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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Installation Management Company

File: B-400613; B-400613.2

Date: December 31, 2008

Michael Bornstein, Esq., Bornstein Law Offices, Inc., for the protester.
Edward A. Hayes for SKE Technischer Service GmbH, an interested party.
Cheryl A. Smith, Esq., Department of Defense Education Activity, for the agency.
Frank Maguire, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's past performance and technical proposal is denied where record shows that the evaluation was reasonable.

DECISION

Installation Management Company (IMC), of Ray, Ohio, protests the Department of Defense Education Activity's (DODEA) award of a contract to SKE Technischer Service GmbH (SKE), under request for proposals (RFP) No. HE1280-08-R-0006, for the German Schools Maintenance Program (GSMP). IMC asserts that the agency improperly evaluated its past performance and technical proposal.

We deny the protest.

DODEA is responsible for providing educational services to DOD dependents. The RFP provided for award of a contract for a 1-year base period, with four 1-year options, to furnish maintenance, repair, minor construction, and custodial services under the GSMP at approximately 60 DODEA schools and administrative sites in Germany and the Netherlands.

Award was to be made to the offeror whose proposal was determined to represent the "best value" to the government on the basis of three evaluation factors: price, past performance, and technical merit (which had two subfactors, management and technical). Price was to be evaluated for reasonableness and price risk (with ratings of either low, moderate, or high risk). RFP at 61-62. Past performance was to be rated with regard to the relevance of prior contracts (with relevance ratings of highly relevant, moderately relevant, or slightly relevant) and customer evaluation ratings,

from which an overall past performance risk rating of low, moderate, unknown, high, or very high risk was derived. RFP at 62. Technical proposals were to be rated according to the offeror's technical ability to perform the contract (with adjectival ratings of outstanding, above average, satisfactory, marginal, or unsatisfactory) and the performance risk associated with the technical proposal (with risk ratings of low, moderate, or high). RFP at 63. The evaluation factors other than price, combined, were approximately equal in weight to price.

IMC, SKE, and two other offerors submitted proposals by the August 8 closing time. SKE's proposal, with an evaluated price of €91,832,013 (and a price risk rating of moderate), received a technical rating of above average with a low performance risk rating, and a past performance rating of low risk based on a relevance rating of highly relevant and a customer rating of above average. AR, exh. A, Contracting Officer's Statement (COS) at 5-7. IMC's proposal, with an evaluated price of €84,014,421 (and a price risk rating of high), received a technical rating of unsatisfactory with a high performance risk rating, and a past performance rating of moderate risk based on a relevance rating of slightly relevant and a customer rating of outstanding. Id.

The source selection authority (SSA) determined that, notwithstanding IMC's and another offeror's lower evaluated prices, given the superiority of SKE's technical proposal, its low performance risk, and highly relevant past performance, SKE's proposal represented the best value to the government. AR, exh. N, Proposal Analysis Report (PAR), at N10000009-10. Upon learning of the resulting award to SKE, IMC filed this protest with our Office.

IMC challenges virtually every aspect of the agency's evaluation, asserting that, had the evaluation been performed properly, its proposal would have received a technical evaluation rating of at least above average and a past performance rating of low risk, and would have been found to represent the best value to the government.

In reviewing a protest of an agency's evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its evaluation of competing proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

We have considered all of IMC's arguments and find that they are without merit. We address IMC's primary arguments below.

