



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: FMS Corporation
File: B-255301
Date: February 23, 1994

Paul Shnitzer, Esq., and Laurie S. Elkin, Esq., Crowell & Moring, for the protester.
Allen Samelson, Esq., Rogers, Joseph, O'Donnell & Quinn, for FMC Corporation, an interested party.
Craig E. Hodge, Esq., and Robert A. Maskery, Esq., Department of the Army, for the agency.
David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of award of contract to original equipment manufacturer for overhaul and upgrade of M113 armored personnel carriers is denied where, although protester offered lower price, (1) awardee's proposal was more advantageous under the stated production/management and technical evaluation factors, which were significantly more important than price; and (2) solicitation placed special emphasis on past performance of similar work and awardee had successfully performed significantly more such work.

DECISION

FMS Corporation protests the Army Materiel Command's (AMC) award of a contract to FMC Corporation, under request for proposals (RFP) No. DAAE07-92-R-0062, for the overhaul of M113A2 armored personnel carriers (APC) and their conversion to model M113A3 APCs. FMS challenges AMC's technical evaluation.

We deny the protest.

BACKGROUND

The solicitation contemplated the award of a contract for the overhaul and conversion (to the M113A3 model) of a base quantity of 471 existing M113A2 APCs, with options for an additional 1,229 units (for a total of 1,700 APCs). The required overhaul/conversion effort included: (1) unloading

and unpacking the APCs; (2) disassembly; (3) cleaning and inspection; (4) repair, replacement or reclamation of defective subassemblies, components and parts; (5) reassembly; (6) conversion to the M113A3 model, including installation of a new engine and transmission, "spall liners"--sliding panels--inside the APC to protect the occupants, armored external fuel tanks (to replace the internal fuel tank), external armor mounting provisions and additional batteries, and other hardware and electrical items; (7) lubrication; (8) painting and/or restoration of protective finishes; (9) testing; (10) marking; and (11) packaging and loading for shipment. In general, the solicitation contemplated performance of the overhaul effort on a cost-plus-fixed-fee basis and the conversion effort on a firm, fixed-price basis.

The solicitation provided for award to be made to the offeror whose proposal offered the best value to the government based upon consideration of three evaluation factors: (1) production/management, which was somewhat more important than (2) technical, which was significantly more important than (3) price/cost. The production/management factor included the following four criteria: (1) past performance and (2) facilities/equipment, which were of equal importance and somewhat more important than (3) organizational structure and (4) work force, which were of equal importance. With respect to past performance, one of the two most important criteria, the solicitation provided for the agency to:

"perform an analysis based on the offeror's current and past performance as it relates to the probability of successful accomplishment of the required effort. The offeror will describe a brief history of its organization, types and quantities of vehicles overhauled and/or converted and similar-like Government/commercial contracts for the last three years. Evaluation will focus on (1) similarity of this requirement to past efforts performed . . . (3) contract value of similar efforts, (4) contract type of similar efforts, (5) quantity of similar type efforts performed, (6) participation of subcontractors in past similar type efforts, (7) cost and schedule delays of past and similar type efforts. . . . Any information provided by an offeror may be subject to a background check to include on-site visits for validation purposes."

In addition, section L of the solicitation, "Instructions, Conditions and Notices to Offerors," specifically required offerors to furnish extensive descriptive information on "all relevant or similar-like Government/commercial contracts and major subcontracts awarded to your firm within the last three (3) years," including, among other information, identifying the "Cognizant Procuring Contracting Officer (PCO), or Purchasing Agent, Administrative Contracting Officer (ACO), Technical Representative and telephone numbers." The solicitation expressly cautioned offerors in this regard that the:

"Government does not assume the duty to search for data to cure problems it finds in proposals. The burden of proving acceptability remains with the offeror. Proposals that do not contain the information requested by this paragraph risk rejection by the Government."

Six offerors submitted proposals in response to the solicitation; one offeror subsequently withdrew its proposal. After conducting discussions with all of the remaining offerors, AMC requested their best and final offers (BAFO). Based upon the BAFO evaluation, the proposal evaluation board (PEB) and the source selection authority (SSA) identified certain relative advantages and disadvantages of the proposals that led the SSA to determine that FMC offered the best value to the government.

