



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: William L. Menefee

File: B-279272

Date: May 28, 1998

William L. Menefee III, for the protester.

Lynn W. Flanagan, Esq., Department of Agriculture, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Selection of offer with higher combined technical and price scores than that proposed by the protester is unobjectionable where the evaluation was conducted in accordance with solicitation, and the record supports the agency's view that the protester's proposed building site was less desirable than the awardee's.

DECISION

William L. Menefee protests the award of a lease to Cook Carson, Inc. (Carson) under solicitation for offers (SFO) No 57-7335-79, issued by the Department of Agriculture for office space in Pauls Valley, Oklahoma. Menefee argues that the award to Carson at a rent higher than that proposed by Menefee is based on USDA's continued bias against Menefee, which translated to an unreasonable evaluation of its offer.

We deny the protest.

As amended, the SFO calls for 7,550 square feet (sq. ft.) of occupiable space in a new or existing building of sound and substantial construction, along with 50 on-site, paved parking spaces to house the offices of the Farm Service Agency (FSA), Rural Economic Community Development Service (RD), and the National Resources and Conservation Service (NRCS).¹ The SFO contemplated award of a

¹Previously, in connection with a different SFO issued in early 1996, Menefee was the lowest-priced offeror with the highest technical evaluation score for existing space to house the USDA Service Center in Pauls Valley. The offers were rejected and the SFO canceled because the State Administrative Committee (SAC), which is made up of employees from each of the three agencies--FSA, RD, and NRCS, questioned how the older renovated building offered by Menefee could receive a

(continued...)

5-year lease with one 5-year option to the responsible offeror whose offer, conforming to the solicitation, was most advantageous to the government, price and other factors considered.

Offers were to be evaluated on the basis of the following eight technical factors, worth a maximum of 50 points,² and listed in descending order of importance: (1) quality/physical characteristics (including the age and physical condition of the building, interior and exterior appearance of the space, attractiveness of grounds, landscaping and approaches); (2) accessibility and location (accessibility to primary hard-surfaced roads, compatibility with surrounding area, and proximity of eating facilities); (3) layout capability (layout efficiency of space); (4) safety (including fire and structural safety, and surrounding area); (5) parking; (6) first floor space; (7) fixed rate, fully serviced lease; and (8) energy conservation. With regard to price, also worth a maximum of 50 points, the offeror proposing the lowest annual rental 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 to the other offerors' annual rental.

Menefee's and Carson's offers were among those submitted in response to the SFO by the September 22, 1997 extended due date. Menefee submitted offers for two locations--for the existing space currently occupied by the three USDA agencies, and space in a building to be constructed on its offered site; Carson proposed to construct a new building on its offered site. Menefee's and Carson's initial proposals were evaluated as follows:

¹(...continued)

higher technical evaluation score than the newly constructed space offered by the other two offerors. Further, the SAC was concerned that there was an appearance of a conflict of interest because the county executive director (CED) for FSA (who subsequently evaluated the offers received under the canceled SFO) was observed leaving the county office with Mr. Menefee on the same day proposals were due. A second SFO, issued later that year, was also canceled when a lease moratorium was imposed on the FSA.

²The points assigned to each award factor were not listed in the SFO, but were listed in USDA's evaluation plan.

	Menefee Existing Space	Menefee New Space	Carson New Space
Quality/Physical Characteristics (12 Maximum Points)	9	11	11
Accessibility and Location (11 Max. Pts.)	9	10	10
Layout Capability (7 Max. Pts.)	6	7	7
Safety (5 Max. Pts.)	3	5	5
Parking (5 Max. Pts.)	3	4	5
First Floor Space (4 Max. Pts.)	4	4	4
Fixed Rate, Fully Serviced Lease (4 Max. Pts.)	4	4	4
Energy Conservation (2 Max. Pts.)	2	2	2
TOTAL TECH. PTS. (50 Max.)	40	47	48
PRICE POINTS³ (50 Max.)	50	39.3	46.3
TOTAL POINTS (100 Max.)	91	86.3	94.3

On November 12, based on the initial evaluation results and site visits, the real property leasing officer (RPLO) recommended award to Carson on the basis of initial proposals. The SAC and the county administrative committee (CAC) reviewed the offers received and the technical evaluations and concurred with the RPLO's recommendation that award should be made to Carson. Later that same day, the RPLO notified Carson by telephone that it had been selected for the proposed contract award.

