



Comptroller General
of the United States

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Washington, D.C. 20548

REDACTED VERSION'

Decision

Matter of: MKA
File: B-257431.3
Date: October 4, 1994

Richard R. Edmister, Esq., and James M. Carmody for the protester.

Thomas J. Madden, Esq., John J. Pavlick, Jr., Esq., Fernand A. Lavallee, Esq., and Fred J. Federici, Esq., Venable, Baetjer, Howard & Civiletti, for Range Systems Engineering, an interested party.

Capt. Gerald P. Kohns, Department of the Army, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest asserting generally that protester's experience in government contracting warranted an "exceptional" rating for corporate capability and experience rather than the "good" rating given it by agency evaluation panel is denied where evaluation documents show that evaluators gave protester credit for its lengthy corporate history and experience, but protester lacked corporate experience relevant to performing tasks comparable to those required in the solicitation's statement of work. Protester's mere disagreement with agency evaluators does not render the evaluation unreasonable.

2. Protest alleging that agency made improper upward adjustments to proposed best and final costs under cost-reimbursement solicitation is denied where agency had a reasonable basis for the adjustments.

The decision issued on October 4, 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]."

DECISION

MKA¹ protests the Department of the Army's award of a contract for logistics support services to Range Systems Engineering (RSE) pursuant to request for proposals (RFP) No. DASG60-93-R-0017. The protester asserts that the Army's evaluation of its technical and cost proposals was unreasonable. We deny the protest.

Issued on July 12, 1993, the RFP requested offers for providing logistics and base support services to the United States Army Kwajalein Atoll (USAKA) in the Republic of the Marshall Islands. The RFP envisioned award of a cost-plus-award-fee, level-of-effort contract that would include a 2-month phase-in period, a 2-year base performance period, and three 2-year option periods. The RFP stated that the Army would award the contract to the offeror whose proposal represented the best value to the government based upon an evaluation of technical, management, and cost areas of each proposal. The technical evaluation factors were:

(1) technical approach, understanding the scope of work and staffing; and (2) corporate capability and experience. The management evaluation factors were: (1) management approach; (2) personnel policies and benefits; (3) contract management approach; and (4) subcontracting plan. The RFP stated that cost was a substantial evaluation factor but was less important than the technical and management areas which were equal in importance.

Kwajalein Atoll is the location of a government-owned, contractor-operated major range and test facility base, an antiballistic missile test range, and a defense site. The primary missions of the USAKA are to support the developmental and operational testing of strategic defensive and offensive ballistic missile systems, ballistic missile defense discrimination research, and to conduct space surveillance functions for the Department of Defense. Other government agencies supported by USAKA include the National Aeronautics and Space Administration, the Department of Energy, and the Defense Nuclear Agency.

To allow Atoll major range and test facility base users and tenants to attract and retain the highly skilled personnel required for conducting their technical operations, the contractor is to provide a variety of support services comparable to that which would be available to a scientific and technically oriented civilian community in the United States. The contractor will provide a wide range of

¹MKA is a joint venture comprised of Morrison Knudsen Corporation and Allied Management of Texas Incorporated.

services including, among other things, services related to: (1) personnel administration, financial management, property management, and data management; (2) operation and maintenance of facilities assets; (3) supply and transportation requirements; (4) aviation; (5) automotive and related equipment; (6) marine vessels and operations; (7) retail merchandising activities; (8) food services; (9) community activities (including religious services, hobby shops, and recreational programs); (10) medical and dental programs; and (11) schools (preschool through high school, including special education and adult education).

Six offers were received by the July 20 closing date for receipt of initial proposals. All six offerors were included in the competitive range. Discussions were conducted with each competitive range offeror, and best and final offers (BAFO) were received by March 14, 1994. BAFOs were evaluated for technical merit and to establish the total evaluated probable cost of each offer. After consideration of the source selection evaluation board's final report and a briefing by the source selection advisory council, on May 13, the source selection authority selected Range Systems Engineering for award, and on May 20, the contract was awarded to that firm. MKA was debriefed on May 26, and filed its protest with our Office on June 2.