Specifically, although FMS's evaluated price/cost (\$49,586,875) was approximately 28 percent lower than FMC's (\$69,048,408), the SSA determined that FMS's advantage in this regard was offset by FMC's advantages under the production/management and technical factors, which were significantly more important than price/cost.¹ While the PEB assigned an overall low risk rating to both FMC's and FMS's proposals under the past performance criterion, the PEB evaluated FMC as possessing an advantage (with a low risk rating) over FMS (with a moderate risk rating) under three of the past performance subcriteria, including similarity of past efforts to the current requirement, contract type of similar efforts and quantity of similar efforts. The PEB noted that FMC (1) is the sole domestic

¹Although another offeror--the Red River Army Depot--received somewhat higher evaluation ratings than FMC, its evaluated price/cost (\$84,772,402) was higher and the SSA determined that the advantages offered by its proposal with respect to the production/management and technical factors did not justify its higher price/cost.

manufacturer of the M113 family of vehicles and the principal supplier of such vehicles to other countries, having produced over 80,000 M113s in 40 models; (2) produces Bradley Fighting Vehicles and Cavalry Fighting Vehicles; (3) performs M113 vehicle overhauls on a routine basis; (4) has converted and, where necessary, rebuilt existing M113s to create prototypes for new models; and (5) has converted other combat vehicles.²

The PEB determined that direct, significant similarities existed between the vehicle overhaul/conversion work performed by FMC on their production contracts and the work required under the contemplated contract; according to the agency, approximately 70 to 80 percent of the work was similar in nature. In addition, agency evaluators noted that FMC's Ground Systems Division (FMC/GSD) had achieved a good-to-excellent performance record with respect to the M113s and Bradley Fighting Vehicles. (Although FMC, like FMS, proposed to establish a new production line--at its Steel Products Division (FMC/SPD) facilities--FMC offered a detailed transition plan for accomplishing the shift and agency evaluators noted that the firm had "a sterling performance record" in managing previous transitions to new production lines.)

In contrast to FMC's extensive experience as the original equipment manufacturer for the M113 family of vehicles and with other combat vehicles, FMS was evaluated as possessing only limited relevant experience. The PEB considered FMS's cited experience in supplying conversion kits and component parts, including those used in the M113A2-to-M113A3 conversion, not to be similar to the overhaul and conversion effort required here. Likewise, the agency discounted as dissimilar FMS's cited experience in supplying technical documentation to Austria concerning its M60A3 tanks. Although FMS also cited a contract to overhaul and convert 12 M48A5 tanks for Taiwan, AMC was unable to verify FMS's performance on that contract. In this regard, AMC was unable to obtain any information on FMS's performance from the Department of State and the Taiwanese point of contact originally cited by FMS; likewise, when the agency subsequently contacted a Taiwanese official identified by FMS (in response to AMC's inquiry) as a replacement point of contact, that individual indicated that he lacked the

²Although FMC also detailed additional conversions of combat vehicles for foreign customers, AMC did not contact these customers since it believed the information it had already obtained on FMC's domestic contracts was sufficient to justify FMC's low risk rating.

requested contract information. Although FMS cited a contract to overhaul and convert M113s for Thailand, an on-site inspection by contracting officials revealed that FMS had only completed a single prototype vehicle, and no production units.

FMS's limited prior similar experience led the PEB, in evaluating the similarity of prior performance to the current requirement, to conclude that "there remains some doubt as to FMS's ability to perform the proposed effort." Nevertheless, notwithstanding FMS's limited combat vehicle overhaul and conversion experience, the PEB assigned FMS's proposal an overall low risk rating for past performance on the basis that FMS was furnishing kits designed and developed for the required conversion program and had received favorable customer evaluations of its performance on these kit contracts. The SSA, on the other hand, determined that, given FMS's limited documented successful similar experience--with only the successful completion of a single unit under the Thai overhaul and conversion contract verified--there was no adequate basis for assessing FMS's performance risk under the past performance criterion; he therefore rated the firm high risk in this area.

