



Comptroller General  
of the United States

Washington, D.C. 20548

REDACTED VERSION'

## Decision

**Matter of:** FMS Corporation  
**File:** B-255191  
**Date:** February 8, 1994

Paul Shnitzer, Esq., and Laurie S. Elkin, Esq., Crowell and Moring, for the protester.  
Gregory A. Smith, Esq., and Vincent S. Antonacci, Esq., Pettit and Martin, for BMY Combat Systems, an interested party.  
Craig E. Hodge, Esq., and Margaret I. Emmert, Army Materiel Command, Department of the Army, for the agency.  
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest against evaluation of protester's proposal for overhaul of howitzers is denied where review shows that the evaluation was reasonable and protester has merely put forth its disagreement with the agency evaluation.

### DECISION

FMS Corporation protests the award of a contract to BMY Combat Systems under request for proposals (RFP) No. DAAA09-93-R-0013, issued by the Department of the Army for the repair and overhaul of 22 M109A2 (M109) self-propelled howitzers with an option for an additional 49 howitzers. FMS asserts that the Army's evaluation of its proposal was not reasonable.

We deny the protest.

'The decision issued on February 8, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

BACKGROUND

The solicitation contemplated the award of a time and materials contract, with a fixed price portion for final inspections. Award was to be made to the offeror whose proposal represented the best value to the government considering the evaluation criteria. The RFP provided for the evaluation of areas and elements as follows;

Technical Area

- Element 1 Knowledge of overhaul requirements
- Element 2 Quality assurance
- Element 3 Facilities/equipment

Production/Management Area

- Element 1 Past experience
- Element 2 Work force
- Element 3 Organizational structure

Price/Cost Area - to be evaluated for realism, reasonableness and affordability

A number of the elements also included specific factors which were to be used to determine the overall numerical rating for the particular element, but which would not be individually scored. The solicitation provided that the technical area was more important than the production/management and cost areas which were equal in weight. Within the technical area element Nos. 1 and 2 were equal in importance and somewhat more important than element No. 3. Within the production/management area element Nos. 1 and 2 were equally important and significantly more important than element No. 3.

Three offerors responded to the RFP. The Army evaluated the proposals, placed all three in the competitive range, held discussions and requested each to submit a best and final offer (BAFO). Following the receipt of BAFOs, the offerors were ranked as follows:

	Technical	Management	Composite
Offeror 3	[deleted]	[deleted]	[deleted]
BMY	[deleted]	[deleted]	[deleted]
FMS	[deleted]	[deleted]	[deleted]

FMS' evaluated price was [deleted]. BMY's evaluated price was \$4,531,159 and the third offeror's price was evaluated at [deleted].

Regarding FMS' technical proposal, the evaluators generally found that FMS frequently reiterated the solicitation requirements without providing adequate detail demonstrating the firm's technical knowledge and approach. Also, the evaluators criticized the FMS proposal under the quality assurance technical evaluation element for not adequately addressing the required defect prevention program, and for not obtaining reapproval of a quality assurance plan for its [deleted]. Under the facilities/equipment technical evaluation element, the evaluators criticized FMS' proposal for including an ambitious milestone schedule. In the production/management evaluation area, the evaluators found that FMS' proposal lacked detailed input in the work breakdown structure that reflected a lack of understanding of requirements process or workflow. In addition, the proposal did not provide any details concerning workforce expansion, or information regarding overhaul or production experience on the M109 family, end items for the United States (U.S.) Army, or overhaul of U.S. Army equipment.

On the other hand, the evaluators found that BMY's proposal reflected a thorough understanding of the overhaul requirements and quality assurance and demonstrated that adequate facilities and equipment were available to perform the contract. The evaluators concluded that BMY provided detailed information concerning current workforce, capability to expand, staffing plans, skilled labor requirements, training curriculum, organizational structure, work breakdown and workflow, and planning and integration.

The source selection official reviewed the evaluation results and the cost information and determined that an award to BMY represented the best value to the government. Specifically, the source selection official reasoned that the proposal of the third offeror was rated only [deleted] than BMY in the technical/management area but was significantly higher in price. BMY's technical proposal, however was rated significantly higher than that of FMS and its management proposal was rated somewhat higher. In the selection official's view, given the importance of the technical area in the evaluation scheme, and given BMY's significantly superior technical proposal and BMY's superior production management proposal, an award to BMY was worth the additional cost.