PAST PERFORMANCE EVALUATION

IMC challenges the evaluation of its past performance. In this regard, the RFP required offerors to submit information regarding relevant contracts and subcontracts performed within the 4 year period prior to issuance of the solicitation. RFP at 56-57. IMC listed nine contracts and provided resumes for several key personnel. AR, exh. A2, Past Performance Evaluation Team (PPET) Chairperson Declaration, at 1-2; PAR at N30000002; AR, exh. J3, IMC Proposal, vol. 3, Past Performance Information (IMC PP Info.). One listed contract was not considered in the evaluation because it was performed prior to the relevant 4 year period; two contracts for grounds maintenance at military bases in the U.S. were considered moderately relevant; and the remaining six contracts were deemed only slightly relevant on the basis that “the scope of work described was either unquantified or small in scope” based on the dollar value of the contracts. PPET at 2-3; PAR at N30000002. In this regard, the agency noted that, while the contract under the RFP is valued at approximately \$25 million annually, the average annual value of all of IMC’s listed contracts was only \$3.9 million. This led the PPET to conclude that there was no evidence in IMC’s proposal that IMC had performed work of the scale and level of integration of the requirement here. PPET at 3. In addition, the PPET concluded that the key personnel resumes submitted by IMC did not “reflect a strong direct connection to the scale of work required by the GSMP,” since they either did not reflect experience with work on the same scale as the GSMP or were unclear with regard to the employee’s role in performance. PPET at 3. Accordingly, IMC’s prior contracts were rated only slightly relevant overall. With regard to customer satisfaction, however, IMC’s performance was rated outstanding. *Id.* at 2. Consistent with the scheme established in the RFP for the rating of performance risk, IMC’s slightly relevant and outstanding performance ratings resulted in an overall moderate performance risk rating. *Id.* at 2-3; RFP at 62.

IMC challenges the agency’s relevance assessment on the basis that its listed contracts encompassed “a larger area logistically” than does the GSMP requirement, and that the employees whose resumes it submitted had extensive experience in performing multiple contracts simultaneously over a wide geographical area, in custodial or grounds maintenance work, or in a school environment. Protest at 4-5. IMC concludes that these considerations should have resulted in a higher relevance rating.

The evaluation of IMC’s past performance was reasonable. Our review of IMC’s past performance submission confirms the agency’s finding that most of IMC’s submitted references were for contracts that were significantly smaller in size and scope. For example, 2 of IMC’s submitted contracts (for Ft. Polk North and Whiteman Air Force Base) had an average annual value of approximately \$126,000 or less, PPET at 2-3; IMC PP Info. at 5-21, that is, significantly less than the \$25 million estimated annual value of the GSMP work. Indeed, as the agency points out, the total annual average value for all 9 contracts submitted by IMC was only \$3.9 million, less than 16 percent

of the estimated annual value of the GSMP requirement. PPET at 3. As for the protester's assertion that its submitted contracts were "geographically located throughout the United States encompassing a larger area logistically," Protest at 4, we find nothing unreasonable in the agency's conclusion that experience with geographically dispersed, but relatively small contracts is not equivalent to experience with contracts of similar scope, size and complexity to the requirement here.

Nor do we find persuasive IMC's assertion that its submitted resumes reflect experience on the part of its proposed personnel with the management of contracts similar in scope, size and complexity to the instant requirement. For example, IMC asserts that one of its submitted resumes (for its proposed contract manager), reflects "extensive experience of an amount in excess of \$39 million yearly over several contracts located throughout the United States and overseas that were performed simultaneously." Protest at 4-5 (emphasis in original). However, our review of the resume indicates that the cited figure of \$39 million was for total "sales" for the period from 1971 to 1993; this amount therefore clearly is not comparable to the \$25 million estimated annual value of the GSMP requirement. Moreover, because this alleged experience dated from 1971 to 1993, it was not within the relevant 4 year period after issuance of the RFP. IMC PP Info. at 26. Similarly, the protester refers to the resume of another of its employees that it maintains reflects current performance in a school environment exceeding the size of the GSMP. The record shows, however, that this employee was not assigned a role in IMC's proposal. See AR, exh. J4, IMC Technical Proposal (IMC Tech. Prop.), at 13-33. We conclude that the past performance evaluation was unobjectionable.

TECHNICAL EVALUATION

Technical proposals were evaluated under two subfactors--management and technical--encompassed by the technical factor. Under the management subfactor, offerors were required to describe their management approach with regard to a phase-in schedule, staffing plan and procedures, subcontractor management, communication, and quality control plan. RFP at 57-59. Under the technical subfactor, offerors were to describe their technical approach, provide a hazardous material and waste management plan, and provide an asbestos management plan. Id.

The technical evaluation team (TET) concluded that IMC's proposal "contained major errors, omissions, and deficiencies," and that IMC "did not have a clear understanding of the Government's requirements." PAR at N10000003-4. Specifically, the evaluators found four broad deficiencies in IMC's proposal: its staffing was very low, particularly for grounds maintenance and routine maintenance, and was inadequate to meet oversight requirements; its asbestos plan did not adequately address air sampling; its phase-in schedule did not meet the solicitation requirement for a 30-day phase-in period and did not address the required coordination with local agencies; and its subcontracting plan did not take

into consideration all areas where subcontract work would be required. Consequently, the TET rated IMC's technical proposal unsatisfactory and high risk. Id.; AR, exh. A2, TET Chairperson Declaration, at 2-7.

