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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Hilton Knoxville

File: B-289478

Date: February 26, 2002

Phillip E. Johnson for the protester.

Maj. Kateni T. Leakehe, Department of the Army, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge to the evaluation of its proposal is denied where the record shows that the evaluation was reasonable and consistent with the stated evaluation criteria.
 2. Contention that an agency's price/technical tradeoff decision was an abuse of discretion is denied where the record shows that the agency was aware of the differences between the proposed approaches of the awardee and the protester and reasonably concluded that the awardee's higher-priced proposal offered a better value to the government than the protester's proposal.
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DECISION

Hilton Knoxville (HK) protests the award of a contract to Command Management Services, Inc. by the Department of the Army's Directorate of Contracting, Fort Knox, Kentucky, pursuant to request for proposals (RFP) No. DABT23-01-R-1016, issued to procure meals, lodging, and transportation for applicants arriving for processing at the Military Entrance Processing Station (MEPS) in Knoxville, Tennessee. HK argues that the award decision here was improper because the on-site inspection of its hotel was unreasonable, the agency failed to consider the risk associated with award to CMS, the agency is biased in favor of CMS, and the agency abused its discretion when it concluded that CMS's higher-priced proposal represented the "best value" to the government.

We deny the protest.

BACKGROUND

The RFP here is a standard solicitation developed by the Directorate of Contracting for procuring meals and lodging for armed forces applicants arriving at the Army's 65 MEPS locations. Contracting Officer's (CO) Statement at 1. These MEPS RFPs are issued as commercial acquisitions using simplified acquisition procedures, and anticipate award of a fixed-price, indefinite-quantity requirements contract, for a base period followed by four 1-year options, to the offeror whose proposal is considered most advantageous to the government. RFP amend. 2, attach. 1, at 3.

The RFP requires that offerors submit a technical/quality proposal as well as a separate cost/price proposal. Id. at 1-2. To assess proposals, the RFP advises that offers will be evaluated on five factors: facility quality, transportation, quality control, past performance and price. Id. at 3. The RFP also advises that the non-cost factors are more important than price, and that among these non-cost factors facility quality is more important than transportation, which is more important than past performance or quality control, which are equal in weight. Id.

In response, the agency received 11 proposals, including those of HK and CMS; 2 of the proposals were withdrawn before the evaluation. The remaining nine proposals were evaluated by a three-member team, which then inspected each offeror's lodging and dining facilities. This inspection was videotaped by a fourth person from the MEPS. The CO explained that the inspections lasted approximately 30 to 45 minutes per hotel, and that the same inspection procedure was used for each visit. Specifically, the evaluators would ask to see a guest room planned for use by the MEPS applicants, the kitchen, the dining room, any vehicles to be used to transport the applicants, and anything else the hotel staff would like to show the team. CO's Statement at 2.

At the conclusion of the inspection, the evaluation panel prepared a narrative assessment and overall adjectival consensus rating for each offeror based on the results of the investigation and on the panel's review of the proposal. The adjectival ratings used here--excellent, good, satisfactory, marginal, and unsatisfactory--were identified and defined in the solicitation. RFP at 30. This information, together with the selection decision, was memorialized in a document prepared by the CO.

For HK, the evaluation narrative focused mostly on the results of the inspection, noting the hotel's "nice, large lobby" and convenient location, but also noting several "deficiencies." CO Findings, Nov. 30, 2001, at 2. For example, the narrative noted that the inspectors saw no sign of security during their visit. With respect to the kitchen, the evaluators noted a bad odor, outdated milk in the refrigerator, uncovered food, and two appliances plugged into one socket; with respect to the guest room, they noted that the bathtub was chipped and did not have safety strips, the bathroom exhaust fan was dirty, the mattress was stained, and three items were plugged into one outlet. As a result of these findings, the evaluators agreed that most of the deficiencies could be corrected quickly, but also concluded that the

deficiencies were evidence that “quality control was lacking, that safety of guests was not of paramount concern to the staff, and that [the] food storage habits of the staff were potentially dangerous to the applicants.” Id. Thus, the evaluators concluded that HK should receive an overall rating of satisfactory, which was comprised of underlying ratings of satisfactory for facility quality, good for past performance, satisfactory for quality control plan, and good for transportation plan.