#### ANALYSIS

FMS protests that for a number of elements the evaluation of its proposal was arbitrary and unreasonable. FMS asserts that, given its significant price advantage, if its technical and management proposals had been properly evaluated, it would be the proper awardee.

The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Therefore, our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with stated evaluation criteria. Mere disagreement with the agency does not render the evaluation unreasonable. Cybernated Automation Corp., B-242511.3, Sept. 26, 1991, 91-2 CPD ¶ 293.

#### Knowledge of Overhaul Requirements

FMS complains that the agency improperly found as weaknesses a lack of knowledge and understanding of U.S. Army configurations (under knowledge of overhaul requirements) and (under the past experience element) FMS' failure to discuss any experience with the overhaul or production of M109 series howitzers, the overhaul or building of end items for the U.S. Army or the overhaul of U.S. Army equipment. FMS asserts that the solicitation did not require offerors to demonstrate such knowledge or experience. FMS further asserts that while it has not overhauled self propelled howitzers, the solicitation was not restricted to contractors with overhaul experience and it provided evidence of extensive experience relevant to the work covered by the solicitation. Specifically, FMS asserts that in its proposal it explained that it has successfully performed as an overhaul/conversion kit supplier, and in doing so has provided the Army with kits and components for the M109. FMS asserts that it manufactures many of the significant components of these kits, and in doing so uses many of the skills required to perform the overhaul work. FMS also notes that its proposal indicated that it has experience with the actual overhaul of U.S. designed vehicles as the prime contractor for the retrofit programs for the Taiwan Army and the Royal Thai Army.

The Army responds that under the knowledge of overhaul requirements element, the solicitation instructed offerors to detail and describe their technical approach to ensure compliance with the solicitation requirements including the scope of work and all corresponding maintenance technical documentation. Regarding the past experience element under the production/management area, the RFP advised offerors to detail or describe any types and quantities of previously overhauled vehicles as well as any similar government/commercial contracts. The Army argues that since the solicitation is for the overhaul of the Army M109, the protester should have been aware that the Army would evaluate knowledge and understanding of U.S. Army

configurations as well as specific experience overhauling the M109.

Concerning the substance of the evaluation, the Army disagrees with FMS that providing repair kits for the M109 merits the same evaluation consideration as specific experience overhauling the M109. The Army explains that as a supplier of kits, FMS would typically manufacture few parts within the kit, would not generally perform overhauls and would not be involved in design or production logistics. Rather, according to the Army, the activities of kit suppliers are typically limited to purchasing, inspecting and packing. Similarly, the Army asserts that overhaul and conversion activities for foreign countries have little relevance to the overhaul of the M109 since that experience is more in the area of conversion than overhaul. The Army explains that conversion involves upgrading an older version of a vehicle to a newer version using parts or kits, while overhaul involves making a decision to repair, replace or reclaim components. In addition, the Army states that performing overhaul work for foreign governments is different because the foreign governments may impose different requirements. The Army also argues that FMS' lack of knowledge of overhaul requirements was further evidenced by FMS' reliance on reiterating language from the scope of work and the technical documents that were provided with the solicitation to describe its technical approach. For example, the Army states that when FMS was asked about paint procedures, it merely quoted back the requirements of the statement of work.

In response, FMS argues that its experience producing kits for the M109 is directly relevant to the overhaul contract to be awarded under this solicitation. FMS asserts that contrary to the agency's position, it in fact manufactures many critical components of the kit. FMS argues that this manufacturing experience is relevant because in performing FMS is required to meet many of the same requirements contained in the instant solicitation such as the requirement for a Statistical Process Control and an approved inspection system in accordance with Mil-Q-9858. FMS further argues that the experience gained by building component items from scratch is directly applicable to disassembly of the items for inspection and repair. FMS asserts that both require the same type of personnel, the same type of tooling and fixtures, the same type of inspection equipment, and the same type of documentation. FMS also asserts that its work for Taiwan and Thailand involved both conversion and overhaul experience.

