



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: R. L. Sockey Real Estate & Construction, Inc.

File: B-286086

Date: November 17, 2000

Belva Brooks Barber, Esq., Barber & Barber, for the protester.
Lynn W. Flanagan, Esq., Department of Agriculture, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest alleging unfairness and bias in evaluation of firm's proposal for rental of office space is denied where the record shows the agency reasonably downgraded firm's proposal, consistent with evaluation factors, for weaknesses regarding the building proposed for lease to the agency.

DECISION

R. L. Sockey Real Estate & Construction, Inc. protests the award of a lease by the Natural Resources Conservation Service (NRCS), an agency of the United States Department of Agriculture (USDA), to Cagle & Nobles under solicitation for offers (SFO) No. 57-7335-0-3.

We deny the protest.

BACKGROUND

Together with another Department of Agriculture agency, the Farms Service Agency (FSA), NRCS has been leasing office space from Sockey under a lease whose initial 5-year term expired at the end of September 1999. This lease included a 5-year renewal option, with the rental rate to be negotiated at the time of renewal. Agency Report (AR) exh. 4, Sockey Lease. In August 1999, FSA began negotiating with Sockey for lease renewal terms, but was not willing to accept Sockey's offer at \$14.80 per square foot. In October, the contracting officer concluded that Sockey's final offered rate of \$14.00 per square foot was unreasonable and terminated the negotiations with Sockey. AR exh. 2, Memorandum of Law, at 3.

THE CURRENT SOLICITATION

On February 18, 2000, NRCS issued the current SFO under simplified lease acquisition procedures, requesting offers for a 5-year lease of approximately 4,675 square feet of office space in the vicinity of Poteau, Oklahoma. AR exh. 12, SFO. Only two offers were submitted by the established closing date, both from Sockey. In one offer, Sockey offered the existing space, which did not meet the SFO's usable square footage requirement, and in the other, it offered to construct an additional room to expand the existing space. Sockey offered a price of \$12.75 per usable square foot in each offer. AR exh. 13 and 14, Sockey Offers.

In an attempt to increase competition for the lease, NRCS decided to amend the solicitation. The amendment replaced the simplified real property lease form with the standard real property lease form, which includes clauses applying to construction of space. The use of the standard form was intended to encourage offers of new construction as well as offers of existing buildings from firms that could have believed the simplified lease form and procedures favored the incumbent. AR exh. 2, Memorandum of Law, at 4-5. The solicitation was amended on May 17. The amended SFO in section 2.3 provided that the lease would be awarded to the firm whose offer "will be most advantageous to the Government, price and other award factors which follow considered," and stated that price would be of equal importance to the combination of the other award factors. The SFO listed the following award factors, in descending order of importance: quality/physical characteristics; accessibility and location; layout capability; safety; parking; first floor space; fixed rate, fully serviced lease; and energy conservation.

The agency received four offers, including two submitted by Sockey. A technical evaluation team reviewed and scored the technical and price proposals, with the following results:

Offeror	Price	Price Pts.	Tech. Pts.	Total
Cagle & Nobles	\$57,268.75	42.3	48.3	90.6
Sockey 1 ¹	\$50,102.50	50	36.3	86.3
Sockey 2	\$57,158.50	43.8	38.3	82.1
Firm A	\$75,000.00	32.5	45.3	77.8

AR, Tab 22, Evaluation Chart at 1.

¹ The record shows that Sockey's first offer did not comply with the SFO's space requirement, and the agency did not consider the offer in selecting the most advantageous lease. AR exh. 2, Memorandum of Law, at 13.

Sockey's two offers were again based on providing the space currently being leased and, alternatively, on providing that space as expanded by an additional room. Cagle & Nobles offered to construct a new building to suit the agency's requirements.

In evaluating the offered prices, the real property leasing officer added \$9,500 for moving costs to Cagle & Nobles's price, which resulted in an increase of \$1,900 per year, for an annual lease price of \$59,168.75. The same amount was added to the highest-priced offer. Sockey's offers were not adjusted in this manner because it offered the same space currently being occupied.

