Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Family Realty

File: B-247772

Date: July 6, 1992

Pamela J. Storie for the protester.
Kenneth A. Markison, Esq., Department of Housing and Urban Development, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency performed a proper price analysis in determining that a low priced offeror's price reflected the offeror's proposed approach and was reasonable on a solicitation for a fixed-priced contract for property management services.

2. Evaluation criterion in request for proposals for property management services that gives a preference for offerors having offices within the geographic area to be served does not establish a requirement that an offeror have an established office in that area; agency properly evaluated this criterion where it gave more credit to an offeror who had a local office over an offeror who did not.

3. Record does not support protester's contention that it was entitled to a perfect technical score, where the proposal was not perfect and legitimate weaknesses were identified.

4. Agency gave appropriate weight to heaviest weighted technical factors in awarding a contract to a slightly lower rated offeror, who offered a significantly lower fixed price, where the agency reasonably found that the only significant difference between the proposals involved one criterion and that this advantage was not worth the significant price premium.

DECISION

Family Realty protests the award of a contract by the Department of Housing and Urban Development (HUD) to Property Watch, Inc. under request for proposals (RFP) No. 67-91-117 for real estate asset management services.

We deny the protest.

The solicitation sought a contractor to manage various properties that the agency holds until the properties can be sold. The RFP solicited proposals for a firm, fixed-price, indefinite-quantity contract for a base year and 2 option years. The RFP solicited a single lump-sum annual price for each contractor-managed agency property. The price included performance within stated time limits of all required property management services (e.g., property inspection, maintaining and securing vacant properties, notifying police and taxing authorities of agency ownership, and obtaining contractors to perform repair and maintenance work) on properties located within an approximately 18,000-square mile/22-county area of southwest Oklahoma.

The RFP listed five numerically scored technical evaluation factors: (1) demonstrated experience in the management of single family properties (30 points); (2) demonstrated experience in soliciting repair bids, coordinating and overseeing repair work and inspections (20 points); (3) demonstrated experience in managing a rental program, including establishing fair market rentals and collections from present and former tenants, for single family properties (15 points); (4) understanding of agency objectives and the required tasks as specified in the solicitation (15 points); and (5) evidence of adequately staffed, trained, and equipped office (or the ability to establish such) reasonably located so as to provide convenient service to the agency and its clients in the area to be served, and to carry out all duties specified in the solicitation (20 points). The evaluation plan for rating proposals under the five technical criteria gave evaluators descriptive narratives for each of four possible levels of points with corresponding point ranges--level-one being the highest with the most possible points and level-four the lowest with the least.

The RFP advised that "[t]he combined relative merit of the technical evaluation factors . . . will be more significant than cost or price in the selection of the contractor" and that award may be made to other than the lowest price offer. The RFP cautioned offerors that, notwithstanding price's lack of a numerical weight, it remained a criterion in the overall evaluation and that the agency must find the price reasonable and reflective of the offeror's proposed technical approach. The RFP stipulated that even though technical considerations were more important than cost:

> "[i]n the event that two or more offers are considered technically equivalent, the evaluated cost or price will be of primary importance in

determining the proposal most advantageous to the [g]overnment."

The agency received three proposals and, after initial evaluations, included only Family Realty and Property Watch in the competitive range. Discussions were conducted with the firms, which then submitted best and final offers (BAFO) by January 21, 1992. On February 12, the evaluators rated the two offerors' BAFOs as follows:

	Technical Score	Price
Family Realty	90	$ 338,801.51
Property Watch	81	214,560.00

The evaluators recommended award to Property Watch, finding that the proposals were technically equal, save for Family Realty's superior office location within the geographical area to be serviced, and determining that Family Realty's advantage was not worth its substantially higher price. On February 14, the source selection official concurred with the evaluators' recommendation and directed award to Property Watch. On February 20, the contracting officer performed a price analysis of Property Watch's proposal, finding it reasonable. On February 21, the contracting officer made an affirmative determination of Property Watch's responsibility, and, on February 24, award was made to Property Watch. On February 25, Family Realty received written notice of the award. This protest followed on February 28. The agency has authorized contract performance notwithstanding the protest.

Family Realty contends that the agency should have rejected Property Watch's proposal because its price was below cost. In support of its contention, the protester, the incumbent contractor, has submitted a detailed analysis of the expenses that it believes are associated with the RFP's requirements. Family Realty contends that Property Watch's low price shows that Property Watch does not understand the requirements and that firm's proposal should have been rejected as unacceptable, since that firm's income from the contract will be insufficient to cover the cost of providing the required level of service. In essence, Family Realty protests that the agency did not adequately evaluate the "cost realism" of Property Watch's price.

