



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Morrison Knudsen Corporation

File: B-280261

Date: September 9, 1998

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Donald A. Tobin, Esq., Bastianelli, Brown & Kelley, for CFS Logistics, Inc., an intervenor.

Kenneth G. Wilson, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation provided that agency would evaluate past performance based on information presented in the proposals, awardee presented past performance information for an affiliate that had performed similar contracts, and protester did not advise contracting officer in writing of adverse information regarding performance by another of awardee's affiliates under contract for a different agency, evaluation of past performance, which considered only the contracts identified in the awardee's proposal, was reasonable and consistent with solicitation.

2. Where agency found both proposals technically acceptable and both offerors low risk under the factor of past performance, selection of lower-priced proposal was reasonable and consistent with solicitation, which provided that, for technically acceptable proposals, price and past performance would be of equal importance in selection decision.

DECISION

Morrison Knudsen Corporation (MKC) protests the award of a contract to CFS Logistics, Inc. under request for proposals (RFP) No. N00189-97-R-0085, issued by the Department of the Navy for operation of the agency's Advanced Traceability and Control (ATAC) program. The protester argues that the agency's evaluation and selection decision were unreasonable or inconsistent with the solicitation.

We deny the protest.

On September 30, 1997, the agency issued the RFP, for a fixed-price, indefinite-delivery requirements contract to operate the ATAC program for a 1-year base period, with two 6-month option periods. RFP § B. The ATAC program is the Navy's program for managing repairable assets, those which the agency has determined more economical to repair than discard, which have been returned for repair. RFP § C.1, attachment 1, Statement of Work (SOW) 1.1. The SOW involved staffing and operating 12 sites in the United States and abroad, providing accountability and control over items of high dollar value or critical to operational requirements, ranging from small electronic circuit cards to large steam-driven deck winches, from the point of failure to intermediate storage points and to the point of repair and back to the end user. RFP § C.1, attachment 1, SOW 1.0 and exhibit 3.

The RFP provided for award to the offeror whose offer was found technically acceptable and was most advantageous to the government based on price and past performance, which were equal in weight as selection criteria. RFP § M.1(a). It directed offerors to submit proposals in three parts, including a technical proposal, a price proposal, and past performance information. RFP § L.1. It stated that the agency would base its evaluation of proposals on the information presented in the proposals. RFP § M.1 The RFP provided for evaluation of technical proposals considering five factors, as follows: overall technical approach to implementing ATAC; quality assurance; management approach; personnel qualifications; and corporate experience. RFP § M.1(e). With regard to corporate experience, the RFP advised as follows:

Offerors shall provide a synopsis of their experience within the past six years with contracts of a similar nature and magnitude (e.g., freight forwarding, transportation, and warehousing). Include the same type of information relative to any applicable subcontractor that would be participating in this program.

As a minimum, the contractor must provide an example of a contract or function performed or managed within the last six years which involved operation of multiple facilities, including Conus and EXCONUS, involving custody of third party material, electronic data transmission and fluctuating workload requirements.

RFP § L.1.I.5. The agency would review this material for technical acceptability.

As noted above, the solicitation provided for a comparative evaluation of past performance and instructed offerors to include past performance information in sufficient detail to identify previous experience as it related to the probability of successful accomplishment of the statement of work. It directed offerors to "submit a description of their previous government (federal, state and local) or commercial contracts (all prime and major subcontracts received, or in performance, during the past 5 years) which are in any way relevant to the effort

required by this solicitation." RFP § L.1.III. It provided for assessment of risk in the areas of timely delivery of services, technical quality, and businesslike concern for the interests of the customer, considering the number and severity of any problems, the effectiveness of any corrective action taken, and overall work record. RFP §§ L.1.III, M.1.B.

The agency received two proposals--from the protester and from the awardee--on January 9, 1998 and referred them to its source selection evaluation board (SSEB). The SSEB found both proposals unacceptable but susceptible to being made acceptable. The agency held discussions on March 3; the two offerors submitted best and final offers (BAFO) on March 11. On May 12, the agency requested another round of BAFOs, which the offerors submitted on May 18. As a result of discussions, the SSEB found both proposals technically acceptable and both offerors low risk under the past performance factor. Since the proposals were technically acceptable and had received identical ratings for past performance, the contracting officer selected CFS for award, based on its lower price. The agency provided a debriefing to MKC on June 2, and this protest followed.

