



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Command Management Services, Inc.

File: B-310261; B-310261.2

Date: December 14, 2007

Alan M. Grayson Esq., Victor Kubli, Esq., and Paula K. Goldman, Esq., Grayson & Kubli, PC, for the protester.

Thomas P. Sayer, Jr., Esq., for LAX Hospitality, LP, an intervenor.

Maj. Carla T. Peters, Department of the Army, for the agency.

Nora K. Adkins, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of technical proposals is denied where the record establishes that the evaluation was reasonable and consistent with the evaluation criteria.
 2. Agency reasonably found that discrepancy in name of entity appearing in the proposal was a mere clerical error where the differences in the name from the entity to which award was made are minor and the data universal numbering system number and address matched that of the entity which received the award.
-

DECISION

Command Management Services, Inc. (CMS) protests the award of a contract to LAX Hospitality, LP by the Department of the Army, under request for proposals (RFP) No. W9124D-07-R-0036, for meals and lodging for armed forces applicants at the Los Angeles Military Entrance Processing Station.

We deny the protest.

The RFP was issued on April 28, 2007 as a commercial item acquisition. It sought proposals for the furnishing of facilities, furniture, equipment, supplies, management, supervision and labor to provide lodging accommodations, meal services and transportation services for armed forces and/or government agency applicant processing. The solicitation contemplated award of a fixed-price requirements contract for a base year with four 1-year options.

Award was to be made on a “best value” basis considering the evaluation factors identified in the RFP. The RFP provided that proposals would be evaluated considering cost/price and the following non-cost factors listed in descending order of importance: facility quality/quality control, past performance, and transportation. The facility quality/quality control factor had seven equally important subfactors: sanitation and cleanliness, room/facility condition, meals, security, special features, facility location, and quality control. The combined weight of the non-cost factors was significantly more important than cost/price.

Six proposals, including LAX’s and CMS’s, were received in response to the solicitation, but two were withdrawn. The remaining four written proposals were reviewed by the source selection evaluation board (SSEB), which then conducted an on-site visit of each offered facility on August 7th and 8th. Agency Report (AR) at 4. Based on its evaluation of the written proposals and the on-site visits, the SSEB produced written narratives that described the relative strengths and weaknesses of each proposal under each evaluation factor and subfactor, and assigned one of the following adjectival ratings:

Excellent: Written proposal and on-site evaluation demonstrate excellent understanding of requirements and approach that significantly exceeds performance or capability standards. Has exceptional strengths, with few or no weaknesses, that will significantly benefit the Government. On site evaluation confirms written proposal.

Good: Written proposal and on-site evaluation demonstrate good understanding of requirements and approach that exceeds performance or capability standards. Has one or more strengths that will benefit the Government. Any weaknesses can be minimized with normal contractor efforts and normal Government monitoring.

Satisfactory: Written proposal and on-site evaluation demonstrate minimal understanding of requirements and approach that meets performance or capability standards. Proposal presents an acceptable solution, but has few strengths. Any weaknesses can be minimized, but confirms the necessity of special contractor emphasis and close Government monitoring necessary to minimize difficulties.

RFP at 13.¹

LAX’s and CMS’s proposals both received an overall technical evaluation rating of excellent; the other two proposals received lower ratings. LAX’s proposal received

¹ The marginal, unsatisfactory and neutral adjectival ratings also used in the evaluation are not at issue in this protest.

an excellent rating for facility quality/quality control, with four excellent and three good subfactor ratings, an excellent rating for past performance, and a good rating for transportation. CMS's proposal also received an excellent rating for facility quality/quality control, also with four excellent and three good subfactor ratings, an excellent rating for past performance, and a good rating for transportation. Without consideration of price, the SSEB recommended LAX as its first choice for award and CMS as its second choice. Agency Report, Tab 10, SSEB Report.