The protester contends that its proposal was evaluated unreasonably low on the corporate capability and experience evaluation factor. MKA states that the Army rated its proposal as "good" when, in fact, the proposal deserved an "exceptional" rating.² In this connection, MKA points out that it has never defaulted on a government contract during its 82-year history. Thus, MKA asserts, it "has earned the right to an 'exceptional' rating."

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead, will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Id. Here, for the reasons that follow, we believe that the Army's evaluation of MKA's corporate capability and experience was reasonable and consistent with the RFP's evaluation scheme and the statement of work (SOW).

²The Army's source selection evaluation plan defined a "good" rating as "[DELETED]" An "exceptional" rating was defined as "[DELETED]"

The RFP stated that corporate capability and experience was one of two technical evaluation factors. Regarding this factor, the RFP stated that proposals would be evaluated to assess each offeror's relevant corporate experience in providing logistics support services for performing tasks comparable to those required in the RFP's SOW. The RFP further stated that prior experience would be evaluated "to assess the extent to which the offeror has had relevant experience of the complexity and magnitude as required by the [statement of work] in remote locations, including corrosive environments, and in a foreign country." The RFP also indicated that proposals must demonstrate how each offeror would apply past experience--in particular, recent corporate experience--and resources to the requirements of the SOW.

Contrary to MKA's assertion, the evaluation documents show that the Army's evaluators did give MKA credit for its lengthy corporate history and experience in successfully contracting with the government. The evaluation materials include many references to MKA's lengthy corporate experience in providing management, administration, and operations at other military installations. For example, one evaluator stated in his narrative comments:

"[DELETED]"

Another evaluator commented:

"[DELETED]"

Among the strengths of MKA's proposal noted by the evaluators was MKA's experience in construction of major projects and the firm's direct experience in constructing a housing project on the Kwajalein Atoll.

Consistent with the RFP's evaluation scheme, however, the evaluators also noted that MKA's proposal showed that MKA lacked corporate experience related to performing a number of the tasks set forth in the SOW. While the evaluation documents contain numerous references to MKA's lack of experience in performing certain types of required work, we will enumerate just a few here to illustrate why MKA received less than an exceptional rating by the evaluation board.

One weakness in MKA's corporate experience discerned by the evaluators was that MKA had little direct experience in operating a fire department at a military installation. The SOW requires the contractor to staff fire stations at Kwajalein and nearby islands, to maintain firefighting equipment and facilities, and to maintain an effective organization of trained personnel and equipment to provide

emergency fire protection services for several other islands. Thus, because fire protection services represented a significant part of the required work, the evaluators determined that MKA's lack of experience in doing such work was a disadvantage of MKA's proposal.

Another weakness is related to the SOW's requirement that the contractor plan, organize, staff, direct, and control the Kwajalein Atoll community activities. The contractor is required to provide religious services, hobby shops, sports programs, pools and beaches, youth centers, libraries, movie theaters, and a host of other recreational activities and institutions for the benefit of the employees and their families. The evaluators gave MKA credit for having provided community services on major projects in the past, but gave MKA less than an exceptional rating because MKA's experience was limited to audiences comprised mostly of adults while USAKA's audience is much more diverse, requiring activities applicable to families with significant numbers of young children.

The SOW also requires the contractor to establish and conduct a comprehensive and effective environmental program. The evaluators found that, while MKA did have some experience in providing environmental protection/compliance at military installations, none of MKA's corporate experience was for providing such services at a military installation outside of the continental United States or in an island environment. The evaluators also noted that MKA's prior environmental protection experiences were not with Army programs similar to the program at the Kwajalein Atoll.

Similarly, the SOW requires the contractor to be responsible for operating an animal pound and registering all pets. The evaluators noted that MKA stated in its proposal that it had no experience in this type of animal control work.

The protester argues generally that its long history and experience warranted a higher rating than the evaluation panel gave it, but the protester has not provided any basis for us to object to the Army's conclusion that it lacked experience in the areas discussed above. The fact that the protester disagrees with the agency does not render the evaluation unreasonable. Simms Indus., Inc., supra.

