



Comptroller General
of the United States

Washington, D.C. 20548

S. McAuliffe

Decision

Matter of: Holiday Inn Lakeside City Center

File: B-248040

Date: June 17, 1992

Neil Trubowitch for the protester.
Captain Gerald P. Kohns, and Timothy G. Goblirsch, Esq.,
Department of the Army, for the agency.
Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency properly awarded contract to low bidder where bid did not take exception to specifications, bid exceeded minimum requirements at the lowest price, and agency made requisite affirmative determination of responsibility.

DECISION

Holiday Inn Lakeside City Center protests the Army's award to Convention Marketing Services (CMS) of a contract under invitation for bids (IFB) No. DABT23-92-B-0016, for the provision of meals, lodging, and test rooms for applicants to the U.S. Army Military Entrance Processing Station (MEPS), Cleveland, Ohio. The protester contends that CMS' bid should have been rejected as nonresponsive for deviating from the IFB's specifications and, in the alternative, protests the agency's affirmative determination of CMS' responsibility.

We deny the protest.

The IFB, issued on February 18, 1992, contemplated the award of a firm, fixed-price contract for a base year and 4 option years. The solicitation provided that award would be made to the low, responsive, responsible bidder and contained the following definitive responsibility criteria which bidders had to meet as a condition of award: (1) that the bidder's facility be located within 5 miles of the MEPS, (2) that the bidder's facility pass an inspection by the MEPS for compliance with the specifications, (3) that the bidder's facility have six or less reported crimes within a 12-month

054724/146926

period, and (4) that the bidder's food/meal establishment have passed its last two sanitation inspections by a public health department. Regarding guest rooms, the solicitation provided that:

"[i]f one individual is billeted, rooms shall contain a minimum of 140 square feet of floor space exclusive of bath and foyer-closet area. If two individuals are billeted in one room, the room shall contain a minimum of 200 square feet of floor space exclusive of bath and foyer-closet area."

Two bids were received by the March 19 bid opening. CMS submitted the apparent low bid at \$2,646,833; Holiday Inn submitted the apparent next low bid at \$2,692,790. After the successful completion of a preaward inspection of CMS' offered facility, the MEPS determined that CMS' bid met all specifications in the IFB and recommended that award be made to CMS. On March 23, 1992, Holiday Inn filed its protest with our Office challenging the acceptance of CMS' bid and the agency's affirmative determination of CMS' responsibility.¹

The protester first contends that CMS' bid was nonresponsive because it improperly offered suites instead of individual hotel rooms to meet the IFB guest "room" requirement.

A bid is responsive as submitted when it offers to perform without exception the exact thing called for in the IFB, and acceptance of the bid will bind the contractor to perform in accordance with all the IFB's material terms and conditions. Stay, Inc., B-237073, Dec. 22, 1989, 89-2 CPD ¶ 586.

While the IFB required bids for "rooms" with a minimum living space of 140 square feet for one individual and a minimum of 200 square feet for two individuals, the record shows that the low bidder exceeded this requirement by offering "suites" containing 800 square feet of living space. The fact that suites (a series of connected rooms) rather than individual rooms were offered by CMS is not

¹Holiday Inn initially alleged that the proposed awardee's bid contained several other deviations from the IFB's requirements. In its comments in response to the agency's report on the protest, Holiday Inn failed to address these claimed deviations. Under these circumstances, we deem those issues to have been abandoned. See Evergreen Int'l Airlines, Inc., B-244284, Aug. 15, 1991, 91-2 CPD ¶ 154.

material since CMS offered lodging for either single or double occupancy, as required, in excess of the minimum square footage required at the lowest price. See id.; see also Charles V. Clark Co., Inc., 59 Comp. Gen. 296 (1980), 80-1 CPD ¶ 194.

The protester also contends that CMS' bid was ambiguous, and thus should have been rejected as nonresponsive, because the bid stated that CMS offered accommodations at the Radisson Plaza Hotel, 1701 East Twelfth Street, (which the protester states is known as the "West Tower" of the complex), but the descriptive cover letter submitted with the bid stated that CMS was offering suites in the "East Tower" to house the MEPS applicants.

We do not find that CMS' bid was ambiguous on its face simply because, as the protester points out, the bid stated that "lodgings shall be furnished at the establishment known as: Radisson Plaza Hotel" and the bid's cover letter, which again states that CMS proposes to use the Radisson, more specifically stated that "the East Tower suites will be used to house the MEPS applicants." Although the protester contends that the bid and cover letter statements are inconsistent because the Radisson Plaza Hotel (which, Holiday Inn states, is known as the "West Tower") and the East Tower (which the protester says are called the Reserve Square Apartments) are separate facilities, we can find nothing on the face of the bid (including the cover letter) that could have reasonably led the agency to believe that CMS was offering anything other than accommodations in the East Tower at 1701 Twelfth Street, or to otherwise question the propriety of the offered location. Moreover, there was no reason for the agency to question the relationship between the offered Radisson/East Tower accommodations offered by CMS; these facilities share the same address (as indicated on the descriptive materials provided by the protester), are part of a multi-function complex, and share the same management.²

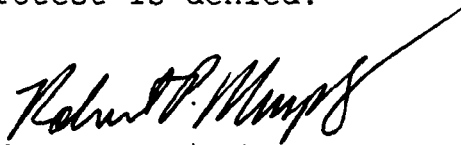
To the extent the protester challenges CMS' ability to perform in accordance with the specifications, that challenge is not a matter of responsiveness, but one of

²Our review of the record shows that the agency's preaward inspection (consisting of two separate inspections, the second of which was conducted after Holiday Inn objected to the agency's favorable preaward determination) of the East Tower suites and facilities offered by CMS was appropriate. As the cover letter to CMS' bid stated, the firm was offering suites in the East Tower which were twice inspected and found to meet the IFB's requirements.

responsibility. See King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. An agency's affirmative determination of responsibility, which is a prerequisite to an award, will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5) (1992); Laidlaw Envtl. Servs. (FS), Inc., B-246114, Oct. 31, 1991, 91-2 CPD ¶ 415.

As to the protester's contention that the agency misapplied a definitive responsibility criterion in that the lodging facility offered by CMS has suffered more than the IFB's stated maximum of crimes in a 12-month period, the record shows, and the protester does not contest, that the Holiday Inn has reported crimes in excess of the number allowed by the IFB and, in fact, suffered more reported crimes than the facility offered by the protester. As such, we conclude that the agency's relaxation of the solicitation's crime rate requirement resulted in no competitive prejudice to Holiday Inn. See Louisiana Dock Servs., Inc., B-241671, Feb. 25, 1991, 91-1 CPD ¶ 206.

The protest is denied.


for James F. Hinchman
General Counsel