HK’s overall rating of satisfactory made it the fifth highest-rated proposal. The consensus rating assigned to each proposal, and that proposal’s total price for the base year and all four option years, is set forth below:

Offeror A	Excellent	\$3.1 million
CMS	Excellent	\$2.6 million
Offeror B	Good	\$2.7 million
Offeror C	Good	\$3.0 million
HK	Satisfactory	\$2.1 million
Offeror D	Marginal	\$1.5 million
Offeror E	Marginal	\$1.6 million
Offeror F	Marginal	\$2.2 million
Offeror G	Unsatisfactory	\$1.4 million

Id. at 4. Based on these findings, the CO concluded that CMS’s excellent-rated proposal offered the best value to the government. In justifying this conclusion, the CO outlined the perceived benefits of the CMS proposal, and noted that this proposal also had the lowest price of any of the offers rated excellent or good. In addition, the CO concluded that CMS’s excellent-rated proposal offered a better value to the government than HK’s satisfactory-rated proposal, and a better value than any of the marginal-rated proposals, all of which were lower-priced than CMS’s proposal. Id. at 5. Accordingly, the CO selected CMS for award and this protest followed.

Before turning to the specific arguments raised by the protester, additional information about a significant difference between the awardee and the protester is relevant here. First, the awardee, CMS, is not a hotel, but a management company that subcontracts with local hotels to perform MEPS contracts throughout the country. In fact, the CO acknowledges that CMS currently holds approximately 40 percent of the contracts awarded by the Army for its 65 MEPS locations. As explained in its proposal, CMS provides two full-time on-site employees to assist with managing the MEPS contract, and also provides all billing services and interface with the local MEPS facility, while a subcontractor provides the rooms, meals, and transportation required by this contract. CMS Technical/Quality Proposal at 2-4, 9-10. The CMS proposal selected here identified the Radisson Summit Hill Hotel in Knoxville as the subcontractor; in fact, four of the five proposals rated satisfactory

or better in this competition were submitted by CMS (although the other proposals identified other Knoxville hotels as subcontractors). Thus, HK's proposal was the only proposal among the five offers rated satisfactory or higher that was submitted by a hotel.

DISCUSSION

As indicated above, HK raises several arguments related to the agency's evaluation of proposals, and contends that the decision to select CMS's higher-priced proposal for award was unreasonable. With respect to the evaluation, HK challenges the adequacy and accuracy of the inspection of its hotel, and argues that the flawed results generated during its inspection were wrongly used to downgrade its written proposal. With respect to the selection decision, HK contends that the agency has overlooked the risk associated with award to CMS because of its high level of subcontracting, abused its discretion by concluding that CMS's proposal represents the best value to the government, and is biased in favor of CMS.

With respect to the adequacy of the Army's inspection, HK argues that the inspection did not provide a reasonable basis for evaluating its hotel because it was limited to only one guest room, was conducted hurriedly, and took place only days before performance was scheduled to begin. Our standard in reviewing evaluation challenges is to examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Our review of the results of the agency's on-site inspection of HK, together with HK's challenges to those results, leads us to conclude that there is no basis to question the Army's reliance on the results of the inspection.

First, we know of no reason why the Army was required to view multiple guest rooms during its inspection of the protester's hotel. As a general matter, rooms in a given hotel are relatively fungible. In this regard, HK has offered no evidence that inspecting multiple rooms would have led to markedly different conclusions about the quality or type of rooms it is offering. In addition, we note that the hotel, not the Army, identifies the rooms that are to be used in performing the contract, and, presumably, the room that gets reviewed. While it appears from the record that agency inspectors entered two guest rooms at some properties, and only one room at others, we have no reason to conclude that this matter alone renders the inspection improper, or that the evaluators were unfairly trying to favor one offeror over another.

With respect to the time allotted to the inspection of each hotel, and the fact that the inspection took place only a few days before performance was scheduled to begin, the focus of HK's complaint appears to be that the inspection was conducted too hurriedly. HK makes no showing as to how it was harmed by the duration or timing of the inspection, however, and there clearly is no basis to conclude that HK was treated unfairly since the inspections of all the offerors' facilities were conducted in

a similar manner. In short, we know of no reason that a more in-depth inspection was required, or that the proximity of the inspection to the date of award means that the inspection was somehow improper.

