DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-213381 **DATE:** July 25, 1984

MATTER OF: Tony and Jamie Brasher

DIGEST:

1. Protest contending that the agency changed its requirements concerning the width of a required office building is denied. The record shows that while the agency provided all offerors with examples of acceptable dimensions, the solicitation did not require that the building be of a certain width.

2. Protesters contend that a portion of an agency manual that was included in the solicitation package imposed additional requirements on offerors in excess of the specific requirements contained in the solicitation, thus the agency acted improperly when it awarded a lease to an offeror who did not offer to meet those requirements. Protest is denied since the record shows that the portion of the manual was not intended to impose additional requirements but was included to assist offerors in proposal preparation.

3. Cost to the government is always a factor in the award of government contracts even if cost is not listed in the solicitation as a specific evaluation factor.

Tony and Jamie Brasher protest the rejection of their offer and the award of a lease to Lone Star Technical Services, Inc. to supply office space to the Carson County Texas Office of the Agriculture Stabilization and Conservation Service. The protesters contend that the agency did not allow them to compete on an equal basis with the awardee and that the agency improperly evaluated their offer. We deny the protest.

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By a notice published in the Panhandle Herald the agency solicited offers to lease approximtely 2,700 square feet of office space in a newly constructed building. The solicitation listed the following criteria and their relative weights against which the proposals would be evaluated:

1. Location - 30 points
2. Building - 30 points
3. Cost - 40 points

Award was to be made to the offeror with the highest total point score whose offer met all the specifications. In addition to listing the agency's requirements, the solicitation package also included a rough pencil sketch of the desired internal office configuration and overall dimensions of the building and a portion of an agency manual that listed general quality standards for agency office space. The protesters, at $12 per square foot, and Lone Star at $8 per square foot were the only offerors. The agency met with both offerors to discuss their proposals and determined that both would meet their minimum needs. Thereafter, the agency awarded the lease to Lone Star and the Brashers protested to this Office.

The protesters complain that the agency changed its specifications with respect to the dimensions of the building; the requirement for janitorial services; the construction of the interior walls; and the location of the plumbing and electrical systems, without allowing the protesters an opportunity to compete under these changed specifications. The protesters also assert that under the evaluation criteria, the high not the low price would receive more favorable consideration since a higher priced lease would reflect a better quality building.

Specifically, the protesters contend that the rough sketch showed a building with a 45 foot width, and the County Committee's Executive Director confirmed this requirement at a meeting with them. Yet, the protesters argue, the agency subsequently changed this requirement to permit a building with a 40 foot width without informing the protesters. They assert that had they known a 40 foot width building would be acceptable they could have offered

a lower price. Further, with respect to the other alleged changes, the protesters contend that the portion of the manual listed certain requirements regarding these items yet the agency permitted the awardee to submit an offer on more relaxed and less costly requirements without affording the protesters a similar opportunity.

We do not agree with the protesters' position because the record shows that rather than stating specific requirements with respect to the building dimensions and plumbing and electrical systems, the solicitation provided only general guidelines as to these items. Moreover, the specifications did not require that the awardee provide janitorial services.

The solicitation listed 51 "specific requirements" for the desired office space that were to "be furnished by the lessor and be included in the monthly rental." Regarding the building dimensions, item 2 stated only that approximately 2,700 square feet of office space was required. Neither this nor any other of the specific requirements specified a particular building width. Moreover, the rough sketch, while depicting a building approximately 45 feet wide, clearly was not intended as a blue print for the successful offeror to use in constructing the building. The protesters admit that the sketch did not provide them with sufficient information to intelligently prepare a proposal. Moreover, it appears that the Director met with the protesters--and the awardee--to discuss examples of acceptable building and office design but not to set down hard guidelines from which no deviation would be allowed. Thus, we conclude that the solicitation permitted a range of acceptable dimensions subject only to the space limitation specifically provided in the specifications.

Regarding the other alleged changes to the specifications, we also do not agree with the protesters' basic contention that the portion of the agency manual included with the solicitation constituted anything more than a general specification to be used when applicable to a specific structure. For example, the specification guide contains general guidance on locations for county office space ("the office should be located on the outskirts or

edge of town with accessibility to the major roads and highways in the area. Where possible, boundaries may be cited to assure proper locations.") while the provision in this solicitation covering location specifically set the boundaries within which the office here had to be located. Similarly § 5(A) of the manual discusses the need for mechanical ventilation on the upper floors of buildings that are not air conditioned. This discussion, however, is clearly inapplicable to this lease of a one-story building. Thus, with respect to the janitorial services and interior wall construction, while the manual contained references to these items, the solicitation's specific requirements did not list janitorial services as one of the items to be provided by the lessor and included in the monthly rental[1], nor did they require the interior office walls to be permanent rather than moveable, as the protesters maintain. Further, contrary to the protesters' contention that the agency improperly changed the solicitation's requirements to permit the plumbing and electrical systems to be located in the exterior walls of the building, we find nothing in the specifications or manual to support the protester's position that a particular location for these systems was specified. The specifications do, however, require the lessor to draft the blueprints for these systems. Consequently, we have no basis to object to the agency's assertion that the portion of the manual was included for informational purposes to assist offerors in proposal preparation and was not meant to set forth additional requirements.

The protesters also complain that the solicitation failed to adequately inform offerors that offers would be evaluated for lowest cost (Lone Star received 40 points under this evaluation factor while the protesters received 25 points). Consequently, they assumed that a higher cost would be better because "a more expensive building would probably be of better quality and appearance."

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[1]/The protester's own estimate of the janitorial services it included in its offer is $1.78 per square foot. If this sum is deducted from the $12.00 per square foot offer, it is still $2.22 higher than the awardee's $8.00 offer.

We do not think it is reasonable for a potential offeror to assume that when a solicitation states that proposed costs will be evaluated in making an award, a higher cost proposal offering to meet the agency's needs will be evaluated more favorably than an acceptable lower cost proposal. On the contrary, it is a fundamental principle of federal procurements that cost to the government is always a factor in the award of government contracts. This is so even where the solicitation does not list cost as one of the evaluation factors. Work System Design, Inc.--Reconsideration, B-200917.2, Sept. 29, 1981, 81-2 CPD ¶ 261; see also Amram Nowak Associates, Inc., 56 Comp. Gen. 448 (1977), 77-1 CPD ¶ 219. Moreover, the solicitation here states that "the lease will not be awarded only on the basis of lowest rate per square foot." Thus, it was clear that while lowest proposed cost might not be the sole determining factor in awarding the lease, it would be one factor considered in making the award. Consequently, the protest on this basis is without merit.

The protesters also complain that their proposal was improperly scored under the location evaluation factor. They argue that their proposed building site was on the same street, same side of the highway and same approximate distance from the intersection as the awardee's, yet they received 2 points less than the maximum score that the awardee received under this factor.

The agency states that it considered the awardee's location "more feasible" than the protesters' proposed location, but it has not indicated its basis for reaching this decision. We do not believe, however, that the protesters were prejudiced in this regard since even had they received the additional two points this still would not have been enough to overcome the awardee's significant advantage resulting from its lower proposed cost.

Finally, the protesters complain that the agency improperly awarded the lease to Lone Star notwithstanding the fact that Lone Star did not own the land on which it proposed to build the office. There was, however, no requirement in the solicitation that the awardee own the land at the time of award.

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The protest is denied.

for Shelton J. Cooper
Comptroller General
of the United States