly indicate the relative weights of cost and technical merit, it must be presumed they were considered relatively equal. Actus Corp./Micheal O. Hubbard and L.S.C. Assocs., B-225455, Feb. 24, 1987, 87-1 CPD ¶ 209.

the modified requirements. AT&T Communications, 65 Comp. Gen. 412 (1986), 86-1 CPD ¶ 247.

In this case, it does not appear that the Forest Service's failure to issue a formal amendment relaxing the insulation requirement had a material effect on the competition. The protester does not argue that it would have changed its price based on such an amendment, or that adding insulation would significantly affect price. Moreover, it seems unlikely that the relaxation would have had an effect on the designs offered, considering that the agency basically was evaluating only a design concept, and the offeror was left to satisfy the technical requirements as it saw fit. It also does not appear that an RFP amendment allowing log construction would have given Daggett reason to change its design for aesthetic purposes, since Daggett already proposed log siding as an alternative to give the appearance of log construction. Since the Forest Service's failure to issue an amendment relaxing its R-value specification to accept log construction did not affect Daggett, we will not disturb the award on this basis.

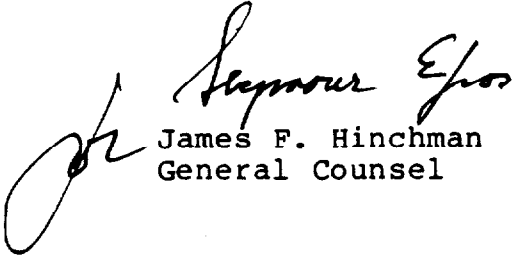
Daggett disputes the Forest Services' conclusion that Seaside's design had energy conservation features that might result in cost savings, and provides its own comparison of anticipated costs for electricity that projects Seaside's proposal as costing \$6,000 per year more than Daggett's. Daggett's computation of the costs of its own proposal, however, are not based on projected energy consumption data supplied in its proposal; notwithstanding the RFP's requirement for such data, Daggett provided none. Similarly, Seaside's proposal stated that it could not provide detailed energy consumption data until completion of the design, and provided only a preliminary estimate of total electricity usage per year. The Forest Service did not require further information from either offeror and did not include energy costs in the evaluation, apparently because they would be speculative. We believe this decision was reasonable; we have held that the evaluation of proposals to determine the most advantageous offer should be confined to matters that are not speculative and are quantifiable. Continental Cablevision of New Hampshire, Inc., et al., B-178542, July 19, 1974, 74-2 CPD ¶ 45; see also, Comdisco, Inc., 64 Comp. Gen. 11 (1984), 84-2 CPD ¶ 416. The agency decision in this regard applied equally to Daggett and Seaside. See Consolidated Photocopy Co. and Downtown Copy Center, A Joint Venture, B-225526, Mar. 20, 1987, 87-1 CPD ¶ 322.

As for Daggett's allegation that the Forest Service improperly evaluated the cost of phone services under its proposal to be excessively high, the agency did state in its

negotiation memorandum that phone services to Daggett's site and other sites outside the Wise area would cost an additional \$5,000 per year. The memorandum merely noted the additional phone services costs, however, and went on to justify the award to Seaside based on its technical advantages over Daggett and the other offerors at a fair price; that is, the phone charges had no noticeable impact on the award decision. This argument thus provides no valid basis for taking exception to the award.

Lastly, the protester challenges the reasonableness of various elements comprising Seaside's total lease price. Since prices were solicited on a firm, fixed basis, however, no particular price or cost analysis was appropriate or required, except as the agency might have considered necessary to determine the reasonableness of the total price. See Sperry Corp., B-225492, et al., Mar. 25, 1987, 87-1 CPD ¶ 341.

The protest is denied.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman  
General Counsel