Where detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merit of competing

proposals, offerors are on notice that qualitative distinctions among the technical proposals will be made under the various evaluation factors. In making those distinctions, the agency may properly take into account specific, albeit not expressly identified matters that are logically encompassed by or related to the stated evaluation criteria. AWD Techs., Inc., B-250081,2; B-250081,3, Feb. 1, 1993, 93-1 CPD ¶ 83. Here, while the RFP did not specifically require experience with U.S. Army configurations or the M109, the solicitation did provide for the evaluation of knowledge of overhaul requirements and past experience. Since the solicitation is for the overhaul of an M109, knowledge of Army configurations and specific experience with the M109 are encompassed by these factors and were properly considered in the evaluation.

We also conclude that the Army properly evaluated the FMS proposal regarding such experience. During the initial evaluation, the Army noted as a weakness that FMS did not have experience with Army end items and equipment and that FMS in many cases merely reiterated the requirements of the RFP. During discussions, the Army clearly communicated its concern, specifically requesting that FMS detail any experience with the overhaul or production of the howitzer or U.S. Army end items or equipment and respond to questions regarding various overhaul processes such as painting. In response, FMS stated that its responsibilities included procurement, inspection and packaging of parts for use in co-production or upgrade programs. FMS specifically admitted though that most of its experience with the M109 has been related to material or logistics rather than production and that it recently manufactured parts used in various upgrade programs. FMS also continued to reiterate parts of the RFP. Based on these responses, the Army reasonably concluded that FMS did not have such experience and viewed this as a weakness. While FMS believes that it should have gotten evaluation credit because it has supplied kits for the overhaul of the M109 and has manufactured some of the parts in the kits and because it has performed overhauls of U.S. Army supplied equipment for Thailand and Taiwan, the fact is that the Army did consider this experience and did credit FMS with it. Specifically, under the knowledge of overhaul requirements evaluation element, the evaluators listed as an advantage that FMS demonstrated some knowledge of overhaul requirements. To the extent that FMS argues that it should have gotten more evaluation credit, FMS is merely stating its disagreement with the Army's evaluation which is not sufficient to demonstrate that the evaluation is unreasonable. Cybernated Automation Corp., supra.

In the comments FMS submitted in response to the agency report, FMS asserts that the Army overvalued BMY's contracts

for the production of self-propelled howitzers because while production experience is relevant, it is not the same as overhaul experience, and is no more relevant than FMS' kit experience. In response, the Army states that BMY's production experience is more relevant and valuable than FMS' kit experience because in building the M109 from the ground up BMY gained extensive knowledge of the inner workings and relationships of components and subsystems within the end item. Kits, however, only provide parts to the subsystems within the end item. FMS disagrees, arguing that overhaul or repair and production are entirely different processes. Specifically, FMS states that in producing a new M109, there are significant capital requirements for welding machinery, drilling/milling machinery and other equipment, while in overhaul work only portable welding equipment is required. In addition, FMS asserts that the mix of skills of the labor force required for the two processes are different, as are the material requirements.

The Army, however, does not argue that the two processes are entirely the same or require the same materials, labor force or tools. Rather, the Army's position is that the production experience is valuable because of the knowledge it gives BMY of the relationship between the components and the inner workings of the system. FMS has not disputed this, but instead only argues that its kit experience is just as relevant because it also manufactures some of the parts in the kit. We fail to see, however, and FMS has not elaborated on, how producing some of the individual components of a kit that will be used to repair the M109 provides it with the same knowledge that would be gained from producing a complete M109. Specifically, as the Army argues, in producing the complete M109, BMY would gain knowledge of how the components work together and the interrelationships of those components; such knowledge could be beneficial in determining what needs to be repaired or replaced. FMS' experience in producing the components would only give it experience in knowing if the individual component was working and whether to repair or replace it. Accordingly, we find that the Army properly credited BMY for its experience in producing the M109.

