



## Decision

**Matter of:** Government and Military Certification Systems, Inc.

**File:** B-420241.2

**Date:** February 15, 2022

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Leigh A. Brand, Government and Military Certification Systems, Inc., for the protester. Philip Lee, Esq., Department of Homeland Security, for the agency. Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest contending that a solicitation provision stating a preference for a contractor with a background in nuclear safety practices is unnecessary and unduly restrictive of competition is denied where the record shows that the preference is reasonably related to the agency's needs.

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### DECISION

Government and Military Certification Systems, Inc., (GMCS) a small business of Washington, D.C., protests the terms of request for quotations (RFQ) No. 70RSAT21Q0000071, issued by the Department of Homeland Security (DHS) to procure International Organization for Standardization (ISO) 9001:2015 certification for the agency's Directorate of Science and Technology's National Urban Security Technology Laboratory (NUSTL), located in New York City, New York. The protester asserts that the terms of the solicitation are unnecessary and unduly restrictive of competition.

We deny the protest.

### BACKGROUND

NUSTL is one of DHS's five scientific laboratories and manages numerous scientific programs and projects in support of the homeland security community. Contracting Officer's Statement (COS) at 1. NUSTL provides products through its two core services: research and development, and test and evaluation. *Id.* Through these services and their resulting products, NUSTL helps state and local first responders and emergency managers prevent, protect against, respond to, and recover from homeland

security threats and hazards. *Id.* NUSTL also maintains radioactive source material at its laboratory and uses radioactive source material and complex equipment as part of its radiation detection testing and training programs. *Id.* at 1-2.

NUSTL maintains a Quality Management System (QMS) to ensure client expectations are met and consistently deliver high quality products and services. *Id.* at 2. NUSTL's QMS ensures the laboratory's technical and business operations are properly documented, reviewed, and audited. *Id.* All of NUSTL's work is completed in conformance with its QMS, and the QMS is maintained and refined through NUSTL's ISO 9001:2015 certification. *Id.* The ISO 9001:2015 certification specifies requirements for NUSTL's QMS. *Id.*

To maintain NUSTL's ISO 9001:2015 certification, which expires on August 30, 2023, the agency issued the RFQ on September 13, 2021, for surveillance and audit services to be conducted from January 5, 2022, to September 29, 2024. COS at 2; Agency Report (AR), Tab 4, amend. 0003 at 4. The solicitation included a list of contractor capabilities, including that the contractor/auditor shall "[h]ave a scientific background including nuclear safety practices" to ensure that auditors will be able to comprehend all of the material that will be reviewed, including information relating to radioactive source material. AR, Tab 3, amend. 0002 at 4. In evaluating a vendor's technical capabilities the solicitation indicated the agency would evaluate whether the firm identified an auditor with a scientific background. *Id.* at 10.

Prior to the closing date for quotation submissions, GMCS notified the agency that it intended to file a protest challenging the terms of the solicitation. GMCS asserted that the requirement that the contractor "have a scientific background including nuclear safety practices," was "not necessary to effectively conduct audits or to maintain certification." Email from GMCS to Agency, Nov. 27, 2021 (Protest at 16).

The contracting officer reviewed the need for this requirement and spoke with NUSTL's Deputy Director and Program Analyst. Both the director and the analyst explained that an auditor with a scientific background is necessary to conduct an effective ISO 9001:2015 audit of NUSTL because the auditor will need to read and understand many of NUSTL's documents. COS at 3. For example, the auditor will review research and test plans, research and test reports, and radiation training materials and measurements, among other documents, and all of these documents contain scientific subject matter, terms, and concepts requiring a scientific background. *Id.* The director and analyst also explained that having an auditor without a scientific background could lead to such errors as the misidentification of standard non-conformities and standard exclusions that apply to NUSTL's operational mission and service-based offerings. *Id.* These errors could lead to a poorly performed audit and the loss of NUSTL's ISO 9001:2015 certification. *Id.*

