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# Decision

**Matter of:** HamHed, LLC

**File:** B-420245.4; B-420245.5; B-420245.6; B-420245.7

**Date:** November 18, 2022

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## DIGEST

1. Protest challenging the agency's evaluation of quotations is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.
  2. Protest challenging the agency's decision to use in-house services during the pendency of the protest is dismissed as that decision involves the exercise of the agency's business judgment and executive branch policy, and thus, is not a matter for our consideration.
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## DECISION

HamHed LLC, a service-disabled veteran-owned small business (SDVOSB) of Jeffersonville, Indiana, protests the award of a contract to Mark Brailsford Group Integrated Solutions (MBGIS), an SDVOSB of Fayetteville, Georgia, under request for quotations (RFQ) No. 36C24722Q0001, issued by the Department of Veterans Affairs for janitorial services at the Ralph H. Johnson Veterans Affairs Medical Center (VAMC) in Charleston, South Carolina. The protester contends that the agency unreasonably evaluated its quotation and MBGIS's quotation, which resulted in an improper award. The protester also contends that the agency's decision to utilize in-house janitorial services during the pendency of this protest violated numerous statutes and regulations.

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

## BACKGROUND

The current protest is the latest in a series of protests filed by HamHed, the incumbent contractor, challenging awards made by the agency under RFQ No. 36C24722Q0001. See Protest at 1-2. Prior to issuing the solicitation at issue here, the agency had awarded a contract for janitorial services at the VAMC in Charleston to HamHed. Protest at 6 n.2. While that contract included a base and option periods, the agency elected not to exercise the option periods, and modified HamHed's contract to end on October 31, 2021. *Id.* at 3. The agency then issued the current RFQ on August 19, 2021, in accordance with Federal Acquisition Regulation (FAR) subpart 12.6. Agency Report (AR), Tab 2, Contracting Officer's Statement (COS) at 1; AR, Tab 3, RFQ at 3. The RFQ, as amended, was set aside for SDVOSBs and contemplated the award of a contract for a base period of twelve months with four, 1-year option periods.<sup>1</sup> RFQ at 4; Comments and Supp. Protest, exh. 1, amend. 0004 at 4-5.<sup>2</sup>

The RFQ, as amended, provided that quotations would be evaluated under FAR section 13.106-2(b), and that a comparative evaluation of quotations would be conducted. Comments and Supp. Protest, exh. 2, amend. 0003 at 16-18. The solicitation identified three evaluation factors: price, past performance, and technical capability. *Id.* at 17. For past performance, vendors were to submit up to three references that were similar in size and scope to the requirements of the RFQ. *Id.* For technical capability, vendors were required to provide a quality control plan, resumes for supervisors, a contingency plan for replacing personnel, and a training plan. *Id.* at 6; AR, Tab 13, Source Selection Decision (SSD) at 6. The RFQ provided for award on a best-value basis to the vendor whose quotation was most advantageous to the agency, price and other factors considered.<sup>3</sup> Comments and Supp. Protest, exh. 1, amend. 0003 at 18.

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<sup>1</sup> The agency amended the solicitation five times. COS at 2. The only amendments directly relevant to this protest are amendment 0003, which removed the competitive range language from the competition, and amendment 0004, which updated the technical requirements. *Id.*

<sup