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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Marriott Downtown

File: B-294594

Date: November 8, 2004

Phillip E. Johnson, Federal Contract Specialists, Inc., for the protester.
Capt. Eugene Y. Kim, Department of the Army, for the agency.
Kenneth Kilgour and Christine S. Melody, Esq., Office of the General Counsel,
participated in the preparation of the decision.

DIGEST

Protest of proposal evaluation and source selection is denied where record shows evaluation and award decision were reasonable and consistent with solicitation's evaluation terms and applicable procurement rules.

DECISION

Marriott Downtown protests the award of a contract to CMS-Radisson Hotel Memphis Airport by the Department of the Army under request for proposals (RFP) No. W912D-04-R-0007, issued to procure meals, lodging, and transportation for armed forces applicants at the Military Entrance Processing Station (MEPS) in Memphis, Tennessee. Marriott argues that the selection of CMS-Radisson's proposal was unreasonable.

We deny the protest.

The RFP, a commercial acquisition using a combination of Federal Acquisition Regulation (FAR) parts 12, 13, 14 and 15, provided for award of a fixed-price requirements contract, for a base year period with four 1-year options, to the offeror whose proposal was most advantageous to the government. The RFP required that offerors submit a technical/quality proposal as well as a separate cost/price proposal. The RFP advised that offers would be evaluated on four factors: facility quality/quality control, past performance, transportation, and cost/price. The first factor, facility quality/quality control, included sanitation and cleanliness, room condition, meals, security, special features, facility location, and quality control. The RFP also advised that the non-cost factors were more important than cost or price,

and that among the non-cost factors facility quality/quality control was more important than past performance, which was more important than transportation.

In response, the agency received nine proposals, including one from an offeror whose facility was closed for business and therefore was not considered further. The original evaluation team reviewed the eight other proposals and conducted on-site visits, and a contract was awarded to CMS-Radisson. Marriott Downtown protested the award, contending that its offer had not been properly evaluated. The contracting officer subsequently terminated CMS-Radisson's contract, amended the solicitation to provide for a date for new on-site evaluations, and assembled a new evaluation team to review the proposals and to conduct the site visits, in order to make a new source selection decision.¹ As a result of the agency's action, we dismissed the protest.

After reviewing the proposals and conducting on-site evaluations, the second evaluation team rated the proposals of Marriott Downtown and offeror A as excellent; CMS-Radisson and offerors B, C, and D as good; offeror E as satisfactory; and offeror F as marginal. The contracting officer established a competitive range consisting of the six offers rated excellent or good, including those from Marriott Downtown and CMS-Radisson. Detailed weaknesses/deficiencies were communicated to those offerors. The agency's main concern with Marriott's proposal was the facility's proximity to Beale Street, which features nightclubs, bars, and other late-night tourist attractions. The agency's main concerns with the CMS-Radisson proposal were deficiencies in cleanliness and quality control noted by the second evaluation team.

Amendment 0002 was issued on July 6 requesting final revisions and/or pricing changes. Five of the six offerors in the competitive range submitted revised proposals,² and based on the revised submissions, the contracting officer rated each of the remaining proposals as excellent and awarded the contract to CMS-Radisson. In conducting the price/technical tradeoff analysis, the contracting officer determined that the proposal offered by CMS-Radisson provided the best value to the government, because it was priced \$81,147.58 less than any other offer over the possible 5-year life of the contract. The contracting officer determined that any slight difference in quality among the offers was not worth the price premium.

¹ The agency reports that the contracting officer decided to take corrective action after learning that a MEPS employee (who had served on the source selection team) had inquired about the hiring procedures of CMS during the Radisson inspection and requested an employment application for his wife the day after the contract was awarded to CMS-Radisson.

² Offeror C withdrew its offer from further consideration.

Marriott Downtown challenges the technical evaluations of its own and CMS-Radisson's proposals and argues that the agency's selection decision was unreasonable. In reviewing challenges to an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals. We will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria, and with procurement statutes and regulations. M-Cubed Info. Sys., Inc., B-284445, B-284445.2, Apr. 19, 2000, 2000 CPD ¶ 74 at 5. A protestor's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Command Mgmt. Servs., Inc., B-292893.2, June 30, 2004, 2004 CPD ¶ 168 at 3. Based on our review of the record, we find the evaluation of the proposals, and the selection of CMS-Radisson's proposal as offering the best value, to be reasonable.

Marriott Downtown identifies four distinctions between it and the Radisson hotel that, Marriott argues, demonstrate the superiority of its facility and warrant award to Marriott despite its higher price: the airport noise at the Radisson; traffic congestion; the allegedly unsafe neighborhood around the Radisson; and Marriott's special features, including an indoor pool and a large fitness center. We discuss each of these factors in turn.

