



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Inn Towne Lodge

File: B-278251

Date: December 24, 1997

Phillip E. Johnson, Federal Contract Specialists, Inc., for the protester.
Maj. Gerald P. Kohns, Timothy G. Goblirsch, Esq., and Patrick Kernan, Esq.,
Department of the Army, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Contracting officer reasonably determined that protester was not responsible based on facility inspection, conducted in accordance with solicitation performance work statement, which disclosed numerous major deficiencies in bidder's facility.

DECISION

Inn Towne Lodge protests the rejection of its low bid and the award of a contract to Command Management Services, Inc. under invitation for bids (IFB) No. DABT23-97-B-0074, issued by the Department of the Army for meals, lodging, and transportation for military applicants processing at the Kansas City, Missouri, Military Entrance Processing Station (MEPS). The protester contends that the contracting officer's determination that it was nonresponsive was improper.

We deny the protest.

The solicitation was issued on August 11, 1997, and sought bids for a requirements contract for meals, lodging, and transportation for military applicants for a base period with up to four 1-year option periods. The solicitation was limited to facilities that were located within 12 miles of the MEPS and had eating facilities located within the lodging facility or within 300 feet of the facility. The food/meal facility was required to have successfully passed its most recent public health inspection. The solicitation also provided that the MEPS would conduct a facility inspection within 24 hours after bid opening and that facilities must comply with standards established in the performance work statement. Copies of the checklists to be used by the MEPS when conducting inspections were enclosed with the IFB. Bidders were also advised that they would be allowed 48 hours after inspection to correct any deficiencies found during the inspection. Award was to be made to the lowest responsive, responsible bidder.

Five bids, including Inn Towne's, were received on September 9. Inn Towne submitted the apparent low bid; however, its bid package did not contain an original signature on the Standard Form 1449. The agency reports that while researching the signature issue, on September 11, it conducted an inspection of the protester's facility.¹ As a result of the inspection, the protester's facility received unsatisfactory ratings in several areas. For example, the MEPS inspection team found that the air conditioning units were dirty, major cleaning and repair work was needed in every inspected room, emergency evacuation instructions were not posted in rooms, and the dining area was dirty throughout. Additionally, the guest bathrooms were found to have loose and missing tiles, stained tubs, mildew, lack of caulking, stained and dirty tiles, stained and dirty floors, soft or loose floors, walls and ceilings, loose base boards, as well as ceiling, floor and wall cracks. During the inspection, the agency also learned that the facility had not passed its most recent Kansas City Environmental Health Services inspection on the basis of the same type of problems, and that the protester had lost its Missouri State Lodging License. Based on the facility inspection, Inn Towne was determined to be nonresponsive.

The protester asserts that the nonresponsibility determination was improper because the survey was inappropriate and was allegedly conducted by unauthorized and unqualified agency personnel, and because the protester was never allowed the "48 hours after inspection to correct any deficiencies found during the inspection" as provided for in the solicitation.

Subsequent to the filing of this protest, the agency provided the protester a copy of the original inspection report and gave the protester 48 hours to correct the stated deficiencies. The facility was reinspected on October 24, and the protester had failed to correct the stated deficiencies.

In general, the determination of a prospective contractor's responsibility is the duty of the contracting officer, who is vested with a wide degree of discretion and business judgment. We therefore will not question a responsibility determination unless the record shows bad faith on the part of contracting officials or that the determination lacks a reasonable basis. Standard Tank Cleaning Corp., B-245364, Jan. 2, 1992, 92-1 CPD ¶ 3 at 3. In order to show bad faith, a protester must show

¹The agency eventually determined the protester's bid to be nonresponsive because of uncertainties concerning the protester's signature on the Standard Form 1449. The agency believed that, because of the signature issue, it was unclear from the bid whether the protester intended to be bound by the information contained in its bid. While the agency's concerns in this regard may have been misplaced, we need not address this issue, since we have concluded that the protester was reasonably determined to be nonresponsive.

that the contracting agency acted with specific and malicious intent to injure the protester. Schenker Panamericana (Panama) S.A., B-253029, Aug. 2, 1993, 93-2 CPD ¶ 67 at 5-6.

Inn Towne first takes issue with the conduct of the inspection and the makeup of the inspection team. As explained above, the solicitation specifically advised bidders that they had to successfully pass an inspection conducted by the MEPS within 24 hours of bid opening and that their facility must comply with the standards establish in the performance work statement. If the protester had concerns about the fact that a survey would be conducted or about the impartiality of MEPS personnel to perform the facility inspection, the protester should have raised this issue prior to the time set for bid opening. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1997).

As to the propriety of the contracting officer's nonresponsibility determination based on the results of the inspection, the record establishes that the determination was reasonable. The contracting officer had before him a MEPS inspection report that detailed major deficiencies in the protester's facility. The contracting officer also had information that Inn Towne had lost its Missouri State Lodging License and had failed its most recent Kansas City Health Department inspection with similar deficiencies. While the protester also asserts that it has plans to correct these deficiencies in the future, this claim does not serve to call into question the contracting officer's nonresponsibility determination based on the information in the inspection report and from the health department.

Regarding the protester's claim of bias, unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Ted L. Biddy and Assocs., Inc., B-209297, B-209297.2, Apr. 22, 1983, 83-1 CPD ¶ 441 at 3. In its comments on the agency report submitted in response to the protest, the protester concedes that there was nothing in the record indicating any improprieties with respect to the inspection of its facility. However, the protester maintains that the agency's regulations concerning pre-award surveys were not followed in that only MEPS personnel performed the inspection and that, therefore, a reasonable doubt is created about the impartiality of the inspection team. This complaint is misplaced because, as noted above, the solicitation specifically provided that MEPS personnel were going to conduct the inspection.

Finally, the protester maintains that the use of the health department information was improper because the solicitation required only that the bidder's food/meal facility to have successfully passed its most recent public health department inspection. We find implausible the protester's argument that the contracting officer should ignore the results of a health department inspection, and we see nothing improper in the contracting officer considering as part of a responsibility determination the protester's failure to pass a health department inspection for a

lodging establishment. This failure of the protester to maintain its lodging license essentially validates the MEPS inspection and the contracting officer's determination that the protester was nonresponsible because it offered an unacceptable lodging facility.

The protest is denied.

Comptroller General
of the United States