

Formica



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Hotel San Diego

File: B-260971

Date: July 7, 1995

Phillip E. Johnson for the protester.
D. R. Forbes, Esq., Department of the Navy, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Award of a contract under a solicitation for motel/hotel lodging to an offeror which submitted a higher-rated, higher-priced proposal was reasonable where the solicitation provided that price was less important than technical merit and the agency reasonably concluded that the advantages associated with the awardee's proposed facility outweighed the higher cost.
2. Protester was not prejudiced by the agency's conduct of oral discussions with only the protester without requesting best and final offers where the communications led to a more favorable evaluation of the protester's proposal and the protester does not contend that it would have offered a lower price or improved its proposal if given the opportunity.

DECISION

The Hotel San Diego protests the award of a contract to Rooms Unlimited under request for proposals (RFP) No. N00181-95-R-0028, issued by the Naval Sea Systems Command, Department of the Navy, for motel/hotel lodging in the San Diego, California area.

We deny the protest.

The RFP provided for the award of a firm, fixed-price requirements contract. The RFP estimated that 80 rooms and 7,200 room days would be required during the base contract period of April 1 through June 30, 1995, with the same quantity being required during the July 1 through September 30 option period of the contract.

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The RFP provided that award would be made to the offeror whose offer, conforming to the solicitation, was determined most advantageous to the government, cost/price and other factors considered. The following evaluation factors were listed in descending order of importance:

1. Safety of neighborhood
2. Security of the facility and parking areas
3. Cost
4. Location

The RFP specified that under the location evaluation factor, the amenities of the facility and conduciveness to good morale would be considered, with the availability of restaurants, a laundry facility, a recreational facility, and the proximity to shopping areas being of special interest. The RFP added that "[a]ll factors except cost may be evaluated in whole or part by a site visit conducted by [g]overnment personnel," and informed offerors of the agency's intent to make award without conducting discussions unless the contracting officer determined that discussions were necessary.¹

The agency received 10 offers by the RFP's closing date. Site visits to each of the offered facilities were conducted and the proposals evaluated. No best and final offers (BAFO) were requested. Rooms Unlimited's proposal received an overall technical rating of 52.60 out of 69 total points at a price of \$368,768. The Hotel San Diego's proposal received a technical rating of 13.70 points--the lowest technical rating of the offers received--at a price of \$288,000. The agency determined that Rooms Unlimited's offered the best value to the government and awarded a contract to that firm.

The Hotel San Diego argues generally that the agency unreasonably selected Rooms Unlimited for award notwithstanding that firm's higher price.

In a negotiated procurement, award may be made to an offeror submitting a higher-rated, higher-priced offer, where the decision is consistent with the solicitation's evaluation criteria and the agency reasonably determines that the cost premium involved is justified, considering the technical superiority of the selected offeror's proposal. Robert G. Rupprecht, B-255516, Mar. 7, 1994, 94-1 CPD ¶ 179.

¹The RFP also contained a clause stating that discussions were anticipated.

In selecting Rooms Unlimited for award, the source selection official noted that Rooms Unlimited's proposal was technically superior to The Hotel San Diego's proposal, as reflected by Rooms Unlimited's proposal's significantly higher point score, and that this technical superiority clearly outweighed The Hotel San Diego's price advantage. For example, with regard to the relative merits of the proposals, Rooms Unlimited's proposal received a weighted score of 22 out of 30 possible points under the most important evaluation factor, "neighborhood safety," with the evaluators noting that the proposed facility was located in a "quiet business district." In contrast, The Hotel San Diego's proposal received a weighted score of 5 points under the "neighborhood safety" evaluation factor, with the evaluators noting that they were told by a representative of the San Diego Police Department that the protester's facility is located in a "high crime area," where residents should "not . . . travel in the area alone." Also, the evaluators, while noting no weaknesses in Rooms Unlimited's offered laundry facility, found in contrast that The Hotel San Diego's laundry facility was "very dirty . . . with roaches/water bugs." Based on our review of the record, and the protester's failure to respond to the agency's explanation of its evaluation of proposals showing Rooms Unlimited's proposal was significantly superior to The Hotel San Diego's, we conclude that the selection of Rooms Unlimited for award was reasonable and consistent with the RFP. Ameriko Maintenance Co., B-250786, Feb. 16, 1993, 93-1 CPD ¶ 145.

The Hotel San Diego protests that the award of a contract to Rooms Unlimited without conducting discussions was improper. Specifically, the protester asserts that the agency's visit to its facility constituted discussions, and that the agency was thus required to provide The Hotel San Diego with an opportunity to submit a BAFO.²

Discussions occur when information requested from and provided by an offeror is essential for determining the acceptability of the offeror's proposal, or where the offeror is given an opportunity to revise or modify its proposal. Federal Acquisition Regulation § 15.601; Unitor Ships Serv., Inc., B-245642, Jan. 27, 1992, 92-1 CPD ¶ 110. Discussions are to be distinguished from clarifications, which are merely inquiries for the purpose of eliminating minor uncertainties or irregularities in a proposal. Id.

²The protester does not argue that the agency conducted discussions with any other offeror, including the awardee.

During its visit to The Hotel San Diego, the agency evaluators viewed the facility and asked The Hotel San Diego representative questions concerning the availability of remote controlled televisions and either videocassette recorders or pay-per-view movies in the guests' rooms, as was required by the RFP, and the availability of a recreational facility, as none was evident on-site. The information provided in response to these questions--that remote controlled televisions, videocassette recorders, and a recreational facility, would be installed should The Hotel San Diego be awarded the contract--was considered during the scoring and evaluation of the protester's proposal as evidenced by the evaluators' worksheets.

Because the communications during the agency's visit to the protester's hotel involved information essential for and considered in determining the acceptability of The Hotel San Diego's proposal, we think the communications between the agency and the protester constituted discussions. See 4th Dimension Software, Inc.; Computer Assocs. Int'l, Inc.; B-251936; B-251936.2, May 13, 1993, 93-1 CPD ¶ 420; Adak Communication Sys., Inc., B-226952, June 1, 1987, 87-1 CPD ¶ 556. However, to the extent that the agency's and the protester's communications during the site visit had any impact on the competition, they could only have prejudiced the other offerors rather than the protester. As explained above, the agency considered information provided orally by the protester during the site visit, and this information led the agency to conclude that the protester's hotel met, at least with the regard to the availability of remote controlled televisions and videocassette recorders, the minimum requirements of the RFP. The protester does not suggest that had it been afforded the opportunity to submit a BAFO it would have lowered its price or improved its proposal so that it would have been more highly rated. Because prejudice is an essential element of every viable protest, and it is apparent from the record that The Hotel San Diego was not prejudiced by the agency's actions here, there is no basis for sustaining this protest. See Adak Communication Sys., Inc., supra.

The protest is denied.

Ronald Berger
 For Robert P. Murphy
 General Counsel