

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

Decision

Matter of: Government and Military Certification Systems, Inc.

File: B-409420

Date: April 2, 2014

Leigh Brand, Government and Military Certification Systems, Inc., for the protester.
Jana L. Strait, Esq., Department of the Army, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Challenge to terms of solicitation for recertification audit services is denied where agency adequately explains rationale for restrictive specifications with regard to contractor accreditation.

DECISION

Government and Military Certification Systems, Inc. (GMCS), protests the terms of request for proposals (RFP) No. W912DQ-14-T-1003, issued by the U.S. Army Corps of Engineers for recertification audit services for the Corps' Kansas City District. The protester asserts that the RFP was unduly restrictive of competition and was drafted so as to ensure award to the incumbent contractor.

We deny the protest.

The RFP was issued on December 11, 2013, with a proposal due date, as extended, of January 21, 2014. RFP at 1; Amendment No. 1, at 1. The RFP was intended to obtain the services of a contractor qualified to perform re-certification of the Kansas City District's previous ISO (International Organization for Standardization) 9001:2008 certification. In this regard, the contractor will provide a team of auditors, including a certified lead auditor, to conduct certification audits. RFP, Statement of Work (SOW) § 1.1, at 8.

As originally issued, section 4.1 of the SOW provided as follows: "Contractor shall be an accredited ISO 9001:2008 Registrar." RFP, Dec. 11, 2013, at 11. On December 26, GMCS filed an agency protest challenging the RFP as unduly restrictive in that it required the contractor to provide ANSI-ASQ National

Accreditation Board (ANAB) certification, thereby limiting offerors to firms with ANSI-ASQ accreditation. Protest attach. 3. GMCS asserted that it would be “fair” to permit certification by any “member of the International Accreditation Forum (IAF), which includes ANAB and others.” Id. The contracting officer found that this agency protest “had some merit,” Contracting Officer’s Statement (COS) at 2, and took corrective action, issuing RFP amendment No. 1. Id. Amendment No. 1 revised SOW § 4.1 to read as follows:

4.1. The Contractor shall be an accredited ISO 9001:2008 Registrar accredited by the ANSI-ASQ National Accreditation Board (ANAB) 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/IEC 17021:2011 with Option 2 as the Management System, and certification scope codes to include both Code 28 for Construction and Code 34 for Engineering Services.

Amendment No. 1, at 6. This protest followed.

Although GMCS concedes that the “need for an accredited certification body and auditors who are competent in the fields of construction and engineering services is reasonable and fair,” GMCS challenges the conditions set by the agency for acceptance of accreditation by other than ANAB. Protest at 1-2. First, GMCS asserts that “[t]here is no requirement that we have [Scope] Codes 28 [Construction] and 34 [Engineering Services] in our accreditation scope to service the USACE Kansas City office provided that our auditors possess experience in construction and engineering as they do.” Protest at 2. In this regard, the protester asserts that the Corps is “not involved directly in Construction,” but rather is “involved in Construction Management,” which is not the “same activity” as construction. Comments at 2 (emphasis in original). Thus, according to the protester, instead of Scope Code 28 for construction, the RFP should specify Scope Codes 35 (Other services) and 36 (Public Administration), in addition to Scope Code 34 (Engineering Services). Comments at 2. (GMCS advises that it has Scope Code 34 in its certificate of accreditation, but not Scope Code 28. Comments at 2; see Supp. Agency Report (AR) at 4.)

The Corps responds that it is “an engineering and construction organization,” that is “highly involved in construction”; according to the agency, while “[m]uch of this involvement is in the form of construction management . . . certainly not all” of its efforts are construction management. Supp. AR at 4. The agency project manager further notes that:

The types of activities covered by each Scope Code are informed by these historical industry codes associated with each scope code. For example, Scope Code 28, Construction, lists NACE¹ codes 41, 42, and 43. This represents construction of buildings, civil engineering, and specialized construction activities--the very areas in which the Corps operates.

Supp. AR, attach., Stevens Supp. Declaration, at 2.

The Competition in Contracting Act of 1984 requires that solicitations generally permit full and open competition and contain restrictive provisions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2305(a)(1)(B)(ii) (2006). Where a protester challenges a solicitation provision as unduly restrictive of competition, the procuring agency must establish that the provision is reasonably necessary to meet the agency's needs. See Total Health Res., B-403209, Oct. 4, 2010, 2010 CPD ¶ 226 at 3. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7. The determination of a contracting agency's needs is primarily within the agency's discretion and we will not object to the use of particular evaluation criteria so long as they reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. SML Innovations, B-402667.2, Oct. 28, 2010, 2010 CPD ¶ 254 at 2.

Here, we find that GMCS's protest provides no basis to question the revised solicitation requirements. As noted, GMCS concedes the need for an accredited certification body and auditors who are competent in the fields of construction and engineering services, Protest at 1-2, and also concedes requiring Scope Code 34 (Engineering Services) for acceptance of accreditation by other than ANAB. While GMCS questions the need for Scope Code 28 (Construction) on the basis that the Corps performs construction management rather than construction, it has not refuted the Corps's position that it is an engineering and construction organization not all of whose construction involvement is construction management. Supp. AR at 4. Furthermore, GMCS has made no showing as to why, even allowing for the Corps' focus on construction management, a scope code for construction is not at least as appropriate as the scope codes for other services (Scope Codes 35) or public administration (Scope Code 36) suggested by the protester.

GMCS also challenges the RFP's requirement for certification "with an identified main scope of Management System Certification conforming to ISO/IEC

¹ Statistical Classification of Economic Activities in the European Community.

17021:2011 with Option 2 as the management system.” RFP, Amendment No. 1, at 6. However, while GMCS asserts that the requirement for Option 2 is “unnecessary and overly restrictive,” GMCS is not an interested party to raise this issue since it concedes that, in fact, it has Option 2 as part of its accreditation. Comments at 2. In this regard, we have held that a prospective offeror generally lacks standing to challenge a specification as unduly restrictive in cases where it can meet the requirement set forth in the solicitation, as such a challenge would be, in essence, on behalf of other potential suppliers who are economically affected by the specification’s allegedly restrictive nature. Westinghouse Elec. Corp., B-224449, Oct. 27, 1986, 86-2 CPD ¶ 479 at 3; see also American Sterilizer Co., B-223493, Oct. 31, 1986, 86-2 CPD ¶ 503; cf., J. Squared Inc., d/b/a University Loft Co., B-408388, Aug. 27, 2013, 2013 CPD ¶ 201 at 4 (protester is an interested party where its economic interests are prejudiced by the agency’s decision to restrict procurement to oak constructed furniture, as the firm could compete more effectively if permitted to offer furniture constructed of another type of wood); Gould, Inc., B-224365, Oct. 17, 1986, 86-2 CPD ¶ 464 (prospective offeror is an interested party where, despite being able to meet the solicitation’s terms, the firm is an established manufacturer of an item excluded by a restrictive specification).²

Finally, GMCS asserts that the Corps has drafted the SOW to ensure that the incumbent receives award. To the extent that GMCS argues that the agency is biased in favor of the incumbent contractor, government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Where a protester alleges bias, it must provide credible evidence clearly demonstrating bias against the protester or in favor of the successful firm. Detica, B-400523, B-400523.2, Dec. 2, 2008, 2008 CPD ¶ 217 at 4-5. Here, the protester has made no such showing. Rather, the protester relies on the fact that the incumbent is able to meet the requirements of the RFP (and subsequent amendments) and asserts that this constitutes “clear evidence that the Agency is seeking to ensure that only one contractor can bid on this requirement.” Supp. Comments at 3. We have held, however, that where a solicitation’s requirements favor an incumbent who possesses the required knowledge and experience, any such advantage is not

² In its comments, GMCS asserts that “IAF membership is not a requirement for any accreditation body and does not represent the only or primary basis for determining equivalency between accreditation bodies.” Comments at 1. This argument, raised for the first time in the protester’s February 12, 2014, comments on the agency’s report, is untimely as it should have been raised prior to the time for receipt of proposals, January 21, 2014, and in any case represents an improper piecemeal presentation of arguments. 4 C.F.R. § 21.2(a)(1) (2013); JAVIS Automation & Eng’g, Inc., B-290434, B-290434.2, Aug. 5, 2002, 2002 CPD ¶ 140 at 7 n.11 (piecemeal presentation of protest grounds, raised for the first time in comments, are untimely).

improper when the requirements are reasonably related to the agency's needs. There is no requirement that an agency equalize or discount an advantage gained through incumbency, provided that it did not result from preferential treatment or other unfair action by the government. Navarro Research and Eng'g, Inc., B-299981, B-299981.3, Sept. 28, 2007, 2007 CPD ¶ 195 at 4.

The protest is denied.

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General Counsel