



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Park Inn International

File: B-233958

Date: April 3, 1989

DIGEST

Award of contract to higher priced offeror is proper where solicitation sought quality rooms at a price less than stated per diem rate and made other considerations more important than cost since so long as it is consistent with the solicitation's evaluation scheme, selection officials have broad discretion in making a tradeoff between price and non-cost factors.

DECISION

Park Inn International protests a decision by the Waterways Experimental Station (WES), United States Army Corps of Engineers, Vicksburg, Mississippi, to enter into an agreement with Magnolia Best Western Motel to provide rooms, transportation and travel agency services. The protester argues that since it offered lower room rates, it should have received the award.

We deny the protest.

The agency reports that for some years, its Huntsville district has sponsored training known as proponent sponsored engineer corps training, which is generally held at WES. Because there is limited parking at WES and no public transportation between WES and the nearest lodging in Vicksburg, the agency has in the past provided transportation for students to and from the nearest airport in Jackson and between WES and local motels.

Prior to 1985, the agency had a full-time employee responsible for making travel arrangements for students and arranging for motel accommodations. In that year, faced

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with a possible reduction in force, the agency decided to eliminate this position and enter into an agreement with a local motel to make travel arrangements for students and provide rooms at a fixed charge. Park Inn (then Ramada Inn) agreed to perform these services for the agency in exchange for the opportunity to have exclusive booking of the students' lodging.

Park Inn's agreement expired on February 1, 1987, because per diem rates for Vicksburg were too low for students to receive full reimbursement, the agency selected Magnolia for the next year's agreement, primarily because its offer of \$25 a night for lodging was the lowest received. The agency retained an option to extend the agreement for two 1-year options, one of which was exercised on February 1, 1988.

In late 1988, the agency decided that since the Vicksburg per diem rate had risen to \$41 a night for lodging, WES students could afford better rooms than the Magnolia had promised to provide. Additionally, the agency wanted the motel with which it executed the next annual agreement to assume the responsibility for providing transportation for students.

By letter dated October 25, 1988, the agency requested local motels to submit offers for room reservation and travel coordination services for a 1-year period beginning February 1, 1989. The agency first advised the recipients of this solicitation that it had benefited from previous agreements by obtaining "lower room rates, reduced meal costs and other benefits." The agency also described its current arrangement with Magnolia and its reasons for not exercising the option to extend that agreement beyond its scheduled expiration date of January 31, 1989:

"[T]wo years ago the per diem rate for the Vicksburg area made it difficult for students to meet lodging and meal costs. Hence, lower lodging rates for students was an important consideration in the selection . . . Today the authorized per diem rate for Vicksburg is [\$41]."

The agency further advised that it would select a motel based on six criteria, as follows: (1) willingness to handle travel coordination requirements; (2) "[q]uality rooms at a daily rate below the maximum which the students is allowed to be reimbursed" (\$41); (3) transportation

service to and from Jackson (including consideration of whether the charge was included in lodging or collected from students and whether the service was subcontracted or provided directly); (4) local transportation; (5) tax free exemption on lodging costs; and (6) other benefits.

The agency received three responses, only two of which offered transportation service. Discussions took place. The awardee offered better rooms than it had been furnishing under the prior agreement but also asked a higher price than did the protester. Both offered rooms for less than the \$41 per diem. After reviewing the offers from Magnolia and the protester, the agency decided that Magnolia offered the best value for students, primarily because it intended to subcontract with a local bus operator for the transportation services, while the protester planned to buy a bus either from WES or elsewhere. The Magnolia subcontract also provided for alternative transportation in the event of mechanical failure and \$300,000 in carrier passenger liability insurance. The agency also found that Magnolia was offering primarily its deluxe, newly renovated room. Furthermore, the agency found that Magnolia offered a variety of amenities such as tennis courts, microwave ovens in every room, a jacuzzi and computer generated mail service, which the agency believed was a better value than the protester's offer of amenities such as miniature golf and a free meeting room if needed.

On November 9, the agency advised the protester and Magnolia of its decision. Park Inn filed this protest on November 22, complaining of the decision to award a contract to the higher offeror.^{1/}

In assessing the relative desirability of proposals and determining which offer should be accepted for award in a negotiated procurement, the procuring agency has the discretion to select a more highly rated proposal if doing so is in the government's best interest and is consistent with the evaluation scheme set forth in the solicitation.

^{1/} The agency argues that its agreement with Magnolia is not a procurement for services and that our Office therefore has no jurisdiction to decide this protest. We disagree, because, in our view, WES is obtaining valuable services, formerly performed by agency employees, and vehicles under contract from the selected motel, even though it is not directly paying the motel for these services. See T.V. Travel, Inc., et al., 65 Comp. Gen. 109 (1985), 85-2 CPD ¶ 640; Gino Morena Enterprises, 66 Comp. Gen. 231 (1987), 87-1 CPD ¶ 121.

VGS, Inc., B-233116, Jan. 25, 1989, 89-1 CPD ¶ 83. The government is not required to make award to the firm offering the lowest cost unless the solicitation specified that cost will be the determinative factor. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178.

The protester first argues that the agency's reference to "lower room rates" in its October 25 letter established that it would enter into an agreement with the lowest priced offeror; the protester states that this interpretation was confirmed by Mr. John Turner, a WES employee. Mr. Turner denies so advising the protester; in any event, the protester neither alleges nor shows that Mr. Turner had authority to modify the express terms of the solicitation. We believe that the agency's October 25 letter clearly spelled out the subordinate role that price would play in its decision and the reasons for giving price less weight than other factors. The protester states that the October 25 letter discussion of per diem rates "meant nothing" to Park Inn. We believe, however, that the letter clearly expressed the agency's apprehension that unless students were assured of receiving the best room and services available for their \$41 per diem, they would not take advantage of the agreement; rather they would rent or bring cars and add to the congested parking situation at WES. We do not therefore believe that the protester was entitled to expect award based solely on its lower price.

The protester also challenges the reasonableness of the agency's decision not to award to the lowest cost offeror. Park Inn argues that its rooms are as nice as Magnolia's, that its plans to buy a bus represent the best method of serving WES and that its options are the same as Magnolia's if the bus breaks down. We will examine an evaluation, however, only to insure that it was reasonable and consistent with the stated evaluation criteria. Fairfield Machine Co., Inc., B-228015, B-228015.2, Dec. 7, 1987, 87-2 CPD ¶ 562. Moreover, the protester has the burden of affirmatively proving its case and mere disagreement with an evaluation does not satisfy this requirement. Structural Analysis Technologies, Inc., B-228020, Nov. 9, 1987, 87-2 CPD ¶ 466. As stated above, the primary reason for selection of Magnolia was its firm subcontract agreement with a bus service to provide all required transportation services. This agreement guaranteed service in the event of the vehicle's mechanical breakdown and passenger liability insurance coverage. In contrast, Park Inn proposed a 1982 commercial type bus to be purchased and operated by Park Inn. Further, our review of the proposals shows that the

agency reasonably could determine that the amenities offered by Magnolia were better suited for its needs than those offered by Park Inn. Accordingly, based on the record before us, we have no basis for finding the agency's evaluation to be unreasonable.

The protest is denied.

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for James F. Hinchman
General Counsel