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**Comptroller General  
of the United States**

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

# Decision

**Matter of:** Innovative Management, Inc.

**File:** B-292818; B-292818.2

**Date:** November 7, 2003

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Johnathan M. Bailey, Esq., Law Offices of Theodore M. Bailey, for the protester. Glen C. Etelson, Esq., and Deborah L. Moran, Esq., Shulman, Rogers, Gandal, Pordy & Ecker, P.A. and Lawrence J. Sklute, Esq., Sklute & Associates, for Choctaw Management/Services Enterprise, an intervenor.

Clarence D. Long, III, Esq., and David M. Hill, Esq., Department of the Air Force, for the agency.

Paul E. Jordan, 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. In past performance confidence assessment, where relevance of offerors' performance was the primary basis for the rating, agency reasonably evaluated awardee's performance record—with more relevant contracts—superior to the protester's despite offerors' similar records of very good to excellent performance on their respective contracts.

2. In evaluation of awardee's proposed professional compensation plan, where agency considered that awardee's labor rates were lower than those paid under current contract, but determined that overall compensation plan, including some benefits not enjoyed by current employees, was comparable to that of the current contractor, agency reasonably evaluated awardee's plan favorably under requirements of Federal Acquisition Regulation § 52.222-46.

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## **DECISION**

Innovative Management, Inc. (IMI) protests the award of a contract to Choctaw Management/Services Enterprise (CMSE) under request for proposals (RFP) No. F41622-03-R-0003, issued by the Department of the Air Force for Family Advocacy Program (FAP) services. IMI challenges the evaluation and award determination.

We deny the protest.

The RFP was issued as a competitive section 8(a) set-aside for personal services to supplement the FAP staff at Air Force medical treatment facilities in the eastern continental United States. The FAP’s mission is to prevent and treat child and spousal abuse utilizing qualified, masters-level clinical social workers, U.S.-licensed registered nurses, and other FAP staff personnel. The RFP contemplated the award of a fixed-rate, labor hours contract for a base year with 4 option years.

Proposals were to be evaluated under four factors: mission capability, past performance, proposal risk, and price, with the non-price factors combined significantly more important than price. The mission capability and proposal risk factors were further divided into the following subfactors: corporate experience; recruitment/retention plan; and management. Proposals were to be rated under the technical factors and subfactors as blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable. Proposal risk was to be evaluated as high, moderate, or low. Past performance information was to be evaluated on the basis of relevance—very relevant, relevant, somewhat relevant, or not relevant—and based on this evaluation, the agency was to make an overall confidence assessment—high confidence, significant confidence, confidence, neutral/unknown confidence, little confidence, or no confidence. Award was to be made on a “best value” basis.

Five firms, including IMI and CMSE, submitted proposals. After review of the proposals, the agency decided to award the contract on the basis of initial proposals without discussions. The final evaluations for IMI and CMSE were as follows:

	<b>IMI</b>	<b>CMSE</b>
<b>Mission Capability</b>		
<b>Corporate Experience/Risk</b>	Blue/Low	Blue/Low
<b>Recruitment/Retention Plan/ Risk</b>	Green/Low	Green/Low
<b>Management/Risk</b>	Blue/Low	Blue/Low
<b>Past Performance</b>	Signif. Confidence	High Confidence
<b>Evaluated Price</b>	\$1,495,252	\$1,489,194

The source selection authority (SSA) conducted an integrated assessment of the offerors’ proposal ratings and prices. Based on his review, he determined that CMSE’s proposal’s higher past performance rating and lower price made it the best value to the government as compared to IMI’s proposal. After receiving notice of the award and a debriefing, IMI filed this protest.

## EVALUATION OF CMSE'S PAST PERFORMANCE

IMI asserts that the agency erred in evaluating its and CMSE's past performance by giving CMSE a higher confidence rating despite the two firms' "essentially identical past performance records." Protester's Comments at 2. In this regard, because both firms were scored as excellent for past performance on all but one contract--and scored as very good on those--IMI concludes that it was unreasonable for the agency to rate CMSE's past performance as high confidence, but IMI's as only significant confidence.

In reviewing a protest of an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2.

The evaluation here was unobjectionable. Contrary to the protester's view, how well an offeror performed on a past contract was not the sole focus of the past performance confidence assessment. Rather, the threshold consideration was the relevance of the offerors' past performance from the standpoint of the magnitude of effort and complexity as compared to this acquisition. RFP ¶ M002(e). In this regard, while IMI submitted four contracts under which the performance was rated exceptional, two, performed by its team member, were evaluated as highly relevant as to magnitude and staffing, and two were evaluated only as relevant due to the lesser magnitude of one and the more limited staffing and site requirements of the other. IMI's rating under the fifth contract, also performed by its team member, was very good, but that contract was assessed as only somewhat relevant because it involved a single social worker. On the other hand, CMSE submitted five contracts, all of which it performed itself as the prime contractor, and all of which were rated as highly relevant because they involved the same services as, and were similar in scope to, this acquisition. The performance under four was rated exceptional and under one as very good. Thus, while the offerors' quality of performance was similar, CMSE's past performance record included more relevant contracts. This being the case, the agency reasonably assigned CMSE's proposal a confidence level of high, while assigning IMI's proposal the lower rating of significant confidence.

IMI also asserts that the agency ignored negative information, and a satisfactory performance rating, contained in a contractor performance assessment report (CPAR) issued for CMSE's FAP-Europe contract, which encompassed the same services as this acquisition. In IMI's view, the CPAR rating is inconsistent with CMSE's high confidence past performance rating.

IMI's assertion is without merit; the agency considered the CPAR in its evaluation and reasonably arrived at CMSE's overall confidence rating. While the CPAR indicated that CMSE had failed to perform appropriate background checks and failed to timely complete the credentialing process, the CPAR assessing official stated that, once the problems were brought to CMSE's attention, the firm assisted in

resolving them and expedited the credentialing process to minimize downtime. Agency Report (AR), Tab 11. In addition, CMSE's response comments indicated that the problems may have resulted from the agency's lack of established procedures. Id. As part of the past performance evaluation, the RFP provided for the agency to take into account the number and severity of any performance problems, as well as the appropriateness and effectiveness of any corrective actions. RFP ¶ M002(e). Here, the agency considered all CPAR comments and the corrective action taken by CMSE, and concluded that the firm had demonstrated the ability to overcome the problems. Supplemental AR at 8. Further, since the CPAR concerned only 1 of the 4 years of performance, and the entire performance period was rated very good on the relevant past performance questionnaire, the agency concluded that the questionnaire represented the more current and comprehensive rating for this contract. Id. In view of the CPAR's limited coverage, and the agency's finding that CMSE had effectively and efficiently identified and resolved its problems, we think the agency reasonably evaluated CMSE's proposal with an overall high confidence rating.

#### EVALUATION OF CMSE'S COMPENSATION PLAN

The RFP required offerors' price proposals to include a total compensation plan setting forth base salaries and fringe benefits proposed for professional employees, as prescribed in Federal Acquisition Regulation (FAR) § 52.222-46. RFP ¶ L030, § 3.3.2.1(6). The referenced FAR provision calls for an evaluation of each offeror's compensation plan to ensure that it reflects a sound management approach and understanding of the contract requirements. FAR § 52.222-46(a). Proposals envisioning compensation levels lower than those of predecessor contractors for the same work were to be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required, competent professional service personnel. FAR § 52.222-46(b). The provision warns that lowered compensation rates could indicate a lack of sound management judgment and lack of understanding of the requirement. Id.

IMI asserts that the agency failed to properly evaluate CMSE's compensation plan, noting that, while the offerors' overall prices are close, CMSE proposed loaded hourly rates for at least two positions that are lower than those paid by the incumbent firm, IMI's team member.<sup>1</sup> In IMI's view, the agency failed to properly

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<sup>1</sup> IMI also asserts that its plan is superior to CMSE's because it included different salary rates for the different performance sites, while CMSE's plan only included a single rate for each position. There was no requirement that offerors' compensation plans include separate salary rates for each performance site. The RFP required only a single loaded rate to be proposed for each labor category, regardless of the place of performance. RFP ¶ L030, ¶ 3.3.2.1(5.3). Thus, while IMI's plan shows greater detail, it does not make CMSE's plan inferior or unacceptable.

evaluate the negative impact of CMSE's lower compensation packages.<sup>2</sup>

The purpose of a review of compensation for professional employees under FAR § 52.222-46 is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. ELS Inc., B-283236, B-283236.2, Oct. 25, 1999, 99-2 CPD ¶ 92 at 11.

Here, in its price evaluation, the agency compared each offeror's first-year fully burdened labor rates with the 2003 rates being paid under the incumbent contract and found all of them to be realistic. AR, Tab 15, at 3. In evaluating the offerors' plans under FAR § 52.222-46, the contracting officer found the following with regard to CMSE's:

The average unburdened labor rates for each of the labor categories is slightly lower than the rates being paid under the current contract. However, it appears that the overall compensation plan is comparable to the current contractor because of additional benefits not currently enjoyed by the employees under the current contractor. [CMSE] provides for . . . continued education for covered employees; the contractor provides for more leave time than the current contractor provides (two weeks vacation and two weeks of sick leave); and the contractor allows for comparably valued health and welfare benefits for the employees. Although the specific benefits vary from the current contractor's benefits, [CMSE's] overall compensation plan appears to be realistic, and provide[s] a sound management approach that I believe can result in an uninterrupted high-quality level of work.

Memorandum for Record, July 15, 2003, ¶ 5. Having made the comparison of CMSE's rates with those under the incumbent contract, the contracting officer recognized the difference in compensation and benefits, but determined that they

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<sup>2</sup> IMI also asserts that CMSE's lower compensation rates should have negatively affected the evaluation under the recruitment/retention plan subfactor. In this regard, it notes that CMSE's plan offered fewer benefits (e.g., life insurance and pension) than IMI's. IMI's assertion is without merit. While offerors were required to describe methods of retaining employees, including benefits, the evaluation criteria for this subfactor did not include review of salary rates or specific aspects of the benefit plan. In evaluating CMSE's proposal as meeting the minimum requirements under this subfactor, the agency found that CMSE had demonstrated it had the necessary experience and network capability to effectively recruit qualified personnel, and had included a sound and realistic approach to achieve and maintain a minimum of 95 percent staffing throughout the contract performance period. AR, Tab 16, at 12.

were comparable to the current contractor's. Proposed rates may be found reasonable where, as here, they are evaluated as comparable, although not identical to the rates on which the comparison is based. See TRW Inc., B-234558.2, Dec. 18, 1989, 89-2 CPD ¶ 560 at 6. While IMI disagrees with the contracting officer's judgment, this does not provide a basis for finding the evaluation unreasonable.<sup>3</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>3</sup> Moreover, the agency states that its positive assessment of CMSE's compensation plan has been confirmed in its contract performance. As of the October 1, 2003 performance start date, CMSE had an 87 percent recruitment rate, with only six positions unfilled. Supplemental AR at 10. Since then, CMSE has filled one position; identified candidates to fill three more, and is in the process of identifying candidates to fill the fifth position. The sixth position is being held open because the incumbent employee is an active duty reservist who has been deployed. Id.