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

**Comptroller General  
of the United States**

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## **Decision**

**Matter of:** MW-All Star Joint Venture

**File:** B-291170.4

**Date:** August 4, 2003

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Mitchell W. Quick, Esq., Michael Best & Friedrich, for the protester.  
Christopher Solop, Esq., Ott & Purdy, for Madison Services, Inc., an intervenor.  
Capt. Charles K. Bucknor, Jr., Department of the Army, for the agency.  
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Agency reasonably assigned neutral rating for past performance of mentor-protégé joint venture offeror, where solicitation provided that a neutral rating would be assigned to firms with no past performance and, although mentor firm had performance history, the joint venture itself did not.
  2. Agency reasonably rated awardee's performance risk lower than protester's where awardee had performed contracts similar to that contemplated by the solicitation while joint venture protester had not, and evaluation was otherwise in accordance with solicitation.
  3. Agency reasonably evaluated realism of awardee's proposal where it determined that, although awardee's total price was lower than that of other proposals, its prices for four of the five most ordered items were in line with the incumbent's, and its lower prices resulted from cost saving measures and lower profit.
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### **DECISION**

MW-All Star Joint Venture protests the award of a contract to Madison Services, Inc. under request for proposals (RFP) No. DAPC50-02-R-0029, issued by the Department of the Army for maintenance services for military family housing at military installations in Hawaii. MW-All Star complains that the Army misevaluated its and Madison's past performance, and the price realism of Madison's offer.

We deny the protest.

The solicitation, for award of a fixed-price contract, provided for a “best value” evaluation based on three factors: performance risk, technical and price. The performance risk factor was comprised of two subfactors—past performance and experience. Proposals were to receive color/adjectival ratings under the performance risk factor (including the past performance and experience subfactors) and the technical factor.<sup>1</sup> Price was to be evaluated to determine if it was reasonable, realistic and consistent with the proposal, for purposes of assessing whether the offeror understood the project and would be able to perform successfully.<sup>2</sup>

MW-All Star is a joint venture formed under the Small Business Administration’s (SBA) mentor-protégé program. See 13 C.F.R. § 124.520 (2003). It is comprised of MW Services, Inc., a small disadvantaged business, and All Star Services Corporation, a large business. Under the firms’ joint venture agreement, All Star, as the mentor firm, would be involved in performing the contract and would assist MW, the protégé firm, in gaining the experience and training necessary to compete for and perform federal contracts in the future. All Star would provide management support under the contract, while MW would be the managing partner of the joint venture, with responsibility for managing and supervising project performance. Joint Venture Agreement at 2-3.

Following the evaluation, MW-All Star’s proposal was rated gray for past performance, yellow for experience, yellow for performance risk and green for technical.<sup>3</sup> In assigning a gray (neutral) rating to the MW-All Star proposal for past

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<sup>1</sup> The possible ratings were: blue (very low risk/exceptional), green (low risk/highly successful), yellow (moderate risk/acceptable), pink (high risk/minimally acceptable), red (very high risk/unacceptable), or gray (unknown risk/neutral).

<sup>2</sup>This procurement was the subject of three earlier protests. Initially, Atlantic Coast Contracting protested the terms of the solicitation. That protest (B-282075) was dismissed because Atlantic failed to respond to the agency report. Subsequently, the agency evaluated the proposals received and awarded a contract to MW-All Star. Two protests were filed against that award decision, by Madison Services, Inc. and KIRA, Inc. (B-282075.2, B-282075.3), in response to which the agency decided to reevaluate the proposals and make a new award determination. MW-All Star’s current protest involves the award to Madison following that reevaluation. In some instances, MW-All Star attempts to rely on the first evaluation to support its protest allegations. However, that evaluation is not relevant in light of the fact that the award to Madison was based solely on the reevaluation. See SDS Int’l, B-285822, B-285822.2, Sept. 29, 2000, 2000 CPD ¶ 167 at 7 n.2.

<sup>3</sup> The Source Selection Authority (SSA) assigned these ratings to MW-All Star’s proposal after she reviewed the evaluations of the source selection evaluation board (SSEB), and disagreed with them. MW-All Star complains that the SSA could not  
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performance, the SSA considered that, while All Star had substantial past performance, the MW-All Star joint venture entity had none. Source Selection Decision (SSD) at 17. Likewise, in rating the joint venture's proposal yellow (acceptable) for experience, the SSA took into account All Star's substantial experience, but determined that, because MW was a protégé with no experience, the joint venture proposal represented a moderate risk. Id. The SSA averaged the gray past performance rating and the yellow experience rating for a yellow performance risk rating. Id. Madison's proposal, which offered the lowest price, was rated green for past performance, green for experience, green for performance risk, and green for technical. The Army made award to Madison based on its lower price and superior performance risk and technical ratings.

