



Decision

Matter of: Government and Military Certification Systems, Inc.

File: B-414740.5

Date: December 19, 2017

Leigh Andrew Brand, for the protester.
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GAO, participated in the preparation of the decision.

DIGEST

Agency is not required to contact all of an offeror's references, but must act reasonably in determining which to contact or not contact.

DECISION

Government and Military Certification Systems, Inc. (GMCS), of Washington, D.C., protests the award of a contract to Orion Registrar, Inc., of Arvada, Colorado, under request for proposals (RFP) No. D17PS00707, issued by the Department of the Interior (DOI), for an accredited registrar to audit the DOI's Office of Aviation Services (OAS). GMCS challenges the agency's evaluation of its proposal and the source selection decision.

We deny the protest.

BACKGROUND

The OAS is responsible for the Department of the Interior's aviation programs, and it is currently certified to International Organization for Standardization (ISO) 9001:2008 quality standards. The RFP was issued on July 13, 2017 as a small business set-aside pursuant to the commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulation (FAR) parts 12 and 13, and sought to procure an accredited registrar to audit for registration and surveillance of the OAS' quality management system to ISO 9001:2015 standards. The RFP contemplated the award of a fixed-price contract for a base period of one year and two 1-year option periods. RFP at 1-2. Award was to be made on a best-value tradeoff basis considering management approach, technical capabilities, past performance, staffing, and price. Id. at 13.

With regard to past performance, offerors were to provide a minimum of three references. Id. Specifically, the RFP stated that the

[c]ontractor shall have past history in conducting [the] same or similar type services described in this SOW [statement of work] for federal agencies or other large organizations. Potential vendors shall provide a minimum of three (3) references with the ability to verify past performance, particularly with other Federal Agencies.

Id. The RFP also included a reference questionnaire, which offerors were to fill out with contact information for their references. RFP, exh. 3, Reference Questionnaire.

With regard to staffing, the RFP provided that the lead auditor must be ISO 9001:2015 lead auditor certified, and that

[c]ompanies who offer an auditor who is an FAA [Federal Aviation Administration] certified pilot and also has experience assessing (auditing) and registering quality management systems with similar (or greater) complexity, especially aviation organizations, will be given more weight during proposal evaluation.

RFP at 13.

Both Orion and GMCS submitted timely proposals in response to the RFP. In its proposal, GMCS identified eight past performance references. Agency Report (AR), Tab 5, GMCS Technical Proposal, at 12-16. GMCS also provided a “directory of certified clients” that included approximately 20 organizations. Id. at 23-34.

As relevant to this protest, during its evaluation of GMCS’ past performance, the agency only reached out to one of the eight past performance references that GMCS identified in its proposal. AR, Tab 19, Agency Past Performance Memorandum, at 1-2. This contact provided the agency with a negative reference for GMCS. Id. at 2. The agency attempted to contact three other organizations in order to obtain references; none of these organizations were among the eight references identified by GMCS as a past performance reference in its proposal. Id. Rather, two of these organizations were listed in the protester’s proposal under “directory of certified clients,” and the third was identified by the protester in its technical proposal to demonstrate the protester’s qualifications. AR, Tab 5, GMCS Technical Proposal, at 10, 24, 27. Of these three organizations, one provided a positive reference and two provided negative references regarding the past performance of GMCS. AR, Tab 19, Agency Past Performance Memorandum, at 1. Thus, three of the responses the agency received were negative, and only one was positive.

In August 2017, the agency awarded the contract to Orion, and GMCS timely filed a protest with our Office on August 21 (B-414740.4). In its protest, GMCS alleged that the agency had improperly evaluated its past performance by failing to contact any of the

eight past performance references contained in the past performance portion of its proposal. In support of this contention, GMCS provided eight emails, one from each of its eight past performance references, stating that no one from the agency had contacted them. Protest at 115-130. The agency subsequently notified our Office of its intent to take corrective action by reevaluating proposals and making a new source selection decision. GMCS withdrew its protest on August 23.

