

DECISION

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

27893

FILE: B-213788

DATE: April 4, 1984

MATTER OF: Arltec Hotel Group

DIGEST:

1. While procuring agencies have broad discretion in determining the evaluation plan they will use in a negotiated procurement, they do not have the discretion to announce in the solicitation that one plan will be used and then follow another in the actual evaluation. GAO finds that the procuring agency evaluated the offerors' proposals on the basis of criteria not specified by the solicitation.
2. Geographic restrictions on competition are permitted as long as they are adequately justified based on the agency's minimum needs and as long as they do not unduly restrict competition. GAO finds that while the agency has a security need to impose a geographic restriction on location of hotels furnishing rooms for Secret Service agents who are protecting presidential candidates, the agency did not sufficiently define the exact scope of the geographic restriction in making the award.

Arltec Hotel Group (Arltec) protests the award of a contract to the Sheraton Washington Hotel under request for proposals (RFP) USSS 83-R-65 issued by the Department of the Treasury, United States Secret Service. The RFP was for the rental of an indefinite quantity of hotel rooms between October 1983 and September 30, 1984, for Secret Service personnel assigned to the protection of the candidates for the Presidency of the United States. The RFP contained an option to extend the contract period for an additional 4 months.

Arltec contends that it should have received the award because it met all the requirements of the RFP and was the lowest priced offeror.

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For the reasons set forth below, we sustain Arltec's protest.

The RFP called for a base of approximately 100 single rooms and approximately eight office spaces for the contract period. The RFP advised offerors that the Secret Service might require an additional number of hotel rooms to satisfy unforeseen emergency situations. The RFP further advised offerors that "operational requirements" might dictate that award be made to more than one hotel location and that the minimum acceptable quantity for award to any one hotel location would be 20 single rooms and one office space. With respect to the specifications for the single unit rooms, the RFP mandated among other things that they must be close to Washington National Airport, downtown Washington, D. C., and commercial areas and have available public transportation and courtesy shuttles from Washington National Airport. In addition, the RFP provided that the hotel must have 24-hour physical and visual security, secure parking facilities, and rooms acoustically conducive to the pursuits of a protective mission.

Under section "K" of the RFP, Evaluation and Award Factors, a firm-fixed-price contract was to be awarded to the successful offeror. In accordance with paragraph 10 of standard form 33-A, award was to be made to the responsible offeror whose offer conforming to the solicitation would be most advantageous to the government, price and other factors considered.

The RFP was mailed to 17 hotel firms. Sixteen proposals were received by the Secret Service, including three proposals from Arltec. After reviewing the proposals, the Secret Service decided to award to a single hotel location rather than make multiple awards to various locations. The Secret Service also determined that the security interests of the agency would be best served by limiting consideration for award to those hotels located in nearest proximity to the residences of the presidential candidates. Accordingly, consideration for award was limited by the Secret Service to the proposals of three "downtown" Washington, D. C., hotels because Secret Service agent response time to the residences of the various presidential candidates was better from the downtown area. Award was made on the basis of initial proposals to the Sheraton Washington Hotel located at 2660 Woodley Road, N.W., Washington, D. C.

Arltec contends that the award to the Sheraton Washington Hotel was made on the basis of an evaluation factor not set forth in the RFP. Arltec argues that neither proximity nor response time to the residences of the presidential candidates was listed in the RFP either as a technical requirement or an evaluation factor. In Arltec's view, the only proximity requirement set forth in the RFP related to the location of the hotel offeror to Washington National Airport, downtown Washington, D. C., and commercial areas.

Arltec contends that it met all the requirements specified by the RFP at a price much lower than that of the Sheraton Washington Hotel. In this regard, Arltec points out that the award price to the Sheraton Washington was \$2,073,600 while its proposed price for its hotel in Arlington, Virginia, near Washington National Airport was only \$1,443,840. Therefore, Arltec urges that the award to the Sheraton Washington Hotel be terminated for the convenience of the government and a contract be awarded to Arltec for the duration of the contract period.