The Radisson hotel offered by the awardee is located at Memphis International Airport. In support of its argument regarding airport noise, Marriott has produced flight records that appear to establish that the airport is a busy transportation hub with a high volume of nighttime air traffic. While the agency does not dispute the frequency of nighttime takeoffs and landings, the contracting officer states that flight noise was not noticeable during daytime visits to the hotel. The contracting officer also states that, after checking with the Memphis MEPS, she is not aware of any noise complaints from any of the applicants staying at the Radisson, and the evaluation teams made no mention of noise disturbances. Other than its speculation that such a large number of nighttime arrivals and departures produces sufficient noise to disturb guests at the Radisson, Marriott Downtown simply has not offered any evidence to support its position. At most, Marriott's argument reflects its disagreement with the agency's judgment regarding the impact of flight noise at the Radisson, which is not sufficient to show that the agency acted unreasonably in not downgrading CMS-Radisson's proposal based on the hotel's proximity to the airport. Language Serv. Assocs., Inc., B-293041, Dec. 22, 2003, 2004 CPD ¶ 6 at 5.

The protestor also asserts that, in prior procurements, hotels outside a 9-mile radius from the MEPS have been rejected due to transportation costs and concerns about traffic congestion.³ The protestor questions why the evaluators did not similarly

³ In support of its position, the protestor cites Treadway Inn, B-221559, Mar. 10, 1986, 86-1 CPD ¶ 236, aff'd, B-221559.2, July 31, 1986, 86-2 ¶ 130. In that case, the incumbent contractor, whose facility was located over 20 miles from the MEPS,

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downgrade the awardee's proposal here, given that the Radisson is located over 10 miles from the MEPS. In comparison, the Marriott is located less than 2 miles from the MEPS. Given that the applicants will be transported between the contract hotel and the MEPS at approximately 5 a.m., the contracting officer anticipates minimal or no traffic congestion and estimates that the time saved by transporting applicants from the Marriott rather than the Radisson would likely be just a few minutes. In view of the contracting officer's reasoned explanation, we see no basis to question her decision not to downgrade the awardee's proposal based on the Radisson's distance from the MEPS.

Marriott Downtown offered crime statistics that it asserted showed that the Marriott was in a safer neighborhood than the Radisson and questioned the Radisson's security. The record shows that the contracting officer reviewed in some detail the security measures in place at the Radisson, including video surveillance cameras, a 24-hour manager, uniformed security guards, and on-site regional airport security. In addition, the contracting officer spoke with the Director of Public Safety at the airport and was told that instances of crime at the airport are "extremely rare," although the airport lies within a reporting area that, as a whole, experiences a higher crime rate than the airport. The contracting officer reports that the Radisson has ample surface parking for MEPS applicants and that the entire facility is surrounded by a fence, set back approximately 300 feet. The contracting officer's evaluation of the relative safety and security of the competing facilities was reasonable and consistent with the solicitation's evaluation criteria, and we will not substitute our judgment for that of the agency regarding the merits of the proposals in this regard. M-Cubed Info. Sys., Inc., supra.

Finally, Marriott Downtown argues that its year-round pool and better-equipped fitness center, along with concierge service and a gift shop, make its facility one of obviously higher quality than the Radisson and that the contracting officer failed to properly consider the Marriott's superiority. We disagree. In fact, the record clearly shows that the agency took the positive features of the protester's facility into account in arriving at its overall excellent rating, specifically considering how the Marriott's amenities mitigated the government's greatest concern about that proposal, namely, the proximity of the Marriott to Memphis nightlife.

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challenged a provision in the solicitation restricting the competition to facilities within a 5-mile radius of the MEPS. We denied the challenge to the geographic restriction, finding reasonable the agency's position that, because the highway connecting the incumbent's facility to the MEPS was under repair, applicants were experiencing excessive travel times and abnormally hazardous conditions. In contrast here, the solicitation does not contain a geographic restriction; moreover, there is no evidence that any similar factors – excessive travel time or hazardous travel conditions – are at issue here.

Where selection officials reasonably regard proposals as being essentially equal technically, price can be a determining factor in making an award, notwithstanding that the evaluation criteria assigned price less importance than technical factors. Language Serv. Assocs., Inc., supra, at 4. Here, both proposals received overall ratings of excellent, and the contracting officer concluded that any slight difference in quality did not warrant paying the price premium associated with the protester's proposal. Given that the record supports the reasonableness of the contracting officer's findings, we see no basis to object to selection of CMS-Radisson's equally-rated, lower-priced proposal.

The protest is denied.

Anthony H. Gamboa
General Counsel