



Comptroller General  
of the United States

10473

Washington, D.C. 20548

## Decision

**Matter of:** Robert G. Rupprecht

**File:** B-255516

**Date:** March 7, 1994

Marcus S. Loden, Esq., Ross & Stevens, S.C., for the protester.

Mary Fitzpatrick, Department of Agriculture, for the agency. Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Award to a technically more advantageous, higher-priced offeror was reasonable and represented the most advantageous offer to the government in accordance with the solicitation's stated evaluation methodology where the agency reasonably evaluated the protester's offer and determined that despite the awardee's higher price, the awardee's offer was technically more advantageous than the protester's offer and offset the protester's lower price.

### DECISION

Robert G. Rupprecht protests the award of a lease to James Kuehn under solicitation for offers (SFO) (number unknown), issued by the Department of Agriculture for office and storage space for the Agricultural Stabilization and Conservation Service, the Soil Conservation Service, and the Farmers Home Administration in Jefferson, Wisconsin. The protester challenges the agency's evaluation of its offer and the agency's price/technical tradeoff decision.

We deny the protest.

The agency issued the SFO for 3,920 net usable square feet of office and storage space. The SFO contemplated the award of a 5-year lease with one 5-year option to the responsible offeror whose offer, conforming to the solicitation, was deemed most advantageous to the government, technical evaluation factors and price being considered of equal importance.

Specifically, offers were to be evaluated on the basis of the following nine technical evaluation factors, worth a maximum of 50 points and listed in descending order of importance: (1) accessibility and location; (2) quality/physical characteristics (including age, physical condition of the building, maintenance, and offered improvements or building characteristics exceeding the SFO's requirements); (3) layout compatibility; (4) parking; (5) safety (fire and structural safety); (6) proximity of eating facilities; (7) fixed rate, fully serviced lease; (8) early occupancy; and (9) alternate energy.

With respect to price, also worth a maximum of 50 points, offers were to be evaluated to determine an annual rental rate per square foot. The offeror proposing the lowest annual rental rate per square foot would receive the maximum number of points for price. Other offerors would receive a percentage of these points based on a ratio of the low offeror's annual rental rate per square foot to the other offerors' annual rental rates per square foot.

Several offers were received by the initial closing time on August 13, 1993. Relevant to this protest, the protester, the incumbent contractor, offered a 22-year old building which had undergone at least two renovations within the last 14 years. However, the protester's building did not satisfy the agency's minimum square footage requirement. Kuehn offered a 15-year old building, part of which had been renovated within the last 9 years. Kuehn's building exceeded the agency's minimum square footage requirement. Both offerors proposed 40 parking spaces.

Following discussions, in which the protester was advised that his offer would be rejected as technically unacceptable if his building did not satisfy the agency's minimum square footage requirement, both the protester and Kuehn submitted best and final offers (BAFO). In his BAFO, the protester increased the quantity of space offered, thus satisfying the agency's minimum square footage requirement. The protester included with his BAFO a list of nine proposed remedial actions and improvements which he apparently would implement if awarded the lease.<sup>1</sup> For example, the protester stated that "[a] new roof [would be installed in the] fall of [19]93"; "[an] insect/rodent control program [would be]

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<sup>1</sup>The protester included with his initial offer a list of eight of these nine proposed remedial actions and improvements. The protester does not argue that the agency failed to conduct meaningful discussions concerning these items.

instituted"; "electrical outlets [would be] added to meet [the agency's] needs"; "plumbing and air distribution systems [would be] inspected, cleaned, and upgraded where necessary"; and [the building would be] remodel[ed] as per sketch."

Out of a possible 50 technical points, the protester's offer received 37 points and Kuehn's offer received 44 points. The protester's offer was downgraded in the technical areas involving the quality/physical characteristics of the building (the protester's building was older; it had a leaky roof; it had insects and rodents; and it had an inadequate cooling and heating system); layout compatibility (the protester's building had less potential for a flexible layout plan due to the positioning of permanent walls and three support posts); and safety (the protester's building had noted fire inspection deficiencies and the ceiling previously collapsed). In contrast, Kuehn's building was not as old; Kuehn's building contained between 400 to 500 additional square feet of space at no charge to the agency; Kuehn's building would have a high efficiency cooling and heating system installed; and Kuehn's building contained more open space, thus affording the agency greater flexibility in laying out its office space.

Because the protester's rental rate per square foot was lower than Kuehn's rental rate per square foot (by approximately \$1.00 per square foot), the protester's offer received 50 points for price and Kuehn's offer received 45 points for price.

Overall, the protester's offer received a total of 87 points, and Kuehn's offer received a total of 89 points. The agency concluded that despite Kuehn's higher rental rate per square foot, its offer was more advantageous than the protester's offer in the technical areas involving quality/physical characteristics (age, physical condition of the building, maintenance, and characteristics exceeding the SFO's requirements), layout compatibility, and safety. The agency determined that Kuehn's technically more advantageous offer offset the protester's lower price, and for this reason, justified the payment of a price premium. On September 30, the agency awarded a lease to Kuehn as the most advantageous offeror, technical evaluation factors and price considered.

The protester alleges that the agency improperly failed to consider its proposed remedial actions and improvements in evaluating its offer.