In addition, FMC's proposal was evaluated as offering advantages relative to FMS's proposal in other evaluation areas. Although the solicitation provided for the evaluation of facilities and equipment currently available or to be acquired, one of the two most important evaluation criteria, it cautioned that "[e]mphasized here is that there is a difference between facilities and equipment that are available and those which are to be acquired." According to the PEB, FMC already possessed all of the testing equipment, tooling and machines used for the M113 production program, which were to be transferred to the new production line at FMC/SPD. Although the agency recognized that FMS had furnished a fully acceptable plan to satisfy the facility and equipment requirements of the program, AMC nevertheless considered it a relative disadvantage that FMS would need to manufacture or purchase the tooling, fixtures and testing equipment needed for the M113 overhaul and conversion program. Further, FMC received a higher evaluation (superior) than FMS (good) for knowledge of overhaul/conversion requirements, one of four criteria under the technical factor. In explaining FMC's evaluation in this regard, AMC noted that FMC had designed and prepared the manufacturing-level drawings for the M113s, produced the vehicles, written technical publications for the M113, and developed the conversion kit. The agency concluded that FMC's proposal demonstrated a total understanding of and

familiarity with the M113 such that the firm could perform the proposed contract at "virtually no risk."

Finally, since the existing M113s cannot keep pace with the M1 Abrams tanks and the Bradley Fighting Vehicles on the battlefield until converted, the SSA considered it imperative to proceed with the conversion and essential that the selected contractor be able to maintain the solicitation performance schedule. In this regard, the SSA determined that FMC had "a significant advantage over FMS from a risk standpoint in assuring successful performance." The SSA concluded that the lesser risk associated with FMC's advantage under the production/management and technical factors offset FMS's advantage under the significantly less important price/cost factor.

ARGUMENTS

FMS raises numerous arguments to the effect that AMC's evaluation under the production/management and technical factors was unreasonable. Our review of the record shows these arguments to be without merit. We discuss several of the protester's arguments below.

Past Performance

FMS primarily challenges AMC's evaluation of past performance. For example, FMS argues that the agency improperly upgraded FMC's rating in this area based on the firm's experience producing new vehicles; according to the protester, the assembly-line production of new vehicles is substantially different from the overhaul/conversion of existing vehicles. In addition, FMS contends that it was unfair to give FMC evaluation credit for having developed the M113A2/M113A3 conversion kit while not giving FMS credit for furnishing conversion and upgrade kits, including kits to be used in this conversion.

We find nothing improper in the past performance evaluation. First, with regard to FMC's new vehicle production experience, according to AMC, the dominant portion of the overall contract effort is associated with the conversion of the M113s. The agency reports in this regard that once a vehicle has been stripped down for conversion assembly, the work processes required for conversion--including welding, machining, installation, painting, purchasing, material control, configuration management, quality assurance, testing and preparation for shipment--are in fact essentially the same as required in new production; AMC estimates that this similarity extends to approximately 70 percent of the overall effort. As one contracting

official responsible for one of FMC's M113 and combat vehicle contracts noted when contacted by AMC, "FMC's past efforts as a full service production contractor for the M113 FOV [family of vehicles] should correlate well with the overhaul/conversion requirement."

While other contracting officials (involved in FMC's contracts to produce new Bradley Fighting Vehicles and M113s) did not consider those contracts particularly comparable to the contract here, in view of AMC's own detailed analysis showing that there were many similarities in the required work processes, we see no reason why those other officials' opinions should have been controlling. In any case, even these other officials did not question FMC's ability to undertake the overhaul/conversion program. On the contrary, referring to FMC's work overhauling and upgrading 995 Marine Corps AAV7A1 amphibious assault vehicles--a type of amphibious APC--they concluded that FMC had "demonstrated that they [FMC] are capable of managing/producing conversion/upgrade programs." Further, as noted above, FMC's past performance included not only the production of thousands of new vehicles, but also the overhaul of M113s, the conversion of existing M113s to create prototypes for new models, and the conversion of other combat vehicles. (In contrast, the information furnished by FMS was only sufficient to demonstrate that it had successfully converted one M113 under contract.) AMC therefore reasonably determined that FMC's new vehicle production experience warranted a more favorable past performance rating.