The protester contends that the agency unreasonably and improperly evaluated the past performance of CFS, a new company that is the successor to a concern, now bankrupt, that has been in "non-use" status with the Military Traffic Management Command (MTMC) for the past year. MKC points out that CFS has only been in existence for 3 years. The protester therefore concludes that the only past performance information that CFS could have provided must relate to predecessor corporations, one of which, Calore Express, MTMC has placed in "non-use" status.¹ It was therefore unreasonable, MKC argues, to rate CFS as "low risk" for past performance.

The evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and the

¹MKC categorizes the firms at issue here, affiliated with CFS, as "corporate vehicles" for the business of Michael Calore, sharing the same addresses and all incorporated in Rhode Island. They include CFS Air Cargo and Calore Freight Systems, Inc., which was merged into Calore Express, a trucking company, in 1993. According to a MTMC letter dated May 22, 1997, placed in the record by MKC as an enclosure to its comments of July 16, 1998, responding to the agency report, MTMC imposed the "non-use" status on Calore Freight Systems as a result of problems with performance of a contract at the Defense Depot Susquehanna. The letter was addressed to JSC Investments, a holding company for the bankrupt Calore Freight Systems, and precludes JSC and Calore Freight Systems from transporting freight traffic for MTMC for a period of 1 year, beginning May 22, 1997.

best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115 at 8. 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 stated evaluation criteria and applicable statutes and regulations. Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 9. A protester's mere disagreement with the agency's evaluation does not render it unreasonable. Id. We find the evaluation here to be both reasonable and consistent with the RFP's stated evaluation criteria.

The record shows that CFS supplied past performance information related to three contracts--its own warehousing contract and two contracts performed by CFS Air Cargo, a firm that the awardee considers the true predecessor of CFS Logistics. Beyond references, in the corporate experience portion of its technical proposal, to origins with "a regional trucking company" (Calore Express, incorporated in 1954), the proposal made little mention of affiliates and none of Calore Freight Systems. For the contracts listed, the record shows that the agency did contact references, who reported no problems. The Navy states that it did not consider contracts involving Calore Express or Calore Freight Systems because, under the technical factor of corporate experience, CFS had primarily relied upon the experience of its management personnel with CFS Air Cargo, and under past performance, CFS did not reference any contract involving Calore Express or Calore Freight Systems.

As noted above, section L.1.III of the RFP required offerors to submit past performance information on "relevant" contracts. In this regard, the awardee argues that CFS Air Cargo, whose assets CFS Logistics acquired and in whose name CFS Logistics does business, and not Calore Freight Systems, is the awardee's predecessor organization. The contracts performed by CFS Air Cargo, which required management at multiple sites and which contained extensive computerized record-keeping requirements, and not the trucking contracts awarded to Calore Freight Systems, are, the awardee argues, the contracts relevant to performance under the instant contract. Thus, CFS argues, it did identify the relevant contracts and provided information on the relevant predecessor corporation as required by the solicitation. It did not provide information on Calore Freight Systems, CFS explains, because the RFP did not require it to provide information on its affiliated or "sister" companies. We do not find this interpretation unreasonable.

As a general rule, in determining whether one company's performance should be attributed to another, an agency must consider the nature and extent of their relationship, and it is appropriate to consider an affiliate's performance record where it will be involved in the contract effort or where, as here, it shares management with the offeror. NAHB Research Ctr., Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 4. Thus, the agency reasonably considered past performance by

CFS Air Cargo, which shares management with CFS Logistics, in the evaluation of the awardee's proposal.