The evaluation of offers is primarily within the discretion of the procuring agency, not our Office; the agency is responsible for defining its needs and the best method of

accommodating them, and must bear the burden resulting from a defective evaluation. Consequently, we will not make an independent determination of the merits of offers; rather, we will examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. Ralvin Pacific Dev., Inc., B-251283.3, June 8, 1993, 93-1 CPD ¶ 442; Patent Scaffolding Co., B-250380.2, Feb. 22, 1993, 93-1 CPD ¶ 153.

Here, the record shows that five of the nine remedial actions and improvements proposed by the protester correspond to specific technical deficiencies in his offer. The agency states in its report that it considered these proposed remedial actions and improvements. The contemporaneous evaluation documents discuss these items in a general manner. However, from the record, it appears that the evaluators found that the protester's proposed remedial actions and improvements were vague, general statements without supporting details. Due to the absence of any details, there was nothing which the agency could specifically evaluate concerning these items. For this reason, we think the agency reasonably chose not to give these items the credit which the protester argues he is entitled. Several examples, discussed below, involving the quality/physical characteristics and safety technical evaluation factors support this conclusion.

The agency downgraded the protester's offer because his building had a leaky roof. The protester stated that he would install a "new roof--fall of [19]93." However, the protester included no details which could be evaluated, e.g., whether he had made any arrangements with a roofing contractor; when exactly the work would be started and completed and whether tenant occupancy would be interrupted during this time; what type of materials would be used; and whether the new roof would be warranted over the period of the lease.

The agency also downgraded the protester's offer because his building contained various insects and bats. The protester stated that an "insect/rodent control program (would be) instituted." The protester again provided no details which could be evaluated, e.g., whether he would be hiring a professional exterminator to implement this program or whether he would essentially carry out this program himself by using commercial products like insect sprays and rodent traps.

Further, the agency downgraded the protester's offer because his building had an older wiring system. While the protester proposed to add electrical outlets to meet the agency's needs, he did not address replacement of the wiring.

In addition, the agency downgraded the protester's offer because the building's cooling and heating system did not uniformly provide air and heat. The agency did not think that the protester's proposal to place two cooling and heating systems in separate parts of the building would solve the problem. The protester proposed that "air distribution systems [would be] inspected, cleaned, and upgraded where necessary." However, the protester failed to explain what he meant by "upgrad[ing] where necessary" and who would be performing the inspection and cleaning operations.

Concerning the layout compatibility technical evaluation factor, the record shows that the agency did consider his proposal to "remodel [the building space] as per sketch." The protester's sketch shows the addition of doors, new ceiling tiles, and possibly movable walls. However, we think the agency could reasonably determine that permanent wall structures and three support posts would limit the agency's flexibility in laying out its office space and, therefore, the agency could reasonably downgrade the protester's proposal accordingly.

Finally, the protester suggested no remedial actions or improvements concerning previously noted fire inspection deficiencies and a previous ceiling collapse. The protester does not challenge the agency's evaluation concerning the safety technical evaluation factor.<sup>2</sup>

Based on the above discussion, we believe the agency's evaluation of the protester's offer was reasonable.

The protester also challenges the agency's price/technical tradeoff decision and the award to a higher-priced offeror. In a negotiated procurement, award may be made to a higher rated, higher-priced offeror where the decision is consistent with the solicitation's evaluation factors and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the price difference. JCI Env'tl. Servs., B-250752.3, Apr. 7, 1993, 93-1 CPD ¶ 299.

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<sup>2</sup>We note that the protester also stated that he would replace floor coverings and drapes, would update handicapped access to the building, and would upgrade parking lot signs. Because these remedial actions and improvements do not correspond to any technical deficiencies in the protester's offer, the record shows that these items had no effect on the agency's evaluation of his offer.

Here, the agency concluded that although Kuehn's rental rate per square foot was higher than the protester's rental rate per square foot, Kuehn's offer was more advantageous than the protester's offer in the technical areas involving quality/physical characteristics (including age, physical condition of the building, maintenance, and offered improvements or building characteristics exceeding the SFO's requirements), layout compatibility, and safety. Therefore, the agency determined that Kuehn's technically more advantageous offer offset the protester's lower price, and for this reason, justified the payment of a price premium.

The protester's original building was 22 years old while Kuehn's original building was 15 years old. While both buildings had been renovated over the years, the protester's building had noted fire and structural safety hazards. Although the protester's building satisfied the agency's minimum space requirement, Kuehn offered between 400 to 500 additional square feet of space at no charge to the agency. As discussed, the protester's building had problems with insects and rodents, and his building had limited layout potential because of permanent walls and three support posts. In contrast, Kuehn's building offered more open space, thus affording the agency greater flexibility in laying out its office space. In addition, while the protester stated that he would upgrade the air distribution system "where necessary," Kuehn specifically stated that he would install a high efficiency cooling and heating system.

For these reasons, we believe that the agency reasonably determined to pay a price premium to Kuehn because his offer was technically more advantageous than the protester's offer.<sup>3</sup> Accordingly, we conclude that the agency reasonably awarded the lease to Kuehn, the most advantageous offeror, technical evaluation factors and price considered.

The protest is denied.

*Christine S. Melody*  
 Robert P. Murphy  
 Acting General Counsel

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<sup>3</sup>Contrary to the protester's assertion, the record shows that the agency's dissatisfaction with how the protester filled wetland space behind his building was not a significant reason for finding his offer less advantageous than Kuehn's offer.