With respect to the accuracy of the inspection, we note that HK concedes several of the deficiencies noted by the evaluators. For example, the evaluation team noted that HK's guest room had a chipped tub in the bathroom, that the tub lacked safety strips, that the bathroom exhaust fan was dirty, that the mattress in the room was stained, and that there was an outlet in the room that had three items plugged into the socket, which the evaluation team considered a safety hazard. CO Findings at 2. Each of these findings was communicated to HK in a letter from the CO explaining why HK was not selected for award. Initial Protest, exh. D. HK concedes the chipped tub, the dirty fan, and the overloaded socket, but argues that its tub was specially manufactured to not need safety strips, and that it has been unable to locate the alleged mattress stains.

The essence of HK's argument appears to be that any problems identified during the inspection were minor and could be easily rectified. While HK may be right about the correctable nature of the deficiencies, we think that the agency reasonably viewed the inspected room as representative of the rooms available in the hotel, and the defects noted clearly bear on the condition of the rooms and of the hotel overall.

HK's final evaluation challenge is that the agency improperly used the results of the inspection—which, by definition, makes an assessment of current conditions at the hotel—to downgrade its proposed quality control plan, which was to be implemented upon award. Specifically, HK contends that any conclusions about the condition of the guest room inspected should not have been used to make judgments about the quality control plan.

As a preliminary matter, we generally agree with HK's contention that the results of a room inspection prior to award are not necessarily related to the adequacy of a quality control plan promised for performance. As HK argues, current conditions and promised procedures may be two different things. On the other hand, while this solicitation, and particularly the provisions applicable here, is no model of clarity or logic, we do not agree that the evaluation here was unreasonable.

The solicitation required offerors to submit a technical/quality proposal that, among other things, addressed quality control. RFP amend. 2, at 2. The solicitation's guidance on quality control required submission of a quality control proposal, and required this quality control proposal to be effective at the time of award and to remain in place throughout the life of the contract, with any changes to be approved by the contracting officer. *Id.* at 3. With respect to the cleanliness of rooms, HK's quality control proposal details its cleaning procedures, and provides examples of checklists for inspecting guest rooms, the dining room and the kitchen. HK Quality Control Proposal at 4-8 (Agency Report, Tab E). Upon review of the written

proposal, HK initially received a rating of excellent under the quality control evaluation factor. Agency Report, Tab H.

During the inspection, however, the evaluators noted several deficiencies in the cleanliness of HK's rooms, and concluded that "the deficiencies indicated that quality control was lacking." CO Findings at 2. Upon return from the inspection, the evaluators downgraded their assessment of HK's proposal under the quality control evaluation factor from a rating of excellent to a rating of satisfactory. Agency Report, Tab H.

In our view, there is nothing unreasonable about the evaluator's linkage of the deficiencies found during HK's inspection to HK's approach to quality control in general. While HK correctly argues that the solicitation's description of the quality control evaluation factor focuses on the quality control proposal, HK would have our Office elevate form over substance. We do not think the evaluators were required to ignore evidence of a lack of current quality control merely because the quality control proposals requested here were written prospectively, rather than as a description of current procedures.

In addition, we see nothing unique about the cleaning procedures and checklists in HK's quality control proposal, nor has HK pointed to any feature within these procedures that will be newly implemented upon award of this contract. Lastly, we note that the inspection took place on a Wednesday before the Sunday when performance was to begin. Given that these problems in quality control were detected only 4 days before performance was to begin, we see no reason why the agency could not consider them as indicative of the level of quality control that would be provided during performance. Accordingly, we do not agree that the agency misused the results of its inspection.¹

Turning to the selection decision, HK makes several arguments that, in essence, raise the same issue. Specifically, HK contends that the agency: failed to properly consider the high risk associated with award to a company that will, in HK's view, subcontract 100 percent of the contract; unreasonably concluded that CMS's

¹ For the record, we note that HK raises a similar argument about the difference between hotel security as of the day of the inspection and the proposal's plans for security. The solicitation did not contain a separate evaluation factor for security, as it did for quality control. Instead, the solicitation explained that security was one of several areas to be addressed under facility quality. RFP amend. 2, at 3. Since we conclude that the agency's assessment of HK's facility quality as satisfactory is supported by the other features considered under this evaluation factor--i.e., sanitation and cleanliness, room condition, meals, special features, and facility location--we think the impact of even an erroneous conclusion about this matter had a de minimis effect on the rating under this factor.

subcontract approach offers the best value to the government; and is impermissibly biased in favor of CMS's approach. We disagree on all three fronts.