#### Quality Assurance and Reapproval

Factor B of the quality assurance element in the technical area required offerors to describe their method of implementing Mil-Q-9858A. Each contractor that is going to overhaul the howitzer must have its facility approved to the quality standard Mil-Q-9858A by the Department of Defense. FMS has a facility in [deleted] which is currently approved to Mil-Q-9858A. However, in its proposal, FMS indicated that it intended to move many of its operations to a new

facility in [deleted]. The Army found as a weakness that FMS' proposal did not address reapproval with respect to Mil-Q-9858A for the [deleted] facility. FMS protests this finding. FMS argues that in its proposal it specifically stated that its [deleted] quality assurance (QA) plan would be in place prior to production and that [deleted] personnel familiar with the standard would assist in its implementation at [deleted]. In addition, FMS asserts that in its master program schedule it provided that Mil-Q-9858A would be in place at the [deleted] facility prior to the commencement of production. FMS contends that this information was sufficient to indicate its intention to obtain reapproval for the [deleted] facility and that if the Army required further elaboration it should have requested it during discussions. FMS also asserts that it provided its quality manual to the local Defense Contract Management Office as part of its start-up operations and it then became incumbent upon that office to validate FMS' performance in accordance with the manual.

The Army argues that it was not sufficient that in its proposal FMS stated that it would implement Mil-Q-9858A at the [deleted] facility prior to production because this statement did not indicate any recognition of the need for government approval or outline the steps that would be required to obtain approval. The Army also points out that the proposal did not indicate who would perform the validation or when it would be performed.

The Army's evaluation of FMS' proposal for this factor was reasonable. The RFP required offerors to detail their method of implementing MIL-Q-9858A. In its proposal, FMS stated that it has, at [deleted], a QA program plan in full conformance with MIL-Q-9858A and that it will implement the same policies and procedures from its existing QA manual to cover its operations at the [deleted] facility. FMS also acknowledged that its system and QA manual are not transferable to the [deleted] facility. These statements, while recognizing that MIL-Q-9858A must be implemented at the [deleted] facility, do not indicate that FMS recognizes that it must go through the same approval steps and obtain government approval for the [deleted] plan as it did in [deleted]. The fact that FMS provided its manual to the Defense Contract Management Office is irrelevant because its intention to do so was not indicated in FMS' proposal and therefore could not be considered during the evaluation.<sup>1</sup>

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<sup>1</sup>We note that the Army did not ask FMS any discussion questions regarding the reapproval of MIL-Q-9858A at the [deleted] facility. Nonetheless, this is only one of numerous disadvantages listed by the evaluators under the

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## Quality Assurance and Defect Prevention

As indicated above, the offeror selected as the awardee must be qualified to Mil-Q-9858A. Under that standard, offerors are required to implement a defect prevention program. The Army explains that the bulk of work under the contract will be the repair or replacement of parts and that it is therefore essential that the contractor have a defect prevention program under Mil-Q-9858A in order that the processes for repair/reclamation are adequately controlled so defective parts are not introduced. The Army was concerned that the focus of FMS' initial proposal was defect detection rather than defect prevention. As a result, during discussions, the Army asked FMS to discuss the development of a defect prevention program under Mil-Q-9858A. In response, FMS stated:

"Within the Program Plan special emphasis is placed on the prevention of defects through the control of manufacturing processes rather than on detection of defects. The subject contract is particularly challenging in that each of the incoming vehicles will require different levels of overhaul and repair. Therefore, special emphasis must be given to the initial quality planning for both the procurement and manufacturing (repair) processes. This planning will include identification of inspection points directly on the manufacturing workbook sheets, application of statistical process-controls covering work performed by FMS personnel as well as selected subcontractors, and an extensive cause and corrective action system at the component, subassembly and final assembly levels. Finally, FMS will implement trend analysis when process defects are detected in order to prevent a reoccurrence of the problem."

FMS asserts that this answer demonstrated that it in fact had a defect prevention program.

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<sup>1</sup>(...continued)

technical area for FMS' proposal. FMS received a score of [deleted] out of 40 on the technical area. Given the numerous other disadvantages, which FMS does not challenge or which we find were reasonable, we fail to see how FMS was prejudiced by the agency's failure to discuss this issue.

In the Army's report, it stated that the last sentence of FMS' discussion response confirmed the evaluators' belief that FMS was more concerned with defect detection than defect prevention. In supplemental comments, the agency explained that in its view the last sentence indicated that trend analysis is the last step that FMS will take in its defect prevention program. According to the agency, trend analysis should be initiated early in the process in order to prevent problems from either occurring or escalating as material passes through the various processes required for the overhaul effort. Thus, the agency was not so much concerned that FMS did not have a defect prevention program as it was with the quality of FMS' defect prevention program. The agency raised this issue with FMS during discussions. The evaluators concluded that FMS' response, which appears to discuss both detection and prevention, did not sufficiently emphasize the prevention of defects in the vehicles. Based on our review of FMS' discussion response, we conclude that FMS has simply disagreed with the evaluators' judgment.

#### Quality Assurance and Subcontractors

FMS protests the evaluation of its proposal regarding the quality standard it intended to impose on its subcontractors. In evaluating FMS' initial proposal the evaluators noted as a weakness that FMS intended to impose on at least some of its subcontractors Mil-I-45208 which is a lesser quality standard than Mil-Q-9858A. The Army was concerned with whether FMS intended to flow Mil-Q-9858A down to its subcontractors because the standard requires such a flowdown. During discussions, FMS was asked how Mil-Q-9858A would be flowed down to FMS' subcontractors. FMS responded that it only intended to subcontract repair of the fire control equipment to one of three subcontractors and that all three were qualified to Mil-Q-9858A. However, in response to a different discussion question, FMS indicated that one of the three subcontractors was qualified to the lesser standard Mil-I-45208. Based on this response we find that the Army reasonably questioned whether FMS intended to impose Mil-Q-9858 on all of its subcontractors and considered this a weakness in FMS' proposal.<sup>2</sup>

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<sup>2</sup>In addressing this protest issue, the agency and the protester discussed whether FMS adequately considered initial quality planning, that is, whether FMS adequately considered what quality standard should be imposed on its subcontractors. Initial quality planning, however, was not listed by the evaluators as a weakness in FMS' proposal and it was not discussed as a basis for not selecting FMS for award. Rather, the weakness that was listed was, as

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## Milestone Schedule

In its initial proposal, FMS indicated that it planned to perform most of the overhaul work at a new facility being constructed in [deleted]. The Army had concerns about the milestone schedule that FMS provided for the completion of this facility and raised this concern during discussions. In its BAFO, FMS proposed moving two additional functions, [deleted], to the new facility. The Army found that this raised additional concerns about the milestone schedule because moving these functions required the installation of new equipment and structures at the [deleted] plant.

FMS argues that the two functions that it was moving, [deleted], are minor since they involve only [deleted] percent of the estimated labor hour performance. FMS thus complains that the agency's concern with the milestone schedule was baseless.

The Army disputes that these two functions are minor. Specifically, the Army states that labor hours are not an appropriate indicator of the importance of a particular function. According to the Army, the [deleted] function is especially important. The Army explains that the [deleted] is where [deleted]. Additionally, the Army asserts that final acceptance is never minor because [deleted]. Also, the agency asserts that a failure at this point could result in a significant cost increase.

It is clear from the protest record that after evaluating FMS' initial proposal, the Army was concerned with FMS' milestone schedule for its new facility because a delay in meeting the schedule would hinder FMS' ability to meet the delivery schedule in the solicitation. During discussions, the Army brought this concern to FMS' attention, specifically requesting FMS to address the milestone schedule for the [deleted] facility and how it planned to meet the requirements of the solicitation. In response, FMS indicated its intent to move the two additional functions to [deleted] and provided a revised milestone schedule. FMS' response however did nothing to alleviate the agency's concern about the milestone schedule. We find it reasonable that this initial concern would be exacerbated by FMS' decision to move additional functions to [deleted]. While FMS argues that the concern is baseless, FMS has provided no information to demonstrate that the

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<sup>2</sup> (...continued)

discussed above, whether FMS intended to impose Mil-Q-9858 on its subcontractors. Accordingly, we have not discussed the issue of FMS' initial quality planning.

concern was unreasonable except to argue that the operations being moved were limited. However, we agree with the Army that the number of labor hours that will be expended in these two areas do not define the importance of the areas. Since FMS has provided no further challenge to the Army's description of the importance of the [deleted], and has provided no information to indicate that the agency's concern with the [deleted] was otherwise unreasonable, we have no basis to question the evaluation. As noted above, FMS mere disagreement with the agency's evaluation does not provide a basis to conclude that the evaluation is unreasonable. Cybernated Automation Corp., supra.

Equipment Delivery

Factor A of element No. 3, facilities/equipment, in the technical evaluation area required offerors to describe the equipment that was currently available and/or to be acquired for the performance of the contract. FMS complains that its proposal was improperly downgraded because FMS failed to provide a plan to deliver equipment to the [deleted] location. In evaluating FMS' initial proposal, the agency found that FMS provided a list of equipment that would be used to perform the contract but did not indicate how the equipment would be acquired or installed. During discussions, FMS was asked to discuss the availability, acquisition, and/or manufacture of the equipment to be used. FMS responded that the equipment was either currently available, was on order to support other contracts or that it had located a source for the equipment, and could order it and have it delivered within 60 days of contract award. Based on its review of FMS' response, the Army was concerned with whether FMS would be able to begin work on the first vehicle 60 days after contract award as required by the RFP.

FMS asserts that the agency had no basis to question whether FMS would be able to begin work within 60 days after award because in its response to the discussion question it stated that the equipment would be available within 30 days after award. Nonetheless, while FMS stated that certain equipment would be available within 30 days of award, FMS also stated that certain tools and fixtures would not be available until 60 days after award. If the tools and fixtures were not delivered until 60 days after award, it would be difficult for FMS to begin performance 60 days after award. Moreover, if there was any delay in the delivery of these items, it is almost certain that FMS would not be able to begin performance 60 days after award as required by the solicitation. In addition, FMS failed to indicate in its proposal or its response to the discussion question what priority the overhaul contract would be given with the equipment that was on order. Since this equipment was on order to support other contracts, without some assurance

from FMS that the equipment would be available when needed to perform the overhaul contract, it was reasonable for the Army to assume that the equipment would first be used to complete other projects and might not be available when needed for the overhaul contract. Given these factors, we find that the Army was reasonably concerned with whether FMS would have the necessary equipment available to meet the delivery schedule.

#### EPA Approval

Also under factor A of the facilities/equipment element, offerors were required to describe their facilities and equipment currently available or to be acquired for painting. The agency viewed as a weakness FMS' failure to address Chemical Agent Resistant Coating (CARC) paint booths and hazardous waste disposal. The Army was particularly concerned with this because of California's strict environmental laws. During discussions, the Army expressed this concern to FMS, requesting that the firm discuss CARC paint booths and hazardous waste disposal. In response, FMS stated that in the event it received the contract award it would construct a hazardous material storage area. FMS further stated that it was currently installing a fully enclosed paint spray booth and gas heated drying system, and that it would install the equipment and procure required permits and licenses for CARC painting by October 15.

After reviewing this response, the Army was concerned about FMS' ability to obtain the necessary Environmental Protection Agency (EPA) approvals by October 15 because FMS did not state whether it had yet applied for them. The agency states that FMS' tight schedule for the new facility, including the need to obtain EPA approval and install equipment in a new facility, coupled with its lack of experience, left considerable doubt as to FMS' ability to meet the delivery schedule.

FMS complains that the solicitation did not require offerors to provide a plan to obtain EPA approval, and in any event, its proposal provided a detailed schedule which indicated that it would obtain the necessary approvals by October 15. FMS asserts that if the Army was concerned with whether FMS had applied for EPA approval, it should have asked during discussions.

The requirement for EPA approval was reasonably encompassed by the facilities and equipment evaluation factor since the facilities could not be operated without the appropriate EPA permits. It appears that FMS was aware of this since FMS did address EPA approval in its proposal. While FMS states that it had in fact applied for the permits, there was no indication of this in the FMS revised milestone schedule or

otherwise in response to the discussion question. Thus, the Army's concern with FMS' ability to timely obtain the permits to perform the contract is reasonable. In addition, since the Army specifically asked FMS to discuss CARC paint booths and hazardous waste disposal and FMS' response demonstrated that FMS was aware of the requirement for EPA approval, it was not necessary for the agency to specifically ask FMS if it had applied for EPA approval.