IMC asserts that the deficiencies enumerated above were unwarranted, and that its technical proposal should have been assigned a rating of at least above average. Protest at 6. We have reviewed all of IMC's challenges to the evaluation, and find that they furnish no basis for questioning the rating of its technical proposal as unsatisfactory and high risk. We discuss several of IMC's arguments below.

Adequacy of Proposed Staffing

As noted above, the agency determined that IMC's technical proposal included inadequate proposed staffing. For example, the TET found that IMC's staffing was "very low in the categories of grounds maintenance and routine maintenance." PAR at N10000003. The evaluators noted that IMC proposed only "two grounds keepers for a large district of 15 plus schools that are not all in the same geographical area." Id. Further, the TET found that IMC's technical approach did not include "adequate personnel to cover daily preventive maintenance requirements and oversight of subcontractors, custodial and grounds maintenance teams." Id. Further, the agency found that IMC's proposed staffing approach failed to account for the amount of employee leave typical for German workers. TET at 2. For example, while IMC's proposal indicated a staffing approach for routine maintenance in the Bavaria District which allowed for 3 weeks of vacation time per year, IMC Cost Proposal, AR exh. J2E at 15-17, the agency found that German employees typically receive 4 to 6 weeks of vacation per year. TET at 2.

IMC asserts that its proposed staffing was adequate in light of its technical approach. For example, IMC notes its plan to meet grounds maintenance staffing requirements through either a specifically allocated grounds maintenance team member or the cross-utilization of routine maintenance or custodial workers. Protest at 6; see, e.g., IMC Tech. Prop., at 50, 57-59.

While IMC believes its staffing should have been deemed adequate, its arguments fail to establish that the agency's concerns were unreasonable. For example, notwithstanding IMC's proposed cross-utilization approach, neither that approach nor the proposal of specifically allocated grounds maintenance team members, on its face, addressed the relatively small number of personnel proposed to perform this work. We note, in this regard, that IMC's proposed staffing levels were significantly lower than those proposed by the awardee--overall, while SKE proposed a total of 32 FTEs for grounds maintenance, IMC proposed only 6.61 FTEs for the same requirement. SKE Tech. Prop. at 4-25; IMC Tech. Prop. at 59. As the agency points out, IMC's reliance on cross-utilization of personnel is a shortcoming under these circumstances, since cross-utilization presupposes that adequate staffing was

proposed for routine and preventive maintenance, such that personnel would be available when grounds maintenance requirements arise. The agency found that this was not the case, and IMC has not shown otherwise. See Aerostat Servs. P'ship, B-244939.2, Jan. 15, 1992, 92-1 CPD ¶ 71 at 5-6 (agency reasonably found protester's proposal unacceptable where proposal did not adequately explain how staff needed continually for particular duties would also perform unrelated tasks that would necessarily divert their attention, time, and energy).

As a further indication of IMC's inadequate staffing levels, the agency noted the very extensive list of responsibilities assigned to the Hausmeister at each school, including such varied responsibilities as leading grounds maintenance, custodial, and lunchroom teams; performing preventive maintenance and related tasks; daily walk-through inspections; coordination of schedules; and cross-utilization for grounds maintenance.¹ TET at 4. The agency questioned whether a single Hausmeister could have the "time or expertise" to perform these varied duties, and notes that IMC's proposal makes no provision for backup personnel in the case of absence of the Hausmeister. Id. at 5. IMC asserts that the routine maintenance schedule set forth in its technical proposal is "not a schedule that would necessitate the Hausmeister's presence being immediately required." IMC Comments at 8. In IMC's staffing plan, however, the Hausmeister is described as having responsibility for "each school's day-to-day routine maintenance operations and repair tasks, as well as other periodic tasks"; is to "direct, schedule and perform all preventative maintenance and related tasks"; and is to "directly take a hands-on approach to perform [his or her] tasks." IMC Tech. Prop. at 23. In these circumstances, we think it was reasonable for the agency to question whether the Hausmeister would be able to perform all of the numerous, varied duties assigned under IMC's staffing approach.²