Based on the technical and price evaluation results, the real property leasing officer recommended award to Cagle & Nobles; the USDA Source Selection Authority concurred, and the contracting officer awarded the lease contract on July 10. After protesting to the agency on July 21, Sockey filed its protest in our Office on August 15.

Sockey challenges the evaluation of the proposals and the resulting award decision, alleging that the technical scoring does not reflect the quality and physical characteristics of the building Sockey offered. Sockey also alleges that the contracting officer was biased against Sockey, and that the adjustments that were made to pricing were unrealistic.²

We will review an agency's evaluation of proposals to ensure that it is fair, reasonable, and consistent with the evaluation criteria stated in the solicitation and with applicable statutes and regulations. Wind Gap Knitwear, Inc., B-261045, June 20, 1995, 95-2 CPD ¶ 124 at 3.

² Sockey also alleges a variety of improprieties in the solicitation, arguing for example that the square footage requested in the SFO does not accurately reflect the agency's actual needs, and questioning the need to amend the solicitation after Sockey had submitted its initial offers. Our Bid Protest Regulations require that, to be timely, a protest based on alleged improprieties in a solicitation that are apparent prior to the time set for initial proposals shall be filed prior to the time set for initial proposals; where the alleged impropriety does not exist in the initial solicitation, but is subsequently incorporated into the solicitation, the impropriety must be protested not later than the next closing date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2000). Sockey did not object to the square footage requirement or amendment until after award. Accordingly, these bases of protest are dismissed as untimely. In addition, Sockey raises a number of complaints concerning the solicitation and evaluation process that do not allege any violation of regulation or statute, and thus do not state a valid basis of protest for our consideration. 4 C.F.R. § 21.5(f).

The evaluation record provides reasonable support for the scores assigned to Sockey's proposal. Sockey's technically acceptable offer, based on constructing an additional room and offering a total space of 4,666 square feet, received a technical score of 38.3 points based on averaging the scores of the three evaluators. Under the first technical evaluation factor, "quality and physical characteristics," Sockey's offer received approximately 8.6 (out of 12 maximum available) points. It was downgraded in this area primarily because, in the agency's experience, the roof had recurring leaks, the entrance to the building was difficult to see from the street (which difficulty was exacerbated by highway construction currently under way), and the office space being proposed to meet the useable space requirement was actually physically separate, with individual entrances, rather than offering a contiguous space. Under the "accessibility and location" factor, Sockey's offers received approximately 7.6 (out of 11 maximum) points. The evaluation reflects the agency's dissatisfaction with the fact that the building is located behind a motel and is not visible from the street, and that it is reached by a narrow roadway which is considered both difficult to find and dangerous to use because of a current road construction project. Under the "layout capability" factor, Sockey's offer received an average of 5.3 points on a 7-point scale. This score was based on the fact that the offered layout uses three separate entrances, rather than the open-foyer configuration that the agency favors for a service center, and because the addition that Sockey proposed, as a single room, was not considered particularly useful in expanding the three separate office spaces.

Sockey's offer was also downgraded slightly (by 1 point on a 5-point scale) under the "parking" factor, based on a problem encountered with standing water in the parking lot, and under the "safety" factor, (by approximately 1.3 points on a 5-point scale) based on concerns about the traffic and entrance roadway, as noted in connection with the location factor. It was also downgraded by 1 point (on a 2-point scale) under "energy conservation," based on concerns regarding the condition of the space's doors and difficulty encountered in controlling the temperature in the space. For the remaining two factors, "first floor space" and "fixed-rate, fully serviced lease," it received the full 4 points that were available under the evaluation.