#### Work Breakdown and Personnel Expansion

Element No. 2, work force, of the production/management evaluation area provides that "[t]he offeror shall detail/describe the current work force as well as the capability to expand." Factor B of element No. 3 (organizational structure) of the production/management area requires offerors to provide a "[d]escription of the management controls including work breakdown." FMS complains that the Army found weaknesses in its proposal in the areas of work breakdown structure and expanding the workforce. FMS asserts that detailed information was provided in its proposal concerning these areas. Specifically, FMS argues that it addressed the capability of its workforce to expand in its initial proposal where it stated that over [deleted] people in the greater [deleted] area provides an ample labor pool from which to draw qualified personnel. Regarding work breakdown structure, FMS asserts that the first (technical) volume of its proposal included a chart which detailed work breakdown and work flow throughout the plant.

The Army responds that FMS' initial proposal stated that it would require a second shift when it started receiving six vehicles per month but did not adequately address the ability of its workforce to expand to meet this requirement. In addition, FMS did not provide any information concerning its work breakdown structure in volume 2 of its proposal. The Army states that as a result, during discussions, it asked FMS to discuss both the ability of its workforce to expand and its management controls including work breakdown, workflow and planning and integration.

In response to the expansion question, FMS stated that given the total number of vehicles to be overhauled and the length of time allowed for deliveries, it did not consider manpower a significant consideration. FMS also stated that it had qualified journeymen on staff in [deleted]. In response to the work breakdown question, FMS explained how it would track and control the overhaul process.

The Army states that it was not satisfied with these responses. Specifically, the Army states that FMS did not provide any further information concerning how it intended

to accomplish the expansion of its workforce, thus still leaving the Army with questions concerning how FMS would staff a second shift. Concerning work breakdown, the Army states that in response to the discussion question, FMS did no more than detail a number of reports it would produce but did not detail its work breakdown. The Army states that to the extent FMS is now arguing in its protest that the work breakdown chart was provided in the technical volume (I) of its proposal, rather than in the production/management volume (II), the deficiency was noted in the evaluation of the production/management volume. The Army explains that the volumes were evaluated by different persons and points out that the solicitation clearly advised offerors to submit their proposals in three volumes (technical, management/production and cost) and to duplicate or cross reference information to the extent necessary. The Army asserts that FMS' failure to include the necessary information in volume II or otherwise cross reference it resulted in its not being considered in the evaluation of volume II under organizational structure.

Concerning workforce expansion, while FMS' proposal stated that the [deleted] people in the [deleted] area provides a sufficient labor pool from which to draw personnel, FMS did not indicate how many people were available or had the skills necessary to perform the work required by the RFP. Nor did FMS provide any plan to expand its workforce. Consequently, we find that the Army's evaluation was reasonable.

Concerning work breakdown structure, our review of FMS' proposal demonstrates that FMS did include a work breakdown chart in the technical volume of its proposal. Factor B of element No. 3 of the production/management area, however, specifically provided for the evaluation of offerors' management controls including work breakdown. In addition, the solicitation advised offerors to duplicate or cross reference information if necessary. Given these factors and the fact that during discussions the agency requested FMS to address work breakdown structure under element No. 3, factor B of the production/management area, there is no basis to question the agency's evaluation finding that FMS' failure to address work breakdown in its production/management proposal was a weakness. See Infotec Dev. Inc., B-245299, Dec. 23, 1991, 91-2 CPD ¶ 578 (where protester included information in its cost proposal but did not duplicate it in its technical proposal, evaluators of the technical proposal properly considered the missing information as a weakness).

#### CONCLUSION

Although FMS' proposal had a lower price than that of the awardee, in a negotiated procurement, award need not be made

to the low priced offeror provided an award to a higher priced offeror is reasonable and consistent with the evaluation criteria. Military Professional Resources, Inc., B-243548, Aug. 7, 1991, 91-2 CPD ¶ 135. Here, the solicitation did not require that award be based on the low-priced proposal. Accordingly, since we have concluded that the evaluation of FMS' proposal was reasonable and FMS has not otherwise challenged the price/technical tradeoff that resulted in the award to EMY, that award is proper despite BMY's higher price.

The protest is denied.

Robert P. Murphy  
Acting General Counsel

otherwise in response to the discussion question. Thus, the Army's concern with FMS' ability to timely obtain the permits to perform the contract is reasonable. In addition, since the Army specifically asked FMS to discuss CARC paint booths and hazardous waste disposal and FMS' response demonstrated that FMS was aware of the requirement for EPA approval, it was not necessary for the agency to specifically ask FMS if it had applied for EPA approval.