As a preliminary matter, our consideration of these complaints leads us to conclude that there may be a misunderstanding by HK about the nature of this procurement. Although this procurement can be described simply as a purchase of rooms, meals, and transportation for individuals who are about to be processed into the military--and thus has been labeled a commercial item procurement--the Army is buying more than just a standard commercially-available room and meal. Under this solicitation, the Army is also procuring services from the contractor that extend the agency's reach from the MEPS station to the hotel where the applicants spend the night before their early morning processing.

In this regard, we note that MEPS hotels are required to obtain a roster of expected applicants every day, and ensure that those applicants are checked-in, housed, fed, and transported to the MEPS facility the next morning, in accordance with the facility's schedule. RFP at 34-35. Many of these applicants are quite young, and, as a result, MEPS hotels are also required to provide a plan for the security of the applicants in a safe environment that is free of crime. RFP at 34. These requirements have led to proposed approaches that offer increased interface between the MEPS facility and the hotel, special personnel who meet the applicants and, in essence, keep an eye on them, as well as special rooms and facilities designed specifically and exclusively for their use, offering things like nightly films or other entertainment. CMS addressed the unique requirements of this solicitation by offering to supplement the staff of its subcontractor hotel with CMS on-site employees who manage the contract and ensure that the hotel meets its obligations. These employees serve as a designated desk clerk for MEPS applicants, provide dedicated liaison services, and ensure the security and safety of the applicants. Agency Report at 5 (redacted version).

With respect to HK's specific challenges, we note first that CMS is not subcontracting 100 percent of this contract to the local hotel, although we recognize that a significant percentage of the cost of this contract is comprised of the rooms, meals, and transportation that are its principal component. Instead, CMS itself is performing services that the agency values. With respect to whether the CMS approach involves an undue reliance on subcontracting, we note that this solicitation was not reserved for small business, and that the Army states that it has no intention of imposing a limit on subcontracting.² Given that the Army does not intend to limit

² During the course of this protest, after neither the Army nor the protester acknowledged that the solicitation here did, in fact, incorporate by reference the standard Limitations on Subcontracting clause found at Federal Acquisition Regulation (FAR) § 52.219-14, our Office convened a conference call to ask the parties to address the impact of the inclusion of the clause on the protester's

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subcontracting, and given there is no other evidence that the level of, or approach to, subcontracting here presents a risk to the agency, we see nothing unreasonable in the agency's conclusion that the approach here offers the best value to the government.

Finally, we turn to the protester's allegation that the agency is biased in favor of CMS's proposed approach. We note first that when HK alleges bias in this protest it does not claim that there is a conflict of interest here, or some other kind of improper relationship between the Army personnel involved in awarding this contract and the contractor that performs it. Rather, we read HK's allegation to be that the Army personnel awarding this contract are unreasonably impressed by CMS's approach of serving as a manager for the contract, and supplementing local hotel personnel with CMS personnel dedicated to improving the interface between the MEPS facility and the hotel. While it appears HK is correct about the agency preference for CMS's approach, there is nothing about this preference that is improper.

As indicated above, CMS is offering the Army certain services in addition to rooms, meals, and transportation. These additional services provided by CMS, in effect, extend the reach of the MEPS facility to the hotel where the applicants are staying before they show up for processing. In this instance at least, the Army concluded that CMS's approach—together with accommodations that appeared upon inspection to be of higher quality than those offered by HK and the other offerors—provides greater value to the agency than lower-priced offers that do not provide these services. While this appears to be an established preference—CMS's approach has resulted in its receipt of 40 percent of the lodging contracts for the Army's 65 MEPS stations—in a best value procurement, we know of no reason the agency cannot properly make the judgment it made here.

The protest is denied.

Anthony H. Gamboa
General Counsel

(...continued)

complaints about CMS's excessive reliance on subcontracting. In response, the Army explained that the clause was included inadvertently, and that assuming arguendo that CMS's proposed approach violated the clause, the agency was waiving its application to this procurement. As the protester has not shown how it would have changed its proposal had it known the agency would waive the application of the clause, we conclude that the protester has not been prejudiced by its waiver. Brown & Root, Inc. and Perini Corp., a joint venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 11.