Federal Acquisition Regulation (FAR) §§ 15.805-2 and 15.803-3 require that, in evaluating proposals in response to RFPs, agencies must determine that costs or prices are fair and reasonable. See Servrite Int'l, Ltd., B-241942.3, June 13, 1991, 91-1 CPD ¶ 567. An agency's concern in making a price reasonableness determination, prior to the award of a fixed-price contract, focuses primarily on whether the offered prices are higher than warranted based on the offeror's costs and are used in negotiating reasonable prices. Ebonex, Inc., B-213023, May 2, 1984, 84-1 CPD ¶ 495. The fact that a firm's offer may not include any profit or may be an attempted buy-in does not render the firm ineligible for award. This is so because below-cost pricing is not prohibited and the government cannot withhold an award from a responsible offeror merely because its low offer is below cost. Id.; Norden Sys., Inc., B-227106.9, Aug. 11, 1988, 88-2 CPD ¶ 131. Thus, "cost realism" ordinarily is not considered in the evaluation regarding the award of a fixed-price contract, since the contract places upon the contractor the risk and responsibility for loss. See Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556. "Cost realism" should be considered in the technical evaluation only if provided for in the RFP. Id. In this case, the solicitation provided that price would be evaluated for reasonableness and to ascertain if it was reflective of the offeror's technical approach.

The contracting officer performed a price analysis of Property Watch's proposal comparing each offeror's price, the government's estimate, and the prices received on another solicitation for what the agency considers to have been similar services.[1] The contracting officer concluded that Property Watch's award may prove unprofitable, but that Property Watch's detailed breakdown of its proposed labor hours showed that its price proposal had been arrived at in a logical manner.

The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Research Mgmt. Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352. Although Family Realty questions the quality of the price analysis, Family Realty's allegations establish, at best, the agency's cognizance that Property Watch may have submitted a below-cost offer, but that this low price did not reflect a defective technical approach or lack of

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[1]Family Realty suggests that a cost analysis, rather than a price analysis, was required. However, since price was a substantial evaluation factor and there was more than one offeror in the competitive range, the agency reasonably found that there was adequate price competition such that a cost analysis was not required. FAR § 15.805 (FAC 90-5); Serv-Air, Inc.--Recon., 58 Comp. Gen. 362 (1979), 79-1 CPD ¶ 212; Sperry Corp., B-225492; B-225492.2, Mar. 25, 1987, 87-1 CPD ¶ 341.

understanding on Property Watch's part. We note that Property Watch's BAFO includes a price breakdown as to how it will accomplish each element of the required work at its proposed price. The record shows the agency analyzed this breakdown and did not find it inconsistent with Property Watch's technical approach. Also the record simply does not support Family Realty's contention that the price analysis was "knowingly fabricated" to support the agency's position. From our review, we find the agency properly evaluated Property Watch's price.

Family Realty contends that Property Watch's proposal is technically unacceptable because Property Watch will perform the contract from offices located outside of the geographical area to be served, and that this violated an RFP requirement. In this regard, the protester cites the fifth evaluation factor of the RFP, which states:

> "Evidence of adequately staffed, trained, and equipped office (or the ability to establish such) reasonably located so as to provide convenient service to HUD and its clients in the area to be served, and to carry out all duties specified in the solicitation."

Likewise Section L.3(b).3(5) seeks offerors' descriptions of prior and current experience bearing on the offerors' "successful experience concerning, or the capability to perform the following:

> "(5) Maintaining facilities which provide reasonably convenient service to HUD and its clients in the area to be served and that such facilities are adequately staffed and furnished to provide daily meaningful service . . . each week, with the exception of authorized Federal holidays."

The agency reports that:

> "any office located within the Oklahoma Field Office jurisdiction would be considered to be reasonably located; however, any office actually located in the geographic area to be served, southwest Oklahoma, would be evaluated higher than an office within the jurisdiction, but outside the geographic area of southwest Oklahoma."

Consistent with this interpretation, the agency considered both the protester's possession of an office within the geographic area, and the awardee's lack of an office within the geographic area, and assigned the protester 5 points more than the awardee under this factor. The source selection official found this was the only meaningful technical difference between the proposals, but the advantages attendant to Family Realty's local office did not offset Property Watch's significantly lower price.

We find nothing objectionable in this evaluation since the RFP clearly provided that the office location was to be judged in terms of reasonableness of the proposed location and is but one element to be considered in establishing an offeror's rating under this factor. There is no mandatory requirement that the contractor must work out of an office located within the geographic boundaries of the area to be served. Rather, the RFP sections referenced by the protester show this is one element of an evaluation factor, where proposals offering local offices would be given more credit.

Family Realty next contends that its proposal was improperly evaluated and that its proposal should have received a perfect score. The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead will examine the agency's evaluation to ensure that it was reasonable and not in violation of the procurement laws and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203; Tichenor & Eiche, B-228325, Dec. 28, 1987, 87-2 CPD ¶ 631. We will not object to a technical evaluation that the record shows was fair, reasonable, and consistent with the evaluation criteria.