The protester next argues that the Army improperly made upward adjustments to MKA's proposed costs in calculating MKA's total evaluated probable cost. According to MKA, it had proposed to employ a large number of Marshallese islanders (i.e., citizens of the Republic of the Marshall

Islands) to perform the work, but the Army improperly converted these staff positions to non-Marshallese and made upward adjustments to MKA's proposed costs to reflect the higher costs of using nonindigenous personnel.

When a cost reimbursement contract is to be awarded, the offerors' estimated costs of contract performance should not be considered as controlling since the estimates may not provide valid indications of the final actual costs which the government is, within certain limits, required to pay. See Jack Faucett Assocs., B-254421.2, Feb. 18, 1994, 94-1 CPD ¶ 204. The agency's evaluation of estimated costs should determine the extent to which offerors' estimates represent what the contract should cost, assuming reasonable economy and efficiency. Id. Our review is limited to considering whether the agency's cost realism determination is reasonable. See Gray Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. As discussed below, we conclude that the Army's analysis was reasonable.

Here, MKA proposed to convert [DELETED] positions each year of the contract from positions held by non-Marshallese employees to positions held by Marshallese employees. Thus, over the 8-year life of the contract (2-year base period, plus two 3-year option periods), MKA proposed to convert a total of [DELETED] employee positions from non-Marshallese employees to Marshallese employees. To do this, MKA proposed to hire [DELETED] Marshallese employees during the base period of the contract and to increase the number of employees over the life of the contract to [DELETED] during the third option period.

The Army's own assessment showed that the incumbent contractor employed approximately [DELETED] full-time equivalent Marshallese employees, and the Army believed that "Proposal of indigenous employees in excess of [DELETED] was considered evidence that an offeror likely had overestimated the skills, training, and availability of Marshallese workers." During negotiations, the Army asked MKA how it would bring additional indigenous workers into the work force and to provide detail on its training programs and goals for such personnel; the Army told MKA to "Provide details by position to show clearly how indigenous workers will replace non-indigenous workers." The Army reports that MKA's answers were "somewhat tentative" regarding its training goals and "projected uncertainty in this regard." Thus, MKA's BAFO did nothing to assuage the evaluators' concern that MKA would not be able to meet its ambitious goal of converting 144 positions from non-Marshallese to Marshallese employees.

Moreover, the Army reports that incumbent Army contractors had attempted to recruit and employ Marshallese Islanders for more than a decade and, therefore, virtually every position that could be filled by a Marshallese employee currently is filled by a Marshallese person. Additionally, the Army reports that due to extremely limited local educational facilities, competition for trained Marshallese from higher-paying private companies, and the limited job training of indigenous workers by the Job Corps, its evaluators simply did not believe that there are enough Marshallese personnel with sufficient skills and education to fulfill MKA's proposed expansion of employment of Marshallese Islanders. Accordingly, the Army increased MKA's proposed costs by about [DELETED]³ to reflect the higher costs (for example, higher wage rates and relocation and travel expenses) of using American workers for the positions MKA had projected it would convert.⁴

We have no basis to question the Army's increasing MKA's probable costs. Based upon historical data, the Army had ample reason to doubt MKA's ability to increase the employment of Marshallese Islanders dramatically as the firm had proposed. Our review of the record reveals that MKA's answers to the Army's pertinent discussion questions were general in nature and did not alleviate the evaluators' concern that MKA would not be able to recruit and train

³MKA proposed a total cost of approximately [DELETED] million for the base and all option periods of the contract. Thus, the Army's adjustments for correcting MKA's projected position conversions resulted in an increase of only about [DELETED] percent.

⁴In its comments on the Army's report, MKA did not dispute the Army's assertions regarding conversion of positions from non-Marshallese to Marshallese positions. This was due in large part to the fact that MKA did not have access to technical and cost evaluation documents which were released by the Army under a protective order issued by our Office in this case at the request of MKA. Our Office denied MKA's application for access to the documents which was submitted by an engineer/third-year law student employed by Morrison Knudsen Corporation where, among other things, the engineer stated that her work involves proposal preparation on some occasions.

sufficient numbers of Marshallese Islanders to allow conversion of [DELETED] positions as MKA had projected in its BAFO. Accordingly, we have no basis for finding the Army's evaluation to be unreasonable.

The protest is denied.

Robert P. Murphy
Acting General Counsel