#### Work Breakdown and Personnel Expansion

Element No. 2, work force, of the production/management evaluation area provides that "[t]he offeror shall detail/describe the current work force as well as the capability to expand." Factor B of element No. 3 (organizational structure) of the production/management area requires offerors to provide a "[d]escription of the management controls including work breakdown." FMS complains that the Army found weaknesses in its proposal in the areas of work breakdown structure and expanding the workforce. FMS asserts that detailed information was provided in its proposal concerning these areas. Specifically, FMS argues that it addressed the capability of its workforce to expand in its initial proposal where it stated that over [deleted] people in the greater [deleted] area provides an ample labor pool from which to draw qualified personnel. Regarding work breakdown structure, FMS asserts that the first (technical) volume of its proposal included a chart which detailed work breakdown and work flow throughout the plant.

The Army responds that FMS' initial proposal stated that it would require a second shift when it started receiving six vehicles per month but did not adequately address the ability of its workforce to expand to meet this requirement. In addition, FMS did not provide any information concerning its work breakdown structure in volume 2 of its proposal. The Army states that as a result, during discussions, it asked FMS to discuss both the ability of its workforce to expand and its management controls including work breakdown, workflow and planning and integration.

In response to the expansion question, FMS stated that given the total number of vehicles to be overhauled and the length of time allowed for deliveries, it did not consider manpower a significant consideration. FMS also stated that it had qualified journeymen on staff in [deleted]. In response to the work breakdown question, FMS explained how it would track and control the overhaul process.

The Army states that it was not satisfied with these responses. Specifically, the Army states that FMS did not provide any further information concerning how it intended

to accomplish the expansion of its workforce, thus still leaving the Army with questions concerning how FMS would staff a second shift. Concerning work breakdown, the Army states that in response to the discussion question, FMS did no more than detail a number of reports it would produce but did not detail its work breakdown. The Army states that to the extent FMS is now arguing in its protest that the work breakdown chart was provided in the technical volume (I) of its proposal, rather than in the production/management volume (II), the deficiency was noted in the evaluation of the production/management volume. The Army explains that the volumes were evaluated by different persons and points out that the solicitation clearly advised offerors to submit their proposals in three volumes (technical, management/production and cost) and to duplicate or cross reference information to the extent necessary. The Army asserts that FMS' failure to include the necessary information in volume II or otherwise cross reference it resulted in its not being considered in the evaluation of volume II under organizational structure.

Concerning workforce expansion, while FMS' proposal stated that the [deleted] people in the [deleted] area provides a sufficient labor pool from which to draw personnel, FMS did not indicate how many people were available or had the skills necessary to perform the work required by the RFP. Nor did FMS provide any plan to expand its workforce. Consequently, we find that the Army's evaluation was reasonable.

Concerning work breakdown structure, our review of FMS' proposal demonstrates that FMS did include a work breakdown chart in the technical volume of its proposal. Factor B of element No. 3 of the production/management area, however, specifically provided for the evaluation of offerors' management controls including work breakdown. In addition, the solicitation advised offerors to duplicate or cross reference information if necessary. Given these factors and the fact that during discussions the agency requested FMS to address work breakdown structure under element No. 3, factor B of the production/management area, there is no basis to question the agency's evaluation finding that FMS' failure to address work breakdown in its production/management proposal was a weakness. See Infotec Dev. Inc., B-245299, Dec. 23, 1991, 91-2 CPD ¶ 578 (where protester included information in its cost proposal but did not duplicate it in its technical proposal, evaluators of the technical proposal properly considered the missing information as a weakness).

#### CONCLUSION

Although FMS' proposal had a lower price than that of the awardee, in a negotiated procurement, award need not be made

to the low priced offeror provided an award to a higher priced offeror is reasonable and consistent with the evaluation criteria. Military Professional Resources, Inc., B-243548, Aug. 7, 1991, 91-2 CPD ¶ 135. Here, the solicitation did not require that award be based on the low-priced proposal. Accordingly, since we have concluded that the evaluation of FMS' proposal was reasonable and FMS has not otherwise challenged the price/technical tradeoff that resulted in the award to BMY, that award is proper despite BMY's higher price.

The protest is denied.

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Acting General Counsel