The protester contends, however, that regardless of the information in CFS's proposal, information on the problems with Calore Freight Systems was so "close at hand" that it was unreasonable for the agency to disregard the poor performance of that firm in the past performance evaluation of CFS. See International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5 (evaluation of past performance unreasonable where agency failed to consider information "close at hand," specifically, the protester's performance of a contract for the same services for the same agency, simply because no one in the agency had completed and returned the past performance evaluation forms). MKC believes the problems of Calore Freight Systems to be so well-known in the industry that the agency could not be ignorant of them. In any event, the protester argues, it has presented evidence in the form of sworn statements that its representatives discussed the Calore companies with the contracting officer's technical representative (COTR) prior to the submission of proposals.²

The RFP stated that the agency would base its evaluation of proposals on the information presented in the proposals; therefore, reliance upon the contracts referenced by CFS Logistics was consistent with the solicitation. Although the COTR acknowledges that MKC raised the issue of past performance by CFS's affiliates at a lunch, after the site visit, she states that she told MKC to put this information in writing, which MKC did not do; MKC does not dispute this. The COTR did not participate in either the evaluation of past performance or the selection of CFS. She did not independently advise the SSEB or the selection official of her conversations with MKC officials and states that, as she has never administered one of CFS's contracts, she has no independent knowledge of any performance difficulties. Where we have charged an agency with responsibility for considering information "close at hand" in its past performance evaluation, that information has generally concerned contracts for the same services, with the same

²MKC representatives also advised agency officials of the bankruptcies of certain Calore firms; however, the record shows that the agency properly addressed issues related to CFS's financial responsibility in its affirmative determination of responsibility; our Office will not review such determinations, absent an allegation of bad faith or the failure to meet definitive responsibility criteria. See 4 C.F.R. § 21.5(c) (1998). In any event, the record shows that the agency became aware of the bankruptcies of CFS Air Cargo and Calore Express during the preaward phase here and concluded that CFS had a line of credit more than sufficient to finance the instant effort, considering that it is primarily a service contract, with no great need for capital outlay at the outset.

procuring activity, or at least information personally known to the evaluators. See, e.g., International Bus. Sys., Inc., *supra*, and cases cited therein, at 5, including G. Marine Diesel, B-232619.3, Aug. 3, 1989, 89-2 CPD ¶ 101 at 5-6; G. Marine Diesel; Phillyship, B-232619, B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90 at 4-5; Inlingua Schs. of Languages, B-229784, Apr. 5, 1988, 88-1 CPD ¶ 340 at 5; and New Hampshire-Vermont Health Serv., B-189603, Mar. 15, 1978, 78-1 CPD ¶ 202 at 12-13.

With regard to issues raised with the COTR at the site visit, only Calore Freight Systems' "non-use" status with MTMC would appear relevant to the past performance evaluation. MKC did not present the allegation (which MKC apparently knew only from rumor) or raise it during discussions with the contracting officer. The record indicates that the COTR's participation in the instant procurement was limited; she had no direct role in the evaluation or selection. We see no basis for charging the SSEB or contracting officer with knowledge of everything that may have been said to the COTR at the site visit.

MKC also contends that, by selecting the low-priced, technically acceptable offeror for award, the Navy failed to follow the selection criteria of the RFP, which provided that past performance was equal in importance to price. The Navy concedes that, during the debriefing on June 2, it advised the protester that it had selected CFS for award as the low-priced, technically acceptable offeror. In addition, the business clearance memorandum, which memorialized the selection decision, incorrectly stated that the RFP had provided for award to the technically acceptable, low-priced offeror.

The agency explains that, in preparing the business clearance memorandum, it inadvertently copied the format from an earlier document and incorrectly described the basis of award as low-priced, technically acceptable. The error was carried over to the debriefing. Regardless of the reference to the incorrect selection criteria on page 6 of the memorandum, however, page 8 of the memorandum contains a detailed discussion of the criteria for evaluating past performance and the results of the evaluation, supporting the "low risk" rating for the two offerors.³ MKC has made no allegation that CFS's proposal was technically unacceptable, and the record clearly supports the agency's determination that both contractors were technically acceptable, with low risk. Since the agency therefore found nothing to distinguish the two proposals technically or in the past performance area, it was

³For example, the memorandum notes that the references contacted regarding CFS's past performance rated the firm's overall technical performance as "good" and quoted the references' conclusions.

consistent with the RFP to select the lower-priced proposal. USA TODAY, B-278650, Feb. 20, 1998, 98-1 CPD ¶ 71 at 6.

The protest is denied.

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