Following these conversations, the contracting officer concluded that the requirement that an auditor have a scientific background should remain in place, but that the requirement that the contractor's background include experience with nuclear safety

practices could be changed to a preference. *Id.* at 4. The contracting officer reasoned that because NUSTL maintains and uses radioactive source material, an auditor with knowledge of nuclear safety practices is preferred because the auditor would understand the policies, procedures, and practices NUSTL maintains for its radiological/nuclear work. *Id.* The director and the analyst agreed with the contracting officer that this portion of the requirement could be changed to a preference because an auditor with a scientific background should have a sufficient understanding of the scientific regulations and terms associated with NUSTL's radiological/nuclear work. *Id.*

The agency then issued amendment 0003<sup>1</sup>, changing the previous requirement from “[h]ave a scientific background including nuclear safety practices” to “[h]ave a scientific background with nuclear safety practices preferred.” AR, Tab 4, amend. 0003 at 4. In evaluating a vendor's technical capabilities, the agency would still assess whether the firm identified an auditor with a scientific background, but the matter would now be reviewed as an evaluation preference for a background in nuclear safety practices, not a requirement. *Id.* at 10. Following publication of the amendment relaxing the requirement, GMCS emailed the contracting officer reasserting its intention to file a protest. GMCS argued that “knowledge of nuclear safety practices is not a required skill set for conducting [this] certification audit” and that “[w]hile you did change the requirement to a preference, the language is still unnecessary to perform the work.” Email from GMCS to Agency, Dec. 8, 2021 (Protest at 13). This protest followed.

## DISCUSSION

Where a protester challenges a specification or requirement as unduly restrictive, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. *Shertech Pharmacy*, B-419069, Oct. 29, 2020, 2020 CPD ¶ 336 at 2. We examine the adequacy of the agency's justification to ensure it is rational and can withstand logical scrutiny. *Id.* The determination of a contracting agency's needs, including the selection of evaluation criteria, is primarily within the agency's discretion and we will not object to the use of particular evaluation criteria so long as the criteria reasonably relates to the agency's needs in choosing a contractor that will best serve the government's interests. *Diversity Marketing and Communications, LLC*, B-412196.2, Mar. 9, 2016, 2016 CPD ¶ 84 at 4. Once the agency establishes support for the challenged solicitation term, the burden shifts to the protester to show that it is clearly unreasonable. *ACME Endeavors, Inc.*, B-417455, June 25, 2019, 2019 CPD ¶ 224 at 6.

Here, GMCS's only challenge to the terms of the solicitation is that the agency's preference for a contractor/auditor with a background in nuclear safety practices is unnecessary because nuclear safety practices are not within the scope of the audit.<sup>2</sup>

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<sup>1</sup> The agency issued additional amendments to the RFQ that are not relevant here.

<sup>2</sup> GMCS also argues that the agency has only included this preference because it is biased in favor of the incumbent contractor. Comments at 5. Government officials are

Because nuclear safety practices are not within the scope of the audit, GMCS further argues that the agency's preference for this type of background unduly restricts competition. Protest at 1; Comments at 1, 4. GMCS does not challenge the agency's requirement that the contractor have a scientific background. Comments at 1.

There is no dispute that the audit here does not include a review of nuclear safety practices. However, as discussed above, NUSTL handles radioactive source material as part of its services. An audit of the services NUSTL provides in accordance with its QMS will naturally include information relating to the handling of radioactive source material. The agency concluded that it was not necessary for a contractor/auditor to have knowledge of nuclear safety practices to perform the audit, but that it was preferential because someone with this background would understand the material relating to its radiological/nuclear work. GMCS has not provided any basis for us to find it unreasonable that the agency prefers an auditor with a background related to the services being audited to ensure that the audit is completed accurately and competently. As a result, we find that the agency has established that its preference for a contractor with a background in nuclear safety practices is reasonably related to its needs. See *Westinghouse Electric Corp.*, B-224449, Oct. 27, 1986, 1986 CPD ¶ 479.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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presumed to act in good faith, and a protester's contention that contracting officials are 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. *Diversity Marketing, supra* at 4-5, n.3. GMCS has provided no evidence of bias to support its allegation and there is none in the record. As a result, we deny this protest ground.