On November 13, the RPLO received a telephone call from Menefee questioning the agency's decision to make award to Carson without requesting best and final offers (BAFO). Upon review of the SFO, the RPLO concluded that offerors should have been given an opportunity to submit BAFOs; discussions were then conducted with offerors on November 13 and 14. During discussions with Menefee concerning its offer for the existing space, the RPLO addressed the SFO's parking requirements and was assured by the protester that 50 parking spaces would be available for the

³In order to protect potentially proprietary information, we are not disclosing the offerors' proposed prices.

agency's use at this location. Regarding its proposed newly constructed space, the RPLO discussed the lot size and whether the lot could accommodate a suitable building and 50 on-site parking spaces. In response, Menefee at first reported the lot size as 200 x 200 ft., which Menefee stated could amply accommodate the agency's needs as specified in the SFO. The next day, November 14, Menefee informed the RPLO that the lot size was 160 x 200 ft., not 200 x 200 ft. as Menefee had previously indicated; nonetheless, the protester stated that the 160 x 200 ft. lot could satisfy the agency's needs.

Thereafter, the RPLO, with the assistance of an agency resource engineer, searched the courthouse records to verify the lot size; the courthouse records indicated that the lot actually measured 140 x 200 ft. The RPLO consulted with a leasing officer at the General Services Administration (GSA) to determine whether Menefee's 140 x 200 ft. lot was big enough to construct a building with 7,550 sq. ft. of occupiable space along with 50 parking spaces. GSA raised concern about how the proposed lot size of 140 x 200 ft. (the equivalent of 28,000 gross sq. ft.) could be adequate for a building of approximately 7,600 sq. ft. (approximately 8,000 gross sq. ft.) plus 50 parking spaces. According to GSA, surface parking for 50 vehicles would normally require 15,000 sq. ft. and, depending on the width of setbacks around the perimeter of the site for sidewalks and a buffer zone, Menefee's proposed site might accommodate only a building of approximately 8,040 gross sq. ft. and parking spaces for 42 vehicles. In GSA's opinion, the ideal lot size for a building that would meet USDA's needs and provide 50 parking spaces would be 42,600 sq. ft., and not 28,000 sq. ft., which was the size of Menefee's lot.

BAFOs were received on November 19. In its BAFO, Menefee significantly reduced the proposed annual rent for its newly constructed space, while Carson reduced its annual rental to \$94,375. Following the evaluation of BAFOs, Carson's technical score, 48 out of a possible 50 points, remained unchanged. Its high technical score was primarily based on its score under the quality/physical characteristics factor and the accessibility and location factor, which reflected its offer of newly constructed space in a good location, with unlimited room for expansion, that will closely follow the layout sought by the agency.

In contrast, Menefee's BAFO earned a technical score of 39 out of a possible 50 points; Menefee's BAFO earned lower technical scores for the quality/physical characteristics of its proposed site (9 out of a possible 12 points) due to traffic safety concerns because the site was located near a highway. In addition, Menefee's score was lowered because the large trees presently on the site would have to be removed to accommodate the building and parking areas, thereby diminishing the overall attractiveness of the site. As to the accessibility and location of the site, the protester's score was reduced (9 out of a possible 11 points) because the proposed site is surrounded by a car wash to the east, an old wood building that is a seasonal garden center to the west, and an older, lower income residential area to the north. Under safety, Menefee's technical score was reduced

(4 out of a possible 5 points) because of the surrounding area; under parking, its score was reduced to zero (out of a possible 5 points) because adequate space was not available to provide the number of parking spaces called for in the solicitation.

Because Menefee's BAFO price was low, its BAFO received the maximum 50 price points, for a combined technical and price score of 89 points. Carson's BAFO received 45.9 points for price, for a combined technical and price score of 93.9 points. Based on her evaluation of BAFOs, the RPLO recommended award to Carson as the offeror submitting the most advantageous proposal. The SAC and the CAC both concurred with her recommendation and the lease was awarded to Carson on December 5. Following denial of its agency-level protest, Menefee filed this protest with our Office on February 17.

Menefee's primary criticism of this procurement is that USDA is biased against it since "being falsely accused of bid fixing by their Pauls Valley employee in 1996." Essentially, Menefee argues that USDA's evaluation of proposals was tainted by ongoing bias, resulting in the selection of Carson's proposal as the most advantageous to the government even though its own proposal offered a lower rental rate.