We have reviewed Family Realty's arguments, its proposal, Property Watch's proposal, the evaluation report, the agency report, and other agency submissions, and discern no basis for finding unreasonable the respective evaluations of Family Realty's and Property Watch's proposals. The record shows that the agency assigned points to the Family Realty proposal consistent with the evaluation plan, and that the evaluators, in both the initial and BAFO evaluations, scored Family Realty's technical proposal under all five technical evaluation criteria as being in the level-one range (i.e., the highest point range) with only minor weaknesses noted. Family Realty's point score was increased under two of the criteria as a result of discussions. Except for the office location criterion, Property Watch also was scored in level-one range with only minor weaknesses noted.

Notwithstanding Family Realty's belief that it is entitled to a perfect score, we are not convinced that its proposal was perfect. For example, Family Realty alleges that it was wrongfully downgraded under the first evaluation criterion, "demonstrated experience in the management of single family properties." The weakness noted by the evaluators for this criterion was that Family Realty's proposal did not contain information to support "professional designation" in single family property management. Family Realty effectively concedes this evaluator's observation is accurate but asserts that it is not a weakness. Not only is this a weakness directly related to this criterion, but we note that Property Watch was downgraded for the same reason. Although the protester has similarly made a detailed critique of each reason the agency only awarded it 90 instead of 100 points, we remain unconvinced that Family Realty was wrongfully downgraded or Property Watch was overrated.[2]

Family Realty contends that in making the award selection the agency improperly changed the evaluation criteria--from an emphasis upon technical factors to an emphasis upon cost factors--without informing the offerors of the change. Family Realty claims that had it known of the change in criteria prior to closing it is conceivable protester's offered prices would have been modified.

Source selection officials in a negotiated procurement 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 to be governed only by the tests of rationality and consistency with the established evaluation criteria. TRW, Inc., 68 Comp. Gen. 511 (1989), 89-1 CPD ¶ 584; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Even where cost or price is the least important evaluation factor, an agency may award to a lower priced, lower scored offeror if it determines that the cost premium involved in awarding to a higher rated, higher priced offeror is not justified given the acceptable level of technical competence available at the lower cost. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321. The propriety of such a tradeoff turns not on the difference in technical scores *per se*, but on whether the contracting agency's judgment concerning the significance of that difference was reasonable in light of the RFP evaluation scheme. TRW, Inc., *supra*; Burnside-Ott Aviation Training Center, Inc.; Reflectone Training Sys., Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158;

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[2]Since no protective order was issued, Family Realty did not have access to the evaluation documentation concerning Property Watch's proposal.

PharmChem Laboratories, Inc., B-244385, Oct. 8, 1991, 91-2 CPD ¶ 317. Where award is made to the lower priced, lower rated offeror, notwithstanding an evaluation scheme placing primary importance on technical considerations, we will review the agency's selection decision to determine whether it is supported by a reasonable justification. Wyle Laboratories, Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107; Meridian Corp., 67 Comp. Gen. 223 (1988), 88-1 CPD ¶ 105.

The record shows that Property Watch's technical proposal, although lower ranked than Family Realty's proposal under each technical criterion, was nonetheless ranked in the "first-level" of all five criteria and the only significant difference between the proposals was office location for which Family Realty received appropriate credit. Our review of the record discloses nothing that would call into question, or otherwise render unreasonable, the source selection official's finding that, apart from differing office locations, the proposals were technically equal, and that the cost premium involved in awarding to Family Realty--the higher rated, higher priced offeror--was not justified given Property Watch's superior level of technical competence available at the lower cost. The RFP provided that where the agency considered offers to be technically equivalent "evaluated cost or price will be of primary importance in determining the proposal most advantageous to the [g]overnment." Thus, we find the agency gave appropriate weight to technical and cost factors in the award selection.

Family Realty finally contends that the agency improperly withheld information concerning the award from Family Realty. The record does not support this contention. Pre-award notice is only required when the procurement is a small business set-aside. FAR § 15.1001(b)(2) (FAC 90-7).[3] Otherwise, the general rule is that prompt notice to unsuccessful offerors is sufficient. FAR § 15.1001. Here, the agency gave Family Realty prompt notice of the award when it

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[3]In small business set-aside procurements agencies are required to give pre-award notice of the identity of the apparent successful offeror. An agency's failure to provide such pre-award notice can result in an improper award if it is timely protested to the Small Business Administration and the awardee is determined to be other than small. See Science Sys. and Applications, Inc., B-236477, Dec. 15, 1989, 89-2 CPD ¶ 558.

mailed the award notice on February 24, 1992, the same day that it made the award; Family Realty received the notice on the following day.

The protest is denied.

James F. Hinchman
General Counsel