The Secret Service admits that an award was made at a price higher than that offered by Arltec. However, the Secret Service states that it had no way of knowing prior to the issuance of the RFP the geographic locations of potentially interested hotel firms. The Secret Service states that, as a consequence, it was determined to be in the best interest of the government to permit hotel firms located outside the downtown Washington, D. C., area to submit proposals. The Secret Service also states that only after a comprehensive review and analysis of all proposals received was it decided that consideration for award should be limited to hotels located in the downtown Washington, D. C. area.

While procuring agencies have broad discretion in determining the evaluation plan they will use, they do not have the discretion to announce in the solicitation that one plan will be used and then follow another in the actual evaluation. Umpqua Research Company, B-199014, April 3, 1981, 81-1 CPD 254. Once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any significant changes made in the evaluation scheme. Telecommunications Management Corporation, 57 Comp. Gen. 251 (1978), 78-1 CPD 80; Eastman Kodak Company, B-194584,

August 9, 1979, 79-2 CPD 105. Consequently, it is improper for an agency to depart in any material way from the evaluation plan described in the solicitation without informing the offerors and giving them an opportunity to structure their proposals with the new evaluation scheme in mind. Umpqua Research Company, supra.

On the other hand, agencies are required to identify only the major evaluation factors applicable to a procurement and need not explicitly identify the various aspects of each major factor which might be taken into account. All that is required is that those aspects not identified be logically and reasonably related to or encompassed by the stated evaluation factors. Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

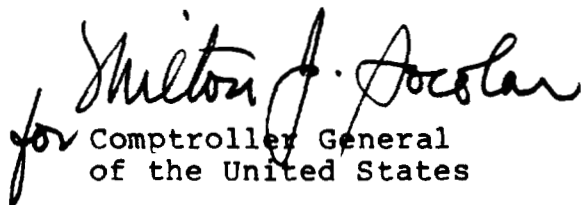
From our review of the record, we find that the Secret Service did evaluate the offerors' proposals on a criteria other than that specified in the RFP. We agree with Arltec that there was nothing the RFP's proposal evaluation plan and technical specifications concerning proximity to residences of the presidential candidates. With respect to the RFP requirement that the hotel be in close proximity to Washington National Airport and downtown Washington, D. C., we find that proximity to candidates' residences is completely unrelated to this requirement.

Arltec's protest is sustained.

However, we cannot automatically conclude that the award to the Sheraton Washington be terminated and award be made to Arltec. While it is clear from the record that the Secret Service should have stated the requirement for having a hotel in a location that would be near all the presidential candidates' residences, the question still remains as to whether such a requirement was other than a reflection of the legitimate minimum need of the agency. In this regard, Arltec argues that proximity of the hotel to candidates' residences is not a valid requirement of the Secret Service because Secret Service agents should be at the candidates' residences when the candidates happen to be there. Arltec further argues that during a campaign the least likely place to find a candidate, except for an incumbent president who is a candidate, is at his Washington, D. C. residence. Finally, Arltec argues that even when a presidential candidate is in Washington, D. C., for a brief stopover between travel to the 50 states, most of his time is spent in his national campaign headquarters.

We find that the Secret Service's desire to have the awardee hotel located near the residences of all the candidates is a reasonable reflection of the Secret Service's need to adequately protect the presidential candidates, their families, and property. In our opinion, Arltec's argument that the place of residence is the least likely place to find a presidential candidate during his campaign overlooks the need of the Secret Service to protect the candidate's family from harm and the candidate's property from sabotage while he is away from Washington. In addition, while a candidate may indeed spend his working day at his office or campaign headquarters when he is in Washington, we think it is likely that the candidate would return to his place of residence at the end of the working day and, thus, require protection after working hours. As to Arltec's argument that Secret Service agents should be at each candidate's residence, we find that Arltec has neglected to take into account the possibility of the Secret Service's need to have centralized command and control of all agents and the Secret Service's need to have backup agents who can reach all the candidates' residences quickly in case of emergency.

Since award was in fact made in accordance with the Secret Service's actual needs some 6 months ago, we do not believe it is feasible to recommend that the contract be terminated and award be made to Arltec. Nevertheless, since Arltec's proposal was rejected because of unannounced criteria, we conclude that Arltec should be paid its proposal preparation costs upon presentation of a substantiated claim to the agency.


for Comptroller General
of the United States