During its reevaluation of proposals, as part of corrective action, the agency re-evaluated the protester's past performance. The agency successfully contacted several of the organizations it had contacted during the initial evaluation, each of whom explained that nothing had changed in the interim with regard to their prior assessment of GMCS's past performance. However, the agency was not able to reach the individual from the protester's list of eight past performance references that previously provided a negative reference. AR, Tab 19, Agency Past Performance Memorandum, at 2-3. The agency also attempted to contact three additional organizations not contacted during the initial evaluation. Two of these organizations were from GMCS' list of eight past performance references, and one was an organization from GMCS' list of certified clients. Id. at 3; Declaration of Quality and Safety Manager, OAS, Dec. 4, 2017. Of these three additional organizations, the agency only reached one of them. The organization the agency reached was a reference from the list of eight past performance references in the proposal. AR, Tab 19, Agency Past Performance Memorandum, at 3. This reference provided GMCS with a positive review. Id. at 4.

On September 14, the agency reaffirmed its award to Orion (in the amount of \$19,070). In determining that Orion offered the best value to the agency, the contracting officer (who was the source selection authority) noted that, while Orion's price was higher than GMCS' price, Orion had more experience auditing aviation organizations, offered multiple auditors with more aviation experience, and received excellent reviews from the organizations that provided past performance information. AR, Tab 16, Award Summary, at 3-4. Upon learning that the agency had again awarded the contract to Orion, GMCS filed this protest with our Office on September 15.¹

DISCUSSION

The protester raises several challenges to the agency's evaluation of its proposal and source selection decision. GMCS' protest primarily challenges the agency's past performance evaluation. Specifically, the protester alleges that the agency acted improperly by failing to contact the past performance references GMCS identified in its proposal. The protester also alleges that its prior performance for the additional

¹ The September 15 protest primarily repeated the assertions GMCS made in its August 21 protest. The September 15 protest also asserted that the agency "simply relied on the same false information to make an identical decision as before . . ." and that the agency failed to properly take corrective action or reevaluate proposals. Protest at 2.

organizations the agency contacted was not relevant to the work to be performed under this contract. While we do not specifically discuss each of the protester's arguments, and variations thereof, we have considered all of them and find that none provides a basis to sustain the protest.

When evaluating proposals using the simplified acquisition procedures of FAR part 13, an agency must conduct the procurement consistent with a concern for fair and equitable competition and evaluate proposals in accordance with the terms of the solicitation. In reviewing protests of allegedly improper simplified acquisition evaluations, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Emergency Vehicle Installations Corp., B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4.

The protester first alleges that the agency improperly attempted to contact only one of its eight past performance references--the one that responded positively following the agency's corrective action. Protester's Comments at 1-3. In support of this contention, GMCS points to the eight emails it provided with its initial protest that were from the past performance references identified in its proposal. GMCS also provides follow up emails from four of its past performance references in its comments on the agency's report.² In these emails, the references continue to state that they were not contacted by the agency. Protester's Comments at 16-23.

GMCS also disputes the agency's initial report of a negative reference from one of the eight references identified in its proposal. GMCS argues that this individual "has maintained both in writing and by phone that he never communicated with the Agency or provided any feedback on GMCS' performance to the Agency." Protester's Comments at 3. As a result, the protester argues that the agency's personnel have committed "fraud by suggesting that they have contacted any of our past performance references, except [for the one] noted above." Protester's Comments at 3.

In response, the agency has provided an affidavit from the agency official who contacted the protester's references, the official's notes from her phone calls, and the underlying emails sent from the official to the protester's references. Declaration of Quality and Safety Manager, OAS, Dec. 4, 2017; AR, Tab 12, Agency Past Performance Notes. With regard to the individual the protester asserts was never contacted--that is, the individual that the agency claimed provided the negative review during the initial evaluation--the agency official explains that during the initial evaluation

² These follow up emails are from GMCS' past performance references, and state that no one from the agency tried to contact them. Protester's Comments at 16-23. They include emails from three individuals the agency does not allege it contacted, and one email from the individual the agency asserts it tried to first contact following the corrective action, but from whom it did not receive a response. Id.

she emailed this individual,³ and subsequently spoke by phone with this individual. During this phone call, the individual provided a negative past performance review, which the agency official documented in her contemporaneous notes. AR, Tab 12, Agency Past Performance Notes, at 4. The agency explains that all subsequent attempts (following corrective action) to contact this individual were unsuccessful.⁴ While the protester asserts that the agency has misrepresented that it contacted this individual, and points to the email from its initial protest in which this person stated that no one from the agency had contacted him,⁵ we find that the agency has sufficiently demonstrated that it did, in fact, contact this individual, and find nothing improper about the agency's reliance on the negative past performance information it received. With regard to the second individual who the protester asserts was never contacted, the agency official explains that she attempted to email this individual, and never received a response. However, the record shows that the email address incorrectly spelled this individual's name, and thus it appears that the agency's attempt to email this individual was unsuccessful.⁶ Declaration of Quality and Safety Manager, OAS, Dec. 4, 2017, Email Attachment.

The record here shows that the agency either contacted, or attempted to contact, three of the eight past performance references provided by GMCS in its proposal. In addition, the record shows that the agency reached one of these references prior to the agency's corrective action. AR, Tab 19, Agency Past Performance Memorandum, at 1-2. Following the agency's corrective action, the agency attempted to contact two additional organizations identified by GMCS in its proposal as past performance references. The record shows that the agency reached one of these references and recorded its input. Id. at 2-3. Given this, we find the record does not support the protester's contention that

³ The agency has provided a copy of this email. Declaration of Quality and Safety Manager, OAS, Dec. 4, 2017, Email Attachment.

⁴ We note that the four follow-up emails submitted by GMCS with its comments on the agency report do not contain an email from this individual.

⁵ The protester also contends that this individual has maintained "by phone" that the agency never communicated with him, and denied that he provided any feedback on GMCS' performance to the agency. Protester's Comments at 3.

⁶ To the extent GMCS claims the agency committed fraud and acted in bad faith, there is no evidence in the record, other than GMCS' speculation, to support the protester's attribution of unfair or prejudicial motives to the agency's evaluation. Because government officials are presumed to act in good faith, a protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See Diversified Maint. Sys., Inc., B-401329.4, Nov. 9, 2009, 2009 CPD ¶ 226 at 4 n.7; see Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. Moreover, as discussed in this decision, we conclude the agency's evaluation of GMCS' proposal was reasonable.

the agency failed to contact any of its past performance references GMCS provided. To the extent the crux of the protester's complaint is that the agency's attempts to contact its references were inadequate, such that the agency was required to contact the other past performance references the protester had provided, there is no requirement that an agency contact all of an offeror's references. See OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 4.

Next, the protester objects to the agency's consideration of the performance assessments it received from the three organizations not identified in GMCS' proposal as part of its eight past performance references. The protester asserts that the work it provided for two of these three organizations was not similar or relevant to the requirements here, and that the reference from the third organization should not be considered as "GMCS has never provided any services" to that agency (which was DOI OAS). Protester Comments at 3.

Here, we note that each of the three organizations that the agency contacted were identified in some form in the protester's proposal. Specifically, two were listed under the protester's "Directory of Certified Clients," and one was referenced in the protester's technical proposal to provide support for GMCS' auditor's experience.⁷ While the protester asserts that its prior performance for two of these organizations were not relevant to the work here, the record shows that the agency reasonably considered the assessments received from these organization as part of its evaluation of GMCS' past performance.

