



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: M. Erdal Kamisli, Ltd.

File: B-291522

Date: December 23, 2002

Christopher M. Anzidei, Esq., and Christopher J. Brasco, Esq., Watt, Tieder, Hoffar & Fitzgerald, for the protester.

Stephen G. Anderson, Esq., and Damon O. Burrows, II, Esq., Baker, Donelson, Bearman & Caldwell, for Kulak Insaat Ticaret ve Sanayi, the intervenor.

James C. Brent, Esq., and Katherine D. Denzel, Esq., U.S. Army Corps of Engineers, for the agency.

Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of offerors' experience and past performance and the resulting price/technical tradeoff and award determination are unobjectionable where they are reasonable and consistent with the solicitation evaluation criteria.

DECISION

M. Erdal Kamisli, Ltd. (ERKA) protests the award of a contract to Kulak Insaat Ticaret ve Sanayi (Kulak), under request for proposals (RFP) No. DACA90-02-R-0045, issued by the Army Corps of Engineers, for the construction of a base supply warehouse at Incirlik Air Base, Turkey. ERKA contends that the agency failed to apply the evaluation criterion for experience in the manner that was called for by the solicitation, and that in determining to award to Kulak the agency improperly concluded that Kulak had better experience which justified paying its higher price.

We deny the protest.

BACKGROUND

The solicitation, issued on August 8, 2002, called for the submission of fixed-price proposals by September 16, 2002. Award was to be made without discussions on a "best value" basis considering the evaluation factors of price, experience and past performance, with price equal in importance to the non-price factors which, in turn, were equal in importance to each other. RFP § 00100 ¶ 6. With respect to the

experience factor, the RFP provided that relevance, depth and breadth would be evaluated and called for offerors to provide information on at least 3 projects performed within the last 5 years that show experience constructing “facilities of a similar cost, physical size, complexity and function.” RFP § 00100 ¶ 4. The RFP explained that projects considered most relevant are those that demonstrate experience as follows:

Similar physical size shall be considered for projects with a construction award amount over \$1,000,000.

Similar complexity shall be considered new construction of all major building systems (architectural, electrical, mechanical, etc.) for a warehouse.

Similar function shall be considered construction or renovation of industrial buildings.

Id.

The RFP stated that “[t]he number of relevant projects in the past five years determines depth of experience.” RFP § 00100 ¶ 6.

The agency received 18 proposals by the closing date, which were evaluated on September 17 and 18 by a technical evaluation board (TEB). The lowest-price proposal was that of [Deleted], at a price of \$1,740,000, which was evaluated as “fair/good” for experience and past performance. The two next lowest-price proposals were ERKA’s, at a price of \$2,143,143, which was also evaluated as “fair/good” for experience and past performance, and Kulak’s, at a price of \$2,448,000, which was evaluated as “good/good.” The lowest-price proposal that received a higher overall technical rating was one submitted by [Deleted], at a price of \$2,580,000, which was evaluated as “good/outstanding.”

In making his award determination, the contracting officer noted that the Kulak proposal was the lowest-price proposal that received a consensus rating of “good/good” on experience and past performance. The contracting officer determined that the price premium associated with the [Deleted] proposal that received a higher overall technical evaluation was not warranted since it did not reflect a “significant specific benefit.” Agency Report (AR), Tab 20, Source Selection Document, at 6. The contracting officer concluded that the strengths reflected in the Kulak proposal warranted payment of the \$708,000 cost premium compared to the [Deleted] proposal, as well as the lesser cost premium compared to the similarly rated ERKA proposal. Id. at 6-7. Accordingly, award was made to Kulak and, after receiving a debriefing, ERKA filed this protest with our Office.

PROTEST ALLEGATIONS

ERKA contends that “the Contracting Officer did not correctly apply the criteria set forth in the Solicitation and failed to provide a rational, defensible basis for awarding the [c]ontract to an offeror other than ERKA, the low bidder by 12.5 [percent], and an established construction company that has extensive, recent experience in performing several similarly complex construction projects in the area of Incirlik Air Base.” Protest at 3. In particular, ERKA objects that in determining relevant experience the agency improperly applied an undisclosed “conjunctive three-factor matching test,” Protest at 9-10, contending that:

the Contracting Officer erroneously required ERKA to provide that it met each factor on three separate projects before those projects merited positive consideration in the Corps’ analysis of ERKA’s experience. The Corps’ irrational approach amounted to an undisclosed invitation to bid that was, in essence, directed only to construction companies that have built three separate \$1 million warehouses over the past five years. The Corps’ insistence on applying the Solicitation’s three experience factors conjunctively as a rigid, three-factor matching test more than likely eliminated nearly every construction company in the world.