After receiving the recommendation from the SSEB, the contracting officer (who was the source selection official) conducted a price/technical trade-off. In this decision, the contracting officer adopted the SSEB report, explained why the proposal of LAX should be rated excellent, and determined that LAX's proposal priced at \$9,619,436.50 offered the best value to the Government, given that it was essentially technically equal to CMS's excellent proposal which was priced at \$11,153,737.48. Contracting Officer's Statement at 10; AR, Tab 13, Source Selection Decision, at 8. Award was made to CMS on August 29. After a debriefing, this protest followed on September 10.

CMS asserts that the agency's evaluation of the proposals was improper and unreasonable. It argues that the agency failed to evaluate proposals in accordance with the stated evaluation criteria and failed to apply the evaluation factors "consistently across all offerors."² Protester's Comments at 4-12.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Al Hamra Kuwait Co., B-288970, Dec. 26, 2001, 2001 CPD ¶ 208 at 2. A protester's mere disagreement with the evaluation provides no basis to question the reasonableness of the evaluators' judgments. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10.

Specifically, CMS contends that LAX's proposal should have received either a marginal or satisfactory rating, rather than a good rating, for the sanitation and cleanliness and quality control subfactors because the agency recognized that its written proposal failed to thoroughly address its plan to meet these requirements

² In its initial protest, CMS also contended that LAX was not responsible and should not have received an overall excellent rating because of certain alleged problems with LAX's facility and with another facility that was managed by LAX's proposed general manager and other proposed personnel. In its report, the agency addressed each of these allegations and the protester did not respond in its comments. As such, we consider these allegations to be abandoned. Dynamic Instruments, Inc., B-291071, Oct. 10, 2002, 2002 CPD ¶ 183 at 4.

and the agency placed undue weight on the on-site visit to discount these concerns, which was not in accordance with the RFP's evaluation scheme. However, contrary to CMS's suggestion, as indicated in the definitions of the adjectival ratings included in the solicitation (quoted above), the RFP did not require evaluators to rate the factors and subfactors based only upon an offeror's written proposal and to only use the on-site visit for mere verification purposes; to the contrary, the RFP expressly contemplated that adjectival ratings would be based upon both an evaluation of the written proposals and the on-site visits.³ RFP at 13. Here, the SSEB and the contracting officer expressly recognized that LAX's proposal "included limited information concerning standards for sanitation and cleanliness" and that the "quality control plan . . . was limited in detail," but, based on the "very good" sanitation and cleanliness and quality control found at the facility during the on-site visits, CMS's proposal was considered good under these subfactors.⁴ AR, Tab 10, SSEB Report, at 4; Tab 13, Source Selection Decision, at 5. We have no basis to find this judgment unreasonable.

CMS similarly contends LAX's proposal's excellent ratings for the security subfactor and the past performance factor were unjustified, given the lack of detail regarding these matters in its proposal, and argues that the agency failed to apply the evaluation factors "consistently" between the proposals, given that its proposal, which contained the requisite details, also received excellent ratings for this factor and subfactor. CMS also claims that other subfactor ratings were also inconsistently applied because its proposal received the same rating as LAX's proposal for these subfactors, even though its proposal had fewer weaknesses.

The evaluation of proposals and assignment of adjectival ratings should generally not be based upon a simple count of strengths and weaknesses, but on a qualitative assessment of the proposals consistent with the evaluation scheme; thus, to the extent that CMS's arguments are based on merely counting weaknesses, they do not provide a basis to challenge the reasonableness of the evaluation. Kellogg Brown &

³ To the extent CMS argues that the SSEB's methodology in the evaluation of using on-site visits for more than verification of the written proposals was inconsistent with the agency's "evaluation team instructions," see AR, Tab 9, Evaluation Team Instructions, at 2, this does not provide a basis for questioning the validity of the evaluation or award selection, inasmuch as such plans are internal agency instructions and as such, do not give outside parties any rights. See Management Plus, Inc., B-265852, Dec. 29, 1995, 95-2 CPD ¶ 290 at 2 n.2.

⁴ The SSEB report, the text of which was substantially incorporated into the source selection document, documented the sanitation and cleanliness of the facility, which was "very clean," with only minor weaknesses, and that "it was apparent that quality control is being routinely performed as no major weaknesses were noted during the inspection." AR, Tab 10, SSEB Report, at 4; Tab 13, Source Selection Decision, at 5.

Root Servs., Inc., B-298694.7, June 22, 2007, 2007 CPD ¶ 124 at 5. In any case, since adjectival scores are merely guides for intelligent decision making in the procurement process, they do not necessarily mandate selection of a particular proposal for award. KBM Group, Inc., B-281919, B-281919.2, May 3, 1999, 99-1 CPD ¶ 118 at 11. The more important consideration is whether the evaluation record and source selection decision show that the agency reasonably assessed the relative merits of the proposals in accordance with the stated evaluation criteria. Id.

Here, while the SSEB's consensus rating sheet for LAX's security subfactor stated, "security plan limited in detail," AR, Tab 12, SSEB Consensus Evaluation Sheet, Security Subfactor, this weakness was not identified in the subsequent SSEB Report or the Source Selection Document. In fact, the SSEB Report and Source Selection Document identified specific and reasonable rationales for why it was determined that LAX's security was regarded as excellent with no weaknesses. For example, the narratives commend LAX's security as, "providing [redacted] roving house security officers," "security is provided on a 24 hour, 7 day per week, basis," and "the hotel offers [redacted] recording and monitored security cameras that are located throughout the entire property." AR, Tab 10, SSEB Report, at 4; Tab 13, Source Selection Decision, at 5. Based upon our review of the record, we find this documented evaluation to be reasonable.

Furthermore, while it is true that the source selection document noted that LAX's proposal had limited past performance information, the SSEB and contracting officer concluded nonetheless that LAX's past performance was excellent because the past performance information that LAX did provide showed successful performance that was relevant in scope and size, and that LAX's proposed general manager and other staff members successfully served at the facility that previously provided these services. AR, Tab 13, Source Selection Decision, at 5. We find the agency has provided reasonable support for its past performance rating.

The agency's source selection decision document specifically discussed the multiple strengths in, and aspects of, LAX's proposal that established why it was rated excellent. In so doing, the decision addressed the concerns regarding a lack of detail, recognizing that "[LAX's] proposal was somewhat limited in detail," but concluding that LAX had provided "sufficient information to determine it understands the requirement." AR, Tab 13, Source Selection Decision, at 8. Based on our review, we find the source selection reasonable and in accordance with the RFP's evaluation scheme.

Finally, CMS asserts in a supplemental protest that the agency's award to LAX was improper because the awardee ("LAX Hospitality LP, Radisson Inn") was not the entity that submitted the proposal upon which the award was based ("LAX Hospitality, LLC, DBA Radisson Hotel at Los Angeles Airport"). In fact, CMS notes that the latter entity identified as submitting the proposal was not registered with Central Contractor Registration (CCR).

It is true that a contract cannot be awarded to any entity other than the one which submitted the proposal. However, the name of an offeror need not be exactly the same in all of the offer documents; although, the offer documents or other information available must show that differently-identified offering entities are in fact the same legal entity. Al Hamra Kuwait Co., supra, at 3. The fact that an offeror has only one taxpayer identification number (TIN) or data universal numbering system (DUNS) number and only one address is often a reliable indicator of the offering entity. S³ LTD, B- 288195 et al., Sept. 10, 2001, 2001 CPD ¶ 164 at 11-12.

The agency asserts that the difference in entity names was a mere clerical error. This discrepancy was discovered when the contracting officer's search of the DUNS number listed on the awardee's proposal, which indicated that the entity name identified for that DUNS number was LAX Hospitality LP, Radisson Inn. Upon discovering the discrepancy, the contracting officer contacted LAX, who confirmed that LAX Hospitality, LP was the name of the entity, not LAX Hospitality, LLC.⁵ Supp. AR at 6. The contracting officer also noted that the address listed in the proposal and in the DUNS systems was that of LAX Hospitality, LP, which was registered with the CCR. Id. Therefore, we find that, notwithstanding the variations in the identification of the awardee between the proposal and award, the agency reasonably determined that LAX Hospitality, LP was the proper entity and was eligible to receive award.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁵ There is no evidence that there is any legal entity named LAX Hospitality, LLC.