For example, the record shows that the work performed for one of the organizations the protester asserts is not relevant, was for ISO 9001 certification, as is being procured here. AR, Tab 5, GMCS Technical Proposal, at 24; Protester's Comments at 4. The protester argues that the work performed was for a single site, as opposed to the multi-site work being procured here; that the site had its certification revoked by GMCS such that "one would not expect an organization whose certification was revoked to provide positive feedback"; and that GMCS' contact at the agency had retired such that the individual contacted "would not have been knowledgeable about GMCS's performance under the contract." We find each of these arguments is insufficient to show that the agency's consideration of the work performed for this organization was improper. Protester's Comments at 4. In this regard, there is no indication in the record, nor has the protester provided any explanation, as to why a single site certification process is meaningfully different from a multi-site certification. Further, the fact that the agency for whom the work was performed failed to pass its certification process is not a reason to disregard that agency's assessment of GMCS' past

⁷ GMCS' proposal's introduction to its past performance specifically references GMCS' directory of clients because the directory (along with GMCS' list of eight past performance references) "clearly demonstrates our ability to work with clients that have a similar complexity to OAS." AR, Tab 5, GMCS Technical Proposal, at 12.

performance, and there is no indication in the record that the individual who provided the reference was unfamiliar with GMCS's work under the contract.

For the other organization contacted by the agency, the protester received a positive evaluation. AR, Tab 12, Agency Past Performance Notes, Eval. for GMCS, at 2. Thus, even if the Interior Department improperly considered this assessment, we find that the protester was not prejudiced by the agency's actions. Competitive prejudice is an essential element of every viable protest ground, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. See DNC Parks & Resorts at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 12.

With regard to GMCS' contention that it had never provided any services to DOI OAS, the procuring agency here explains that, while GMCS has never worked for DOI OAS, its owner, president, and principle auditor (who would be performing the work here) performed similar services as a project manager for Brand Consulting Group, Inc. Legal Memorandum at 2. Thus, even though the services were actually performed by a subcontractor, we find nothing improper about the agency's consideration of work performed by Brand Consulting Group, given that the individual who will be performing the work here served as the project manager under the contract about which the agency inquired. Protester's Comments at 5. Moreover, to the extent the protester is asserting that any problems with performance under the contract were the fault of its subcontractor, such a contention is unavailing. The general rule is that a prime contractor under a government contract is responsible for the performance of its subcontractors. See Neal R. Gross & Co., Inc., B-275066, Jan. 17, 1997, 97-1 CPD ¶ 30 at 4.

In sum, while an agency must act reasonably in deciding which references to contact and which not to contact, Lynnwood Mach. & Eng'g, Inc., B-285696, Sept. 18, 2000, 2001 CPD ¶ 113 at 5, we see nothing unreasonable in the agency's review here. In this regard, the agency's initial past performance evaluation (prior to the agency's corrective action) contacted one reference from the protester's list of eight past performance references, and contacted three more organizations identified in other portions of the protester's proposal. Following the corrective action, the agency attempted to again contact organizations it had already contacted, and attempted to contact three additional organizations for the first time, two of which were from the protester's list of eight past performance references. Given that the record shows the agency attempted to contact a total of seven organizations, three of which were from the protester's list of past performance references and all of which were identified in GMCS' proposal, we find nothing improper about the agency's actions here.

Finally, the protester asserts that the agency acted improperly by finding that the awardee has more aviation experience than GMCS, and finding that this additional experience was a discriminator in its evaluation and source selection decision. In this regard, the solicitation provided, under the staffing evaluation factor, that firms offering an auditor who is an FAA certified pilot and has experience assessing aviation

organizations “will be given more weight during proposal evaluation.” RFP at 13. The protester argues that this evaluation criterion did not allow for a comparative assessment of aviation experience, and that the same weight for such experience should have been given to each offeror. GMCS points out that it proposed an auditor who is a certified private pilot with experience auditing aviation organizations.

We find nothing improper about the agency’s evaluation. Here, the RFP provided that award was to be made on a best-value tradeoff basis considering the relative merits of the offerors’ proposals under each evaluation factor. There is nothing in this evaluation criterion that indicates the agency would, for example, consider a proposed auditor with minimal experience in auditing aviation organizations to be equal in weight to a proposed auditor with significant experience in auditing such organizations. The solicitation provision does not prevent, as GMCS alleges, the agency from comparing the relative amount of experience among offerors. We find the agency’s evaluation in this regard unobjectionable.

The protest is denied.

Thomas H. Armstrong
General Counsel