#### PERFORMANCE RISK EVALUATION--MW-ALL STAR

MW-All Star protests the evaluation of its proposal under the past performance and experience subfactors, as well as its overall rating under the performance risk factor, arguing that the evaluation did not properly reflect the significant past performance and experience of All Star, the mentor firm.

In reviewing a protest against an agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2.

#### Past Performance

MW-All Star argues that the Army improperly failed to consider the past performance of All Star in rating MW-All Star's proposal under the past performance factor, as required by the solicitation. The Army disagrees, asserting that, while the solicitation provided that it could consider the prior work record of the project manager and other proposed management personnel when evaluating experience, only the offering entity's past performance--in this case, the joint venture itself--was to be considered in evaluating past performance.

We agree with the Army. With respect to performance risk, the solicitation instructions provided:

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ignore the evaluations of the SSEB. However, source selection officials are not bound by the evaluation judgements of lower level evaluators; they may come to their own reasonable evaluation conclusions. EBA Eng'g, Inc., B-275818, Mar. 31, 1997, 97-1 CPD ¶ 127 at 10. As discussed below, the SSA's evaluation was reasonable.

Performance Risk (Experience and Past Performance): . . . The offeror shall provide information pertaining to current and previous Federal, State, Municipal, or commercial contracts. . . .

Offerors that are newly formed entities without sufficient prior contracts may also include contracts and subcontracts for the proposed Project Manager or other management personnel.

RFP § L.14 (B)(2)(a). The evaluation factors provided:

Past Performance-- . . . The absence of past performance will result in a neutral rating in which the offeror will not be rated favorably or unfavorably. However, a neutral rating may affect the offeror's overall ranking.

Work Experience-- . . . Experience of the offeror's proposed project manager and other key personnel may be considered for those newly formed entities that do not have previous work experience.

RFP § M.4 (1) and (2). We think it is clear from these solicitation provisions that past performance was to be rated based on the past performance of the offeror itself, here, the joint venture. More specifically, while the instructions permitted offerors to include past contracts for management personnel in their performance risk proposals, the evaluation provision only stated that such contracts would be considered when evaluating experience; the RFP nowhere stated that past performance of other than the offering entity would be considered in the past performance evaluation. Thus, since the MW-All Star did not have any past performance as a joint venture, it was reasonable for the Army to rate MW-All Star's proposal gray in that area.

MW-All Star maintains that the agency's failure to factor All Star's past performance into the joint venture's past performance rating was inconsistent with Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii). However, this provision provides only that past performance evaluations "should" take into account past performance information regarding "predecessor companies, key personnel who have relevant experience, or subcontractors . . .," when relevant. We have held that this provision permits, but does not require, procuring agencies to consider the experience and past performance of these additional entities and personnel in evaluating an offeror's past performance. Olympus Bldg. Servs., Inc., B-282887, Aug. 31, 1999, 99-2 CPD ¶ 49 at 4; see also TyeCom, Inc., B-287321.3, B-287321.4, Apr. 29, 2002, 2002 CPD ¶ 101 at 7 (in appropriate circumstances, a procuring agency may, but is not required to,

consider the past performance of other than the performing entity).<sup>4</sup> Accordingly, since the solicitation did not provide that the agency would consider the past performance of each member of a joint venture, the agency properly rated MW-All Star's proposal gray for past performance based on the joint venture's lack of a performance history.<sup>5</sup>

## Experience

MW-All Star's proposal was rated yellow under the experience subfactor; the protester maintains that this rating failed to accord sufficient weight to All Star's substantial relevant experience. This argument is without merit. In reaching its rating, the agency considered that All Star's management team had over 8 years of experience, but that MW, the protégé firm, had no experience. SSD at 17. The SSA determined that All Star would provide stable leadership for the contract, and had the necessary experience, management and personnel to ensure acceptable performance while MW assisted and learned the process, but that there still was a moderate amount of risk due to MW's lack of experience. *Id.* We find nothing unreasonable in the SSA's conclusions. Notwithstanding All Star's substantial experience, we think the SSA reasonably could conclude that MW's lack of experience presented a moderate risk of performance problems in light of its substantial management and performance obligations under the contract; an overall yellow/moderate risk/acceptable rating was appropriate in light of this legitimate concern. See Urban Meridian Joint Venture, *supra*. MW's disagreement does not establish otherwise.

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<sup>4</sup> MW-All Star asserts that, by downgrading its proposal under the performance risk factor because of MW's lack of experience and past performance, the Army violated the SBA's mentor-protégé requirements. However, MW-All-Star has pointed to, and we have found, nothing in those regulations that prohibits an agency from basing a past performance or experience evaluation on the performance and experience of the offering entity, or that requires that the mentor firm's past performance and experience be accorded a particular amount of weight in the evaluation. See 13 C.F.R. §§ 124.513 and 124.520.