¹ We further note the TET's concern that since the Hausmeister is not scheduled to arrive at the school until 10:30 a.m., he or she would not be able to supervise snow removal, which must be accomplished before school opening. IMC Tech. Prop. at 50-51; TET at 3; PAR at N10000003. In its comments on the agency report, the protester concedes that it "agree[s] with the agency questioning the issue of Snow Removal," but asserts that "if the Agency had questions regarding grounds maintenance and didn't intend to fully read IMC's proposal it should have asked for clarification from IMC regarding its proposal." The RFP, however, provided for award without discussions, and no discussions were held. RFP at 52. See Leader Communications Inc., B-298734, B-298734.2. Dec. 7, 2006, 2006 CPD ¶ 192 (protester had responsibility to provide "within the four corners of its proposal" information necessary for the agency to properly evaluate its proposed approach).

² IMC asserts that its staffing levels are supported by an industry cost study--the American School and University 35th M&O Study. However, the agency points out that this cost study "concerns actual staffing and expenditures at schools in the U.S.," and explicitly reflects "generally insufficient investment in facilities

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Quality Control Plan

The TET found that IMC's quality control approach did not provide for sufficient quality control staffing to ensure adequate oversight. In this regard, the agency noted that IMC had proposed to use middle managers and workers in a quality control role, which the agency determined would not provide appropriate oversight, since the middle managers would in effect be evaluating themselves. PAR at N10000004; TET at 6-7.

IMC challenges the agency's concern, noting that its proposal provided for a "quality control manager" who will instruct supervisors and managers to ensure that they exceed accepted standards of performance, and asserting that its proposal does not provide for inspections by workers below the Hausmeister-level. Protest at 11-12. As noted by the agency, however, IMC's proposal specifically abjured "separating Quality Control personnel and production personnel" and instead proposed to "empower all of the production employees as quality control staff." IMC Tech. Prop. at 37-38. In these circumstances, we find that the agency could reasonably conclude that IMC's proposal provided for "forcing the QC function down" such that managers would be responsible for evaluating their own performance, which the agency reasonably viewed as a weakness. TET at 6.

Asbestos Management Plan

The TET found that IMC's asbestos management plan failed to address air sampling in a way that demonstrated an understanding of procedures mandated under the Asbestos Hazard Emergency Response Act of 1986 (AHERA), 15 U.S.C. §§ 2651 et seq. (2006). IMC generally asserts that it provided an adequate asbestos monitoring plan. However, we find that the record supports the agency's evaluation. In this regard, the RFP required that offerors address compliance with AHERA and air sampling requirements in their asbestos management plan. RFP at 58-59. IMC's asbestos management plan was found to address air sampling in only a perfunctory way, merely stating, without elaboration, that IMC would "take air-monitoring readings in addition to those furnished by any asbestos contractor used by IMC, as a final reading to ensure the clean air quality in any asbestos removal area." IMC Tech. Prop. at 96. The agency noted that, among other omissions, IMC's proposal did not address the difficulty of following required air sampling protocols in Germany; in that country, there is no legal requirement for Transmission Electron Microscopy testing and, therefore, there are few, if any, laboratories in Germany to perform the necessary tests, resulting in the need to send most samples to the U.S., with

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infrastructure" in U.S. schools. TET at 2-3. IMC has not shown that the study is relevant to staffing for schools located outside the U.S.

appropriate accountability. See TET at 3-4. Given IMC's failure to address this issue, we think the agency could reasonably find IMC's asbestos management plan to be inadequate.

In sum, we find that the deficiencies identified by the agency in IMC's technical proposal were reasonable and supported the agency's conclusion that IMC's proposed approach was unsatisfactory and high risk.³

The protest is denied.

Gary L. Kepplinger
General Counsel

³ IMC asserts that, since its proposal was scored "unsatisfactory," the agency effectively determined the firm to be nonresponsible; since IMC is a small business, IMC contends, the agency was required to refer this determination to the Small Business Administration (SBA) for a certificate of competency (COC) review. However, SBA's COC procedures are only applicable to requirements that will be performed within the U.S. 13 C.F.R. § 125.5(b)(1)(ii) (2008). Since the contract here will be performed in Germany and the Netherlands, the COC procedures are inapplicable here.