Protest at 11.

The protester further alleges that the agency “mistakenly ignored the significant price difference between ERKA and the selected offeror.” Protester’s Comments at 1.

EXPERIENCE EVALUATION

The evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing protests challenging an agency’s evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency’s evaluation only to ensure that it was reasonable and consistent with the solicitation’s evaluation criteria, and with procurement statutes and regulations. Valenzuela Eng’g Inc., B-283889, Jan. 13, 2000, 2000 CPD ¶ 1 at 4. A protester’s mere disagreement with the agency’s evaluation does not render it unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454 at 5.

With respect to ERKA’s allegation that the agency improperly applied a “conjunctive” test as to the three listed experience factors, this “conjunctive” evaluation is

consistent with the solicitation provision that relevance would be evaluated in terms of satisfying all of these factors and the provision, noted above, which explicitly states that the number of relevant projects would be used as the basis to evaluate depth of experience. Accordingly, in evaluating experience represented by the projects listed in the offerors' proposals, the TEB considered whether each of the projects listed met the RFP size, complexity and function factors. Offerors that listed a greater number of more relevant projects were evaluated as having more depth of experience, consistent with the RFP evaluation scheme.

While ERKA contends that the agency simply discounted projects that did not satisfy all three factors, the record reflects otherwise. The TEB members and the contracting officer considered the listed experience with respect to all three factors; offerors that listed a greater number of projects that satisfied more of the factors received higher experience evaluations than offerors who listed fewer projects satisfying the factors. ERKA's proposal listed numerous projects, only two of which appeared to meet the \$1,000,000 project size threshold. However, the agency recognized that only one actually met the size threshold because the second project was an indefinite-delivery/indefinite-quantity paving contract which was for numerous smaller projects. AR, Tab 20, Source Selection Document, at 6. ERKA's BX Shopping center project, the only listed project that met the size threshold, also met the complexity requirements, but was evaluated as not meeting the industrial function criterion. The other smaller projects that ERKA listed were recognized to the extent that they encompassed similar complexity and function, but on balance they were considered less relevant because of their relatively low award amounts. As a result, ERKA's proposal was evaluated as only "fair" under experience. AR, Tab 18, TEB Synopsis, at 3. In contrast, Kulak listed six projects that met the size and complexity criteria. As a result, Kulak's proposal was evaluated as "good" for experience. In our view, this "conjunctive" application of the RFP experience criteria reflects an appropriate weighing and balancing of the specifically listed experience factors, consistent with the evaluation scheme set forth in the solicitation.

ERKA also objects that its experience is actually "indistinguishable from (or even better than) Kulak's [e]xperience with respect to this project." Protester's Comments at 7. In this regard, ERKA explains that its BX project, which was evaluated as meeting the size and complexity factors, but not the industrial function factor, actually included the requisite industrial features. Protester's Comments at 8. However, while ERKA now contends that the BX project included construction of a warehouse facility, including a conveyor belt system and other industrial features, *id.*, this information was not provided in ERKA's proposal under the project description. ERKA believes that the agency should have known that this was the case because the project was constructed on the same base where the warehouse to be constructed is located. However, in this regard, the RFP instructed offerors to submit descriptive information on projects to enable evaluation of the specified features, RFP § 00100 ¶4, and further required offerors to submit an information

sheet for each listed project which called for a description of the nature and scope of the contract work.

An agency's evaluation is dependent upon information furnished in a proposal, and it is the offeror's burden to submit an adequately written proposal for the agency to evaluate. Chant Eng'g Co., Inc., B-279049, B-279049.2, Apr. 30, 1998, 98-2 CPD ¶ 65 at 7. It was ERKA's responsibility to provide sufficient information in its proposal, as was required by the RFP, regarding the nature of the listed project experience to enable a meaningful review of the offeror's experience. ERKA failed to do so, and our Office will not entertain the protester's complaint that it was entitled to evaluation credit simply because it believes that the agency should have been aware of the omitted information.

ERKA's other main basis for objecting to the overall experience evaluation is predicated on its comparison of the individual evaluation sheets prepared by the three TEB evaluators with the consensus evaluation. ERKA contends that the individual evaluations of the two offerors are very close, pointing out that two of the three evaluators initially rated both offerors as "fair" under experience, and only one gave Kulak's proposal a slightly higher "outstanding" rating compared to the "good" rating he gave to ERKA's proposal. Protester's Comments at 9-11. We see no conflict between the fact that two evaluators evaluated the two proposals as "fair" and one evaluator rated Kulak's higher than ERKA's, and the fact that the rollup consensus evaluation of Kulak's experience was better than ERKA's. This consensus evaluation was not based on simply averaging the individual ratings, but was the product of a September 19 TEB meeting at which the evaluators discussed their assessments in order to develop a consensus rating for each factor. AR, Tab 2, Memorandum of Law, at 5.

Agency evaluators may discuss their individual evaluations with each other in order to reach a valid consensus score, since such discussions generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation. A consensus rating need not be the same as the rating initially assigned by the individual evaluators; rather, the final evaluation rating may reasonably be determined after discussions among the evaluators. I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 5-6. The overriding concern in these matters is whether the final ratings assigned reasonably reflect the relative merits of the proposals. Here, the TEB reached consensus evaluations of "fair" for ERKA's experience and "good" for Kulak's experience. The protester has failed to show that the agency's final evaluation judgments are unreasonable since the record establishes that the evaluations accurately reflect the relatively greater breadth and relevance of Kulak's projects. Thus, we see no basis to object to the agency's final consensus scoring.

AWARD DETERMINATION

ERKA asserts that the agency mischaracterized the 12.5 percent (\$304,857) price savings associated with its proposal compared to Kulak's as "meager," and used the faulty premise that Kulak's proposal is only "slightly higher priced," to reach an "erroneous best value award decision." Protester's Comments at 11-12. The discretion to determine whether the technical advantages associated with a higher-priced proposal are worth the price premium exists notwithstanding the fact that price is equal to or more important than other factors in the evaluation scheme. Butt Constr. Co., Inc., B-284270, Mar. 20, 2000, 2000 CPD ¶ 73 at 3. Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171 at 6. Where, as here, the RFP allows for a price/technical tradeoff, the selection official retains discretion to select a higher-priced but also technically superior submission, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10.

Here, the RFP provided that the agency would "determine the best overall value based on offeror capability, the extent to which the proposal demonstrates the Offeror is likely to perform successfully and the risks associated with contract performance." RFP § 00100 ¶ 5(2). In making his best-value determination, the contracting officer focused on a comparison of the Kulak proposal with the lowest-priced [Deleted] proposal, which had received the same "fair/good" technical evaluation as the ERKA proposal. The [Deleted] proposal's "fair" evaluation for experience was driven by the same limited number of projects meeting the relevant size threshold as was the case with ERKA, and [Deleted] experience was otherwise substantially comparable to ERKA's. AR, Tab 20, Source Selection Document, at 6. The contracting officer recognized that Kulak's "strengths were that they had significant experience in construction of similar size and complexity." Id. at 7. He also recognized that while Kulak had limited experience in industrial property, Kulak had breadth of experience, including physical fitness centers, youth activity centers, a bowling alley, a high-rise apartment building, and earthquake repair. Id. He determined that in view of Kulak's favorable references indicating that it did good work and was cooperative, and its demonstrated experience in completing projects of similar size and complexity, Kulak could complete the project with an acceptable level of risk. The contracting officer concluded that awarding to an offeror whose proposal reflected the experience and resources to perform the work at an acceptable level of risk warranted payment of the \$708,000 cost premium relative to [Deleted], with its lesser experience. Id. at 7, 10.

While focusing on a comparison with the [Deleted] proposal, the contracting officer also considered that ERKA's lower technically rated proposal reflected many small

projects, but did not include three similar projects, and that most of the work was not of similar cost magnitude or complexity. The contracting officer has explained that he determined that these projects indicated differences in overall technical ability that made the firm a higher risk than Kulak. AR, Tab 1, Contracting Officer's Statement, at 4. Further, in making the award determination, the contracting officer considered [Deleted]. AR, Tab 20, Source Selection Decision, at 6. In this regard, the contracting officer also explains that while both the Kulak and ERKA's proposal received ratings of "good" for past performance, he considered that ERKA's "good" was not as strong as Kulak's "good," in light of the uniformly favorable comments received with respect to Kulak, versus a negative comment from an ERKA reference, which indicated that ERKA's owner was not cooperative. AR, Tab 1, Contracting Officer's Statement, at 4-5. The record is clear that the contracting officer specifically considered the \$304,857 cost savings associated with ERKA's proposal, and, irrespective of the particular terms that he may have used to describe these savings, in view of the discretion afforded to the contracting officer, we see no basis to question his determination that the lower performance risk associated with the Kulak proposal warranted payment of the associated 12.5 percent price premium.

The protest is denied.

Anthony H. Gamboa
General Counsel