<sup>5</sup> We note that, in any event, the contemporaneous source selection documentation shows that the SSA would have rated MW-All Star's proposal yellow (acceptable) for the performance risk factor even had she considered each member of the joint venture separately. In this regard, she explains in the SSD that she would have rated All-Star blue (exceptional), but MW red (unacceptable). She states that combining these ratings would have resulted in a yellow performance risk rating for the joint venture, reflecting the fact that MW and the joint venture both lacked past performance and experience. SSD at 17.

## PERFORMANCE RISK EVALUATION--MADISON

Madison's green (good) ratings for past performance, experience and overall performance risk were based on Madison's prior performance of four military family housing contracts for properties with between 1,500 and 2,500 dwelling units, and past performance references that rated Madison exceptional for three of those contracts and above average for the fourth. Agency Report at 17. MW-All Star maintains that Madison should have received a lower performance risk rating than MW-All Star, because the solicitation defined relevant experience as maintaining over 2,000 units, and Madison has performed only one contract, as a subcontractor, that meets that standard. MW-All Star notes that, in contrast, All Star has extensive experience performing military family housing contracts with more than 2,000 units.

The evaluation of Madison's performance risk was reasonable. The RFP instructions advised offerors to provide information pertaining to contracts performed within the past 3 years that are relevant to the scope, effort, and magnitude of this contract, and that it would "rate the relevancy of past references provided (i.e. similar end items, family housing maintenance on at least 2,000 units, multiple projects concurrently accomplished, and efforts with similar services)." RFP § L.14 (B)(2). While the protester reads the reference in this provision to 2,000 units as precluding the agency from considering contracts covering fewer units, we find no basis for such a narrow reading. The provision did not expressly state that only contracts covering 2,000 or more units would be deemed relevant, and it appears to have been listed only as an example of the most relevant experience an offeror could demonstrate. This view is supported by RFP § M, which stated that "[w]ork experience that is not comparable to the effort required by this project will result in a higher performance risk rating." RFP § M.4 (a)(2). In other words, the agency was not required to ignore prior contract efforts that were not comparable to the work under the RFP but, rather, would assign lower ratings for such work depending upon its comparability; the agency did downgrade Madison by rating its proposal green, not blue, in this area. Further, as discussed above, while All Star had substantial past performance and experience, the joint venture's yellow experience and performance risk ratings also reasonably reflected MW's and the joint venture's lack of past performance and experience. Madison's past performance and experience, on the other hand, were fully attributable to it. Accordingly, there was nothing unreasonable in the Army's rating Madison's proposal superior to MW-All Star's under the performance risk factor. See Alpha Data Corp., B-291423, Dec. 20, 2002, 2003 CPD ¶ 18 at 4.

## PRICE REALISM--MADISON

MW-All Star protests that the Army did not properly evaluate the realism of Madison's price proposal, which is 17 to 19 percent lower than those of the other offerors.

Price realism is not generally considered where, as here, the agency intends to award a fixed-price contract, because such a contract places the risk and responsibility for all contract costs and resulting profit or loss on the contractor. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4. An agency may, however, as the agency did here, provide for a price realism analysis for such purposes as assessing offerors' understanding of the solicitation or the risk inherent in their proposals. In such cases, the nature and extent of the agency's price realism analysis are ultimately within the agency's discretion. Id.

The price realism analysis here was reasonable. In reviewing Madison's proposal, the agency recognized that Madison's price was substantially lower than those of the other offerors, and sought to determine the reason for the disparity. In doing so, the agency compared Madison's prices for the five most frequently ordered items with those of the other offerors and found that Madison's prices were in line with the incumbent's for four of the items. SSD at 18, 20. The Army believed this indicated that Madison's prices were fair and reasonable and reflected the company's understanding of pricing in the industry, as well as its experience. The agency further determined that Madison's lower pricing reflected cost saving measures such as [DELETED]. SSD at 20. In addition, the agency noted that, while profit and overhead for these services are usually charged at a 20-25 percent rate [DELETED]. Id. Finally, the agency noted that Madison had a proven record of satisfactory performance on contracts for which it had bid low prices. Id. MW-All Star does not challenge the agency's findings regarding Madison's low pricing, and we find that the agency's conclusions were reasonable. The protester does assert that the agency was required to conduct, essentially, an item-by-item analysis of Madison's price. However, given the fixed-price nature of the contract, such a detailed analysis was not required. Star Mountain, Inc., supra.; Integrity Mgmt. Servs., Inc., B-283094.2, May 3, 2000, 2000 CPD ¶ 67 at 4-5.

The protest is denied.

Anthony H. Gamboa  
General Counsel