We think the evaluation was consistent with the criteria established in the SFO. While Sockey asserts that it has timely repaired its roof leaks, it does not rebut the agency's contentions that the roof has leaked repeatedly and that the leaks are evidence of the building's condition and need for maintenance. While Sockey alleges that its proposal was unfairly downgraded under more than one category for some of its perceived problems, such as the parking lot (which was mentioned in the evaluation sheets under the factors of "parking" and "quality/physical characteristics") and the entrance roadway (which was noted under both "accessibility" and "safety"), we find no merit to the suggestion that one problem cannot have an impact in several different areas. Thus, a narrow entrance roadway that is blocked from view by construction and leads to a building that is not visible from the roadway can reasonably raise separate concerns regarding the accessibility

of the site (e.g., to service center users unfamiliar with its location) and the dangerous traffic situation inherent in a blind entranceway.

Sockey also alleges that because the building it is offering is the same one that the agency has been leasing for the past 5 years, which was built to suit the agency's needs at that time, it is unreasonable for the agency to evaluate the space differently now than it did 5 years ago. We find no merit to this argument. Each procurement action is a separate transaction; thus, the evaluation conducted under one procurement is not relevant to the propriety of the evaluation under another for purposes of a bid protest. Physician Corp. of Am., B-270698 et al., Apr. 10, 1996, 96-1 CPD ¶ 198 at 13. The evaluation of Sockey's building and acceptance of Sockey's lease offer under a prior procurement does not demonstrate that the current evaluation was unreasonable. The fact that the building offered by Sockey was built to the agency's specifications in 1995 does not necessarily mean it is best suited to meet the agency's needs 5 years later. For example, the contracting officer reports that during the course of Sockey's 5-year lease period, the USDA adopted a "service center" configuration for its offices, which Sockey's building cannot offer. The protester does not rebut the contracting officer's statement that layout issues could not be discussed with Sockey during negotiations because Sockey's representative terminated the discussions soon after they had begun. The fact that the building is now older, and, as demonstrated in the record, has had maintenance problems such as recurring roof leaks, further supports the reasonableness of distinguishing between the earlier assessment of the building and the current evaluation.

Sockey also protests that prices were not properly evaluated because moving expenses that were added to Cagle & Nobles's offer were too low to be realistic. We need not address the merits of this contention. The SFO simply did not provide for any adjustment during the price evaluation based on moving or any other costs; rather, the solicitation only provided that the agency would evaluate each offeror's proposed lease price. Therefore, the agency should not have added any costs to the lease prices.³ The contracting officer's methodology, however, did not result in competitive prejudice to the protester, since its effect was to increase the cost of the awardee's lease compared to the protester's. In fact, the closeness in price (approximately \$100) between the two proposals, when correctly evaluated (without moving expenses), only lends further support to the reasonableness of the agency's conclusion that Cagle & Nobles's lease offer was more advantageous for the government.

³ Any post-closing time protest that the solicitation should have provided for consideration of these costs is untimely. See Aero Realty Co., B-250985, Mar. 2, 1993, 93-1 CPD ¶ 191 at 8-9.

Finally, Sockey protests that agency personnel were biased against Sockey, apparently inferring bias from the agency's decision to amend the SFO after Sockey had submitted its initial offers, and from the scores assigned to Sockey's proposal. Where a protester alleges bias on the part of procurement officials, the record must establish that the officials intended to harm the protester, since government officials are presumed to act in good faith. William L. Menefee, B-279272, May 28, 1998, 98-1 CPD ¶ 144 at 5. Even where there is credible evidence of bias, the protester must demonstrate that the bias translated into action which unfairly affected the protester's competitive position; that is, the protester must demonstrate that the allegedly biased official exerted improper influence in the procurement on behalf of the awardee or against the protester. Id.

Sockey has failed to make that showing. The agency report states that the SFO was amended for the purpose of expanding the number of offerors and to better accommodate offers of new construction; the reasonableness of the agency's actions is supported by the fact that the amended SFO did, in fact, produce an increase in competition. Further, as discussed above, our review of the record confirms the reasonableness of the agency's evaluation. In these circumstances, where the protester has neither alleged, let alone provided evidence of, any specific acts that were intended to harm the protester, much less resulted in competitive harm, we find no basis to support Sockey's protest in this regard.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel