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**Comptroller General
of the United States**

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

Decision

Matter of: Government and Military Certification Systems, Inc.

File: B-413576.2; B-413875; B-413875.2

Date: December 22, 2016

Leigh Brand, for the protester.

Autumn V. Lovato, Esq., and Thomas J. Warren, Esq., Department of the Army, Corps of Engineers, for the agency.

Nora K. Adkins, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging an agency's cancellation of a solicitation is denied where the record demonstrates that the agency reasonably determined that the solicitation did not clearly reflect its needs.
 2. Protest challenging the terms of a solicitation is dismissed where the protest was filed subsequent to the deadline for the submission of quotations.
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DECISION

Government and Military Certification Systems, Inc. (GMCS), a woman-owned small business located in Washington, D.C., protests the cancellation of request for quotations (RFQ) No. W9127N-16-Q-0046 and the terms of RFQ No. W9127N-16-Q-0077, which were issued by the Department of the Army, Corps of Engineers Portland District, for a surveillance audit of the district's Engineering and Construction Division. GMCS contends that the agency improperly cancelled RFQ-0046 and that the terms of RFQ-0077 are unduly restrictive of competition.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

The Corps' Engineering and Construction Division plans, designs, and constructs projects and manages programs in support of the district's civil works mission.

RFQ-0046 at 2.¹ The solicitation sought services to provide a surveillance audit of the Engineering and Construction Division's quality management system to maintain its International Organization for Standardization (ISO) 9001:2008 certification. Id.

On August 23, 2016, the Corps issued RFQ-0046 as a commercial item procurement using simplified acquisition procedures.² The solicitation was set aside for small businesses and contemplated the issuance of a fixed-price purchase order for a 3-month period to the contractor providing the lowest-priced technically acceptable quotation. Id. at 3.

The solicitation was amended six times. As relevant to this protest, amendment No. 2 provided the following accreditation requirements:

The Contractor shall be a certifying body, an accredited member of American National Standards Institute/American Society for Quality (ANSI-ASQ) National Accreditation Board or other recognized ISO 9001 accreditation board, and serve as a certified registrar for ISO 9001. The contractor shall possess current ISO 9001 certification by the International Organization of Standards (ISO). In addition, the contractor's certificate of accreditation shall include scope codes 28 and 34 for Construction and Engineering Services for the ISO 9001 Certification Standard. . . .

RFQ-0046 amend. No. 2, at 5 (underline added). The agency received numerous questions in response to the amended solicitation. The Corps thereafter issued multiple amendments to address the vendors' concerns. With respect to the accreditation requirements, the final RFQ provided, in relevant part:

The Contractor shall be a certifying body, an accredited member of American National Standards Institute/American Society for Quality (ANSI-ASQ) National Accreditation Board or an equivalent accrediting body that is certified by the International Accreditation Forum (IAF) with an identified main scope of Management System Certification conforming to ISO/IED 17021:2011 with Option 2 as the Management System, and certification in scope codes to

¹ All citations herein are to the final amended version of the solicitation unless otherwise noted.

² On August 15, 2016, GMCS filed a protest objecting to the agency's intent to award RFQ-0046 on a sole-source basis, which our Office docketed as B-413576. GMCS withdrew its protest after the agency agreed to compete the requirement. See Agency Notice of Corrective Action, Aug. 17, 2016, at 1.

include both Code 28 for Construction and Code 34 for Engineering Services. . . .

RFQ-0046 amend. No. 6, at 5 (underline added).

The solicitation closed on September 16. GMCS submitted a timely quotation in response to the RFQ. During the agency's evaluation of GMCS' quotation, the agency discovered that GMCS did not have both of its construction and engineering services scope codes under the ISO 9001 standard. Contracting Officer (CO) Statement at 6. In this regard, GMCS' engineering services scope code was under the ISO 9001 standard for quality management, but its construction scope code was under the ISO 14001 standard for environmental management systems. Agency Report (AR), Tab 9, GMCS Technical Quotation, Scope of Accreditation.

Upon making this discovery, the agency reviewed the solicitation's terms with respect to the accreditation requirement, including the multiple amendments, and concluded that while it was not the intent of the agency to remove the scope code requirements from the ISO 9001 standard, the final RFQ language was not sufficiently specific and created an ambiguity regarding the Corps' needs. Contracting Officer Statement (COS) at 7; AR, Tab 20, Memorandum for Record, Sept. 27, 2016, at 1. Thus, the agency determined that it was necessary to cancel the solicitation and resolicit the requirement with language that clearly reflected the agency's need for a vendor to possess a certificate of accreditation in both the engineering services and construction scope codes under the ISO 9001 certification standard. Id.

On September 28, the agency cancelled the solicitation and notified vendors of the cancellation. RFQ-0046 amend. No. 7. On that same day, the agency issued a new solicitation with a revised contractor accreditation section. RFQ-0077 at 6-7. Quotations for RFQ-0077 were due by 8:00 a.m. Pacific Time on September 30. Id. at 1.

On September 30, at 2:13 p.m. Eastern Time (11:13 a.m. Pacific Time), GMCS filed its protest with our Office.

DISCUSSION

GMCS objects to the agency's decision to cancel RFQ-0046 and challenges the terms of RFQ-0077--specifically, the revised scope code requirements--as unduly restrictive of competition. The protester alleges that the Corps' decision to cancel RFQ-0046 was for the purpose of directing the award to the incumbent contractor

and to avoid an award to GMCS.³ In response, the agency asserts that it became clear during the evaluation of the vendors' quotations that the solicitation's accreditation requirement was unclear and ambiguous. The agency argues that it reasonably cancelled the RFQ because it determined that the solicitation did not clearly reflect its needs for a certifying body with accreditation in both construction and engineering services scope codes under the ISO 9001 standard. As discussed below, we deny GMCS' protest of the cancellation of RFQ-0047 and dismiss as untimely GMCS' challenge to the terms of RFQ-0077.

A contracting agency has broad discretion in deciding whether to cancel a solicitation and need only have a reasonable basis for doing so. See TaxSlayer LLC, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 6. This is true regardless of when the information first surfaces or should have been known, and even if the solicitation is not cancelled until after quotations have been submitted and evaluated, or discovered during the course of a protest. Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 4. A reasonable basis for cancellation exists and cancellation is appropriate when a solicitation does not accurately reflect the agency's requirements. Skyline ULTD, Inc., B-408961, Dec. 27, 2013, 2013 CPD ¶ 298 at 2.

The accreditation of a certifying body is the formal recognition by an independent organization that the firm is operating according to international standards and is competent to perform audits. AR, Tab 36, ISO Certification and Accreditation Website, <http://www.iso.org/iso/home/standards/certification.htm> (last visited Dec. 22, 2016). Accreditation scope codes are tied to specific ISO standards and demonstrate that the certifying body is competent to carry out the specific tasks related to the scope code. Id. Having a scope code under one ISO standard demonstrates a different kind of experience and competence than having the same scope code under a different ISO standard. Id.

As noted above, the agency revised the solicitation's accreditation standard multiple times in an attempt to address the various questions received by the vendors. The contracting officer explains that he issued amendments to remove the requirement that the certifying body itself possess the ISO 9001 certification; to specify an equivalent accreditation certified by the International Accreditation Forum (IAF); and to reduce from 6 years to 4 years the requirement that a contractor have had continual accreditation, among other things. COS at 5-6. However, while the final version of RFQ-0046 maintained the accreditation requirement that a certifying body have both construction and engineering services scope codes, the final solicitation language did not specifically state that both scope codes had to be under the ISO 9001 certification standard. Rather, the RFQ simply provided that a certifying body

³ GMCS maintains that it submitted the lowest-priced, technically acceptable quotation. Protest at 3.

possess scope code 28 for construction and scope code 34 for engineering services; it did not tie this requirement to the ISO 9001 standard. RFQ-0046 at 5. The agency maintains that it was not its intent to remove the requirement that the scope codes both be under the ISO 9001 standard. COS at 6. On this record, we agree with the agency that its final solicitation was not clear as to the requirement for a firm's accreditation.

While the protester disagrees with the agency's assertion that it needs a certifying body with both scope codes under the ISO 9001 standard, the protester has not demonstrated that the agency's explanation in this regard was unreasonable. The Corps' Engineering and Construction Division is audited and certified as a whole under the ISO 9001 standard. The ISO 9001 certification focuses on an organization's quality management system to ensure customers get consistent quality products and services. See http://www.iso.org/iso/home/standards/management-standards/iso_9000.htm (last visited Dec. 22, 2016). Because the Corps' ISO requirement is to ensure the quality management of its construction and engineering services, the agency explains that it is necessary for the certifying body to have a scope of accreditation in ISO 9001, with corresponding construction and engineering services scope codes. In this regard, the agency contends that knowledge and experience with construction and engineering services for an ISO standard other than ISO 9001, such as the ISO 14001 standard for environmental management that GMCS possesses, would not be relevant to the quality management standard the Engineering and Construction Division is striving to meet.⁴

We find the agency's rationale unobjectionable. The protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. See Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. Accordingly, we find that the agency reasonably cancelled RFQ-0046 based upon its concerns that the terms were unclear and ambiguous as to its need for specific accreditation standards.

Next, GMCS challenges the scope code requirement in the revised solicitation, arguing that the requirement is unduly restrictive of competition. As noted above, the Corps issued RFQ-0077 on September 28, and the solicitation required vendors

⁴ The agency explains that ISO 9001 for a construction program would be concerned with improving the quality management of construction services to satisfy stakeholders and customers, while ISO 14001 for a construction program would focus on environmental issues relevant to construction, e.g., how construction affects the environment, what environmental laws and regulations apply to construction efforts, and how to improve methods of construction to have less impact on the environment. COS at 8.

to submit quotations no later than 8:00 a.m. Pacific Time on September 30. RFQ-0077 at 1. GMCS filed its protest with our Office on September 30 at 11:13 a.m. Pacific Time. See Protest Email, Sept. 30, 2016, at 1.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial bids or proposals be filed before that time. 4 C.F.R. § 21.2(a)(1). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Here, GMCS' protest ground arguing against the scope code requirements in the new solicitation is untimely. In this regard, to be timely, GMCS had to file its solicitation challenge prior to the 8:00 a.m. Pacific Time submission deadline. Because GMCS filed its protest after the deadline for the submission of quotations, the protest is untimely and will not be considered by our Office.⁵

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel

⁵ GMCS filed a supplemental protest with our Office (B-413875.2) asserting that the contracting officer improperly found its quotation in response to RFQ-0077 to be late, and arguing that prior suspensions prevent the incumbent contractor from receiving an award. We also dismiss these allegations because, as the protester concedes, it is not an interested party to raise these protest grounds. Comments at 3 ("Our firm would not be qualified to bid on the Contract if the revised language regarding accreditation scope is allowed to remain in the reissued Solicitation."); 4 C.F.R. § 21.0(a)(1) (only an interested party may file a protest).