As for the evaluation of upgrade and conversion kits, first, it is clear that FMS's prior work in furnishing kits--only some of whose parts were produced by FMS--is in no significant way similar to the more demanding challenge of undertaking the actual overhaul/conversion of combat vehicles (and is in no way comparable to FMC's production of combat vehicles). As noted by one contracting official familiar with FMS's performance, "NO disassembly, inspection of vehicles, conversion, reassembly, vehicle test [was] required." [Emphasis in original.] Second, contrary to FMS's assertion, it does not appear that FMC ultimately was given credit under the past performance criterion for developing the M113A2/M113A3 conversion kits; rather, FMC was given credit for this work under the less important criterion for knowledge of overhaul/conversion requirements. It actually appears that FMS may unreasonably have received credit under the past performance criterion for furnishing conversion kits; although the PEB reasonably discounted FMS's role in this regard as not similar to actually undertaking the overhaul/conversion of combat vehicles, it

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appears that the board nevertheless may have considered FMS's past performance on kit contracts as somewhat offsetting FMS's evaluated "limited experience in performing the actual overhaul and conversion work of similar vehicles."

FMS also argues that FMC's proposal to establish a new production line at FMC/SPD, transferring M113 work from its FMC/GSD division, warranted a lower past performance evaluation. We disagree. As noted, FMC furnished a detailed transition plan for accomplishing the shift, and its reported "sterling performance record" in managing transitions to new production lines was deemed sufficient to establish that it could successfully implement the proposed transition plan. In any case, there is no basis for concluding that FMC's rating was inflated relative to FMS's, since FMS itself proposed establishing a whole new production line at a different facility.

In summary, given the totality of FMC's past performance of similar work--including its production of 80,000 M113s (as well as other armored vehicles), its overhaul of M113s on a routine basis and its conversion of existing M113s and other combat vehicles--and FMS's limited similar experience, we conclude that the SSA reasonably rated FMC's relevant past performance significantly higher than FMS's.³

Facilities/Equipment Criterion

FMS challenges AMC's determination that FMC's possession of the testing equipment, tooling and machines used for the M113 production program warranted giving FMC's proposal an evaluation advantage relative to FMS's under the facilities/equipment criterion. FMS (which must manufacture or purchase much or most of the necessary tooling, fixtures and testing equipment) maintains that this unfairly discriminated in favor of prior producers and against firms such as itself that offered an acceptable plan for acquiring the requisite equipment. FMS notes in this regard that the solicitation provided for consideration of either an

³FMS also questions AMC's failure to consider the qualifications of its proposed operations manager under the past performance criterion. However, a firm's experience is different from its employees' individual experience, where, as here, the RFP clearly provides for separate evaluation of these areas; we thus find no basis to question the evaluation in this regard. See Crimson Enters., Inc., B-243193.4, June 12, 1992, 92-1 CPD ¶ 512.

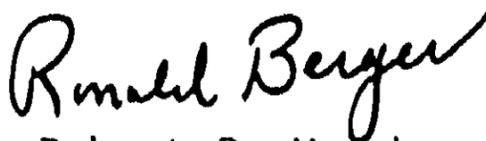
offeror's existing equipment or its plans to acquire equipment.

This argument is without merit. The solicitation provided only that the agency would consider an offeror's plans to acquire the requisite equipment; it did not provide that an offer proposing such a plan would be rated as highly as an offer proposing existing facilities and equipment. There is nothing unreasonable in distinguishing between proposals on such a basis. To the extent that this provided FMC with a competitive advantage, it was not an improper advantage since it did not result from preferential treatment or other unfair agency action. See Jara-King Photographic, Inc., B-253631, Sept. 15, 1993, 93-2 CPD ¶ 169.

CONCLUSION

As noted above, overhauling and converting the existing M113A2s to M113A3s is essential if the M113s are to keep pace with the M1 Abrams tanks and the Bradley Fighting Vehicles on the battlefield. In view of the importance of assuring that the selected contractor is likely to successfully perform the contemplated overhaul/conversion contract, the solicitation's statement of evaluation criteria provided that the production/management and technical factors would be significantly more important than price/cost, and placed special emphasis on an offeror's past performance of similar work. In these circumstances, we conclude that AMC reasonably determined that FMC's relative advantage under the production/management and technical factors, and in particular its significant advantage with respect to past performance of similar work, offset FMC's lower price/cost such that FMC's proposal offered the best value under the stated evaluation criteria.

The protest is denied.

for 
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 Acting General Counsel