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Decision

Matter of: TMI Services, Inc.

File: B-283677.3

Date: May 17, 2000

Timothy H. Power, Esq., for the protester.
Sam Z. Gdanski, Esq., and Jeffrey Gdanski, Esq., for MCS Management, Inc., an intervenor.

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United States Marine Corps, for the agency.

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GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's evaluation of proposals is denied where the record shows that the evaluation was reasonable and consistent with the applicable evaluation factors.
2. Selection of technically superior, higher-priced proposal is unobjectionable where the solicitation provided that technical considerations were more important than price and the agency reasonably concluded that the technical superiority of the awardee's proposal warranted payment of the associated price premium.

DECISION

TMI Services, Inc. protests the award of a contract to MCS Management, Inc. (MCS) under request for proposals (RFP) No. M00681-99-R-0004, issued by the Marine Corps Base Camp Pendleton for full food services and mess attendant services for various messhalls at Camp Pendleton. TMI principally contends that the agency's evaluation was unreasonable and that TMI should have been selected for award.

We deny the protest.

The solicitation, issued February 1, 1999 as a total small business set-aside, commercial-item procurement, contemplated the award of a fixed-price contract to provide full food and mess attendant services at Camp Pendleton for a base year with option periods of 3 months not to exceed 12 months. RFP § A.1. The RFP provided for award to the responsible offeror whose conforming offer provided the

best value to the government, price and other factors considered. RFP § A.10.3.a. The RFP called for the evaluation of the proposals under the criteria of experience/ past performance, resumes of key personnel, understanding the work, compliance with RFP instructions and price. Id. The RFP stated that a proposal would be evaluated and considered acceptable if it manifests the offeror's unconditional assent to the terms and conditions of the RFP, and that the capability of offerors that submitted acceptable offers would be evaluated. RFP § A.10.3.b. Capability was to be evaluated on the basis of experience, past performance, understanding the work, price and compliance with RFP instructions. RFP § A.10.3.b.2. Under experience, the RFP provided for an assessment of an offeror's work records to determine whether, during the past 3 years, the offeror had the opportunity to learn about relevant work processes and procedures and about the nature, difficulties, uncertainties and risks associated with performing the work required by the solicitation. RFP § A.10.3.b.2.i. Under past performance, the RFP called for offerors to furnish a total combination of five references for each present government contract. RFP § A.10.3.b.2.ii. If five government references were not available, then offerors could provide references from private industry. Id. The RFP also provided that references not identified by the offerors could be contacted by the government with respect to information used in the evaluation of the offeror's past performance.

In determining the best overall value, the RFP stated that the government would consider an offeror's capability and the government's level of confidence in the offeror to be significantly more important than price. RFP § A.10.3.c. An offeror's capability was to be the basis for developing the government's level of confidence. When assessing offeror capability, the RFP provided that the government would consider experience, past performance and understanding the work to be more important than compliance with the RFP instructions.

In reaching the best overall value determination, the RFP provided that the agency would make a series of paired comparisons among those offerors that submitted acceptable offers. RFP § A.10.3.d. In this regard, the RFP specifically provided that if, in a paired comparison, the offeror with the higher expected value had the higher price, then the agency would decide whether the difference in expected value was worth the difference in price. Id.

Twelve proposals were received, including those of TMI and MCS. TMI currently has a contract at Camp Pendleton for mess attendant services only. The technical proposals were evaluated by the technical evaluation team. The contracting officer reviewed the technical evaluation team's findings and the proposals, and independently determined that award should be made to MCS on the basis that it offered the best value to the government. Agency Report, Tab 10. On September 7, 1999, a notice of intent to award to MCS was sent to all offerors. Agency Report, Tab 11. On September 10, TMI was provided an oral debriefing at which TMI was informed that it had been eliminated because its proposal had received an overall

rating of good while the proposed awardee's proposal had received an overall rating of excellent. Agency Report, Tab 13.

On September 16, TMI filed a protest with our Office alleging that the agency had failed to follow the evaluation criteria. While reviewing TMI's protest, the agency discovered that the resumes of key personnel erroneously had been evaluated as part of the experience factor. Consequently, the agency decided to retract its notice of award to MCS, and to reevaluate the proposals, whereupon TMI withdrew its protest.

The proposals were subsequently reevaluated by the technical evaluation team. Agency Report, Tabs 16-18. The contracting officer again reviewed the evaluations and proposals, and determined that MCS offered the best value to the government. Agency Report, Tab 20. TMI received an overall rating of good and proposed a price of \$12,579,284.24. MCS received an overall rating of excellent with a price of \$14,196,290. MCS was the only offeror with an overall excellent technical proposal and received high ratings for past performance, resumes of key personnel and quality control plan. Agency Report, Tab 20. MCS had demonstrated experience in full volume food service work in a military environment, realistic staffing charts and relevant experience with the Marine Corps on a contract that is very similar in size and scope to Camp Pendleton's. *Id.* Consequently, the contracting officer determined that MCS's technically superior proposal was worth the associated additional cost. On February 2, 2000, the contract was awarded to MCS on the basis of initial proposals without discussions. On February 8, TMI received a written debriefing detailing the rationale for selecting MCS as the best value to the government. TMI subsequently filed this protest with our Office on February 14.

TMI primarily objects to the evaluation on the grounds that the agency's rating of its proposal as "good" rather than "excellent" in the categories of past performance and experience was inconsistent with the solicitation criteria. TMI maintains that had its proposal been evaluated in accordance with the solicitation, it would have been rated "excellent" and that TMI would have received the award based on its low price.

The evaluation of technical proposals, including the evaluation of past performance, is primarily the responsibility of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and the applicable procurement statutes and regulations. Honolulu Marine, Inc., B-245329, Dec. 27, 1991, 91-2 CPD ¶ 586 at 3. A protester's mere disagreement with the agency's evaluation does not render it unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454 at 5.

TMI challenges the agency's rating of its proposal as "good" rather than "excellent" in the categories of past performance and experience. With respect to past performance, TMI maintains that certain evaluators misstated its past performance references. Specifically, TMI asserts that one evaluator improperly stated that TMI had established a reputation as being not pro-active and another stated that its past performance references were marginal and from his past experience with TMI, that TMI was not cooperative with the government and did just enough to get by. TMI contends that there is no documentation to support the finding that TMI has established a reputation for not being pro-active and that although evaluators can consider their own personal experience, they cannot use their personal experience to override references from other contracts.

Notwithstanding TMI's assertions that statements made by individual evaluators concerning its past performance are inaccurate, the record shows that TMI's proposal was reasonably evaluated with respect to past performance. As previously noted, the contracting officer reviewed the evaluators' individual scoring sheets, the matrix and the evaluators' oral recommendation. Agency Report, Tabs 16, 17, 20. The agency received two past performance surveys from TMI's references. Agency Report, Tab 18. One of the references rated TMI as "very good" and the other rated TMI as "satisfactory." Based on these references, there is no reason to question the agency's assignment to TMI of a rating of "good" for past performance.

While TMI maintains that it had excellent past performance history on similar contracts and was the incumbent on this procurement and has an excellent record of performance, the record shows that TMI performed only the mess attendant services contract at Camp Pendleton, which does not include full food services. The documentation also shows that notwithstanding some individual evaluators' concerns about TMI's past performance, the contracting officer independently reviewed the record and concluded that while TMI was only a participant in the majority of its contracts, TMI appeared to have had a more successful and cooperative experience on other contracts than was indicated by the evaluators' negative assessments of TMI's performance. Agency Report, Tab 16. On this basis, the contracting officer rated TMI "good" under past performance. The documentation supports this rating, and TMI has provided no evidence to establish that it should have been rated "excellent" under this evaluation factor.

Next, TMI contends that it was improperly evaluated under the experience factor. Specifically, TMI maintains that the evaluators focused on what they believed were overstatements of TMI's current responsibilities at Camp Pendleton. TMI also

contends that the agency improperly applied the evaluation criteria under experience because the RFP was concerned about the number of past contracts and the opportunity to experience the difficulties in managing such contracts, not how well the offeror had performed.

As previously indicated, the contracting officer reviewed each proposal and the individual evaluation scoring sheets. With respect to experience, the contracting officer found discrepancies under the evaluation of TMI's proposal. The contracting officer felt that the evaluators placed too much emphasis on TMI's exaggeration of its description of the work it currently performs at Camp Pendleton, and that the evaluators had failed to give adequate consideration to TMI's other government contracts and years in business. While the contracting officer concluded that TMI did exaggerate, she did not feel a marginal rating for experience was appropriate when all factors applicable to experience were taken into consideration. Agency Report, Tab 20. Based on the contracting officer's review, she increased TMI's rating in experience from marginal to good. In doing so, the contracting officer recognized that TMI's previous contract experiences were much smaller than the type of work effort required by this RFP. Agency Report, Tab 16. Consequently, she did not feel a rating of excellent was warranted since it could not be determined from TMI's experience on previous contracts that TMI had the clear cut ability to assume responsibility for the volume of work under this RFP. Id. While TMI disagrees with the contracting officer and maintains that it deserved an excellent rating for experience, the record shows that the contracting officer's evaluation here was thorough and reasonable. In sum, the agency's evaluation of TMI's proposal was unobjectionable.

TMI also asserts that the agency should have rejected MCS's proposal as unacceptable because it did not constitute an unconditional promise to perform in accordance with the RFP. In this regard, TMI asserts that MCS's proposal reflects a combination of two allegedly incomplete proposals dated years apart for two different contracts with different scopes of work.

The agency takes the position that MCS's proposal was well organized and notes that it included a properly executed standard form 1449 which clearly stated the correct solicitation number and thus indicated MCS's promise to perform in accordance with the terms of the solicitation. The contracting officer states that she noticed certain references to another solicitation number but did not feel it created a basis to reject the proposal since it is not unusual for offerors to cut and paste from prior solicitations. The record does show that MCS's key personnel resumes are either dated 1997 or undated and reference a different solicitation number, and that its proposal contained an organizational chart with no names provided for any of the positions besides president. We see nothing improper with an offeror using resumes of personnel it has used under prior solicitations, and the solicitation here did not require the production of an organizational chart. In our view, the fact that Moore's

proposal obviously contained some pages from a prior solicitation does not call into question its promise to perform in accordance with the current RFP.

Contrary to TMI's argument that it is unclear who MCS is proposing for any of the positions under the contract and what resumes, if any, go with any of the key positions, MCS's proposal clearly provides resumes for the president, contract manager and alternate contract manager. Agency Report, Tab 5, Resume of Key Personnel. While TMI argues that MCS's proposed alternate contract manager does not demonstrate experience with food services for military mess halls, the record shows that MCS proposed a contract manager with extensive experience in providing food services for mess halls at Camp Lejeune, and MCS provided two additional resumes of personnel with extensive experience in providing food services for mess halls. *Id.* In this regard, TMI has simply failed to show that the agency's evaluation of MCS's proposal was unreasonable.

TMI also asserts that the evaluations were inconsistent in that TMI had an equal number of very good and satisfactory references, yet the evaluators wanted to rate TMI as satisfactory (which the contracting officer raised to good), while MCS's proposal had more ratings of satisfactory and good than it did excellent, yet the contracting officer rated MCS's as excellent. As explained above, one of TMI's references contained satisfactory ratings in each category, with one marginal rating, while the other reference provided all very good ratings. On this basis, the agency reasonably rated this combination of past performance reports as good. On the other hand, MCS provided two references from a contract almost identical in size and scope to this solicitation. One reference rated MCS mostly very good with some satisfactory ratings. The other reference gave MCS's a combination of exceptional and very good ratings. Based on these ratings along with supporting narratives that contained numerous notations about MCS's meeting and exceeding the contract requirements, the contracting officer had a reasonable basis to rate MCS's proposal as excellent under past performance.

Finally, to the extent that TMI argues that the agency did not perform a proper best value determination, the record shows that the source selection authority made extensive paired comparisons. First, an offeror who received a rating of marginal from all evaluators in a single category was eliminated from the best value analysis. Next four offerors, including TMI, were eliminated because of low technical scores. Although these offerors were rated good overall, they contained some ratings of marginal in the areas of experience and/or understanding the work, which tended to downgrade the government's level of confidence. Agency Report, Tab 20. The next comparison consisted of offerors receiving only ratings of good or ratings of good with some individual ratings of excellent, all of which were rated lower technically than MCS and offered higher prices. MCS was the only offeror to receive a rating of excellent. This rating was based on high ratings for past performance, resumes of personnel and quality control plan; experience in full volume food service work in a military environment; very realistic staffing charts; and relevant experience with the

Marine Corps on a contract that is very similar in size and scope to Camp Pendleton's contract.

The price offered by MCS was considered reasonable in comparison with the other offerors and the government estimate. While TMI offered a lower price, the agency concluded that because TMI received two marginal ratings for the understanding the work factor, coupled with concerns about TMI's key personnel, MCS's overall excellent proposal was worth the relatively small associated additional cost. The record provides no basis to question the reasonableness of this award determination.¹

The protest is denied.

Comptroller General
of the United States

¹ TMI also speculates that the agency did not actually select MCS because it represented the best value, but rather because Camp Lejeune personnel liked MCS, so that Camp Pendleton preferred to contract with MCS as well. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. Accordingly, TMI's speculation in this regard provides no basis to question the award.