To support its allegation of bias, Menefee refers to an October 10, 1996 conversation between Mr. Menefee and Mr. Thomas Roberts, the Community Development Manager for RD. Mr. Menefee had visited Mr. Roberts's Pauls Valley office after learning that he had been accused of "bid fixing." According to the protester, during this conversation, Mr. Roberts purportedly disclosed that the "real reason" why the SAC canceled the 1996 SFO was that certain procurement officials were "mad" with the CED for FSA because the CED had not given them more input in the selection of the leased space to be acquired under the 1996 procurement. In addition, Menefee further contends that the same bias arises from dissatisfaction on the part of certain procurement officials with the current leased space in his building.

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. Executive Sec. & Eng'g Techs., Inc., B-270518 et al., Mar. 15, 1996, 96-1 CPD ¶ 156 at 4. 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.

Menefee has failed to make that showing. Although Menefee relies on the October 10, 1996 conversation regarding the SFO cancellation that occurred a year prior to the issuance of this SFO to show bias against the protester, even if the

conversation as represented by Menefee is factually correct, Menefee has made no showing that the RPLO who performed the evaluation and made the recommendation for award to Carson was biased, or improperly influenced in any way by other procurement officials. We therefore have no basis to conclude that USDA has acted improperly or unreasonably in its evaluation of proposals under the instant solicitation. The kinds of action to which Menefee points, such as the cancellation of the 1996 solicitation, the alleged tenant dissatisfaction with the currently leased space in his building, and the initial decision by the RPLO to award the lease to Carson on the basis of initial proposals, do not demonstrate bias against Menefee or that any possible bias on the part of the Pauls Valley employees translated into improper action. Consequently, we see no evidence in the record supporting bias in this award decision.

Moreover, our review of the record confirms the reasonableness of the agency's determination concerning which proposal was the most advantageous to the government, thus further underscoring the absence of bias. The SFO clearly states that price was of equal importance as the combination of the other eight technical factors. Although Menefee's BAFO was lower priced than Carson's, the record shows that Menefee's proposed site was considered less desirable and was rated lower in the technical areas involving quality/physical characteristics, accessibility and location, safety, and parking. While the protester argues, for example, that its proposal was "rejected" because its proposed lot size was less than "42,000 square feet" and could not therefore accommodate the proposed building and parking spaces, the evaluation record contradicts this claim.⁴

The record shows that Menefee's proposal was not rejected because of insufficient parking; rather, its proposal was merely downgraded under the parking factor. More specifically, under the evaluation scheme set forth in the amended SFO, the maximum possible points an offeror could earn under the parking factor was 5 points. The record shows that Menefee's BAFO received 0 points under the parking factor because the RPLO determined, in consultation with the agency's own engineer and a leasing official at GSA, that Menefee's proposed site was not large enough to accommodate both a suitable-sized building and 50 on-site parking spaces. In its comments submitted in response to the agency report, Menefee does not rebut the RPLO's finding, but merely states that its proposal was not fairly evaluated. The record does not support Menefee's allegation of misevaluation. Moreover, since Menefee does not contest the agency's evaluation under the

⁴In this regard, the protester alleges that during a site visit he had advised the RPLO that he and his wife own the adjoining property; consequently, additional space was available if more than 50 parking spaces were needed. However, the agency was not interested in additional parking spaces; rather, the agency was evaluating whether Menefee's proposed site would provide 50 on-site parking spaces.

technical areas of quality/physical characteristics,⁵ accessibility and location, and safety, we find no basis to conclude that the technical evaluation of proposals were unreasonable. The evaluations were properly based on the review of the offerors' proposals and site visits which resulted in a higher overall score for Carson's proposal. Menefee's general disagreement with the agency's evaluation does not establish that the evaluation was unreasonable. Peterson Constr. Co., B-256841, Aug. 3, 1994, 94-2 CPD ¶ 55 at 3.

The protest is denied.

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⁵The agency reports that during one of the RPLO's trips to Pauls Valley the RPLO visited the local police department and discussed Menefee's proposed location with a police officer who told her that there had been a few car accidents where the cars did not complete the curve off the interstate highway and ended up in an area where the proposed building or parking lot would be constructed. In its comments on the agency report, the protester provides a statement from the chief of police for the Pauls Valley police department in which the chief of police states that he had not spoken with the RPLO regarding traffic or criminal problems at Menefee's proposed location. The chief of police's statement did not dispute the veracity of the RPLO's conversation with an (unnamed) police officer who had informed her of the few accidents that had occurred in that area. Under these circumstances, we have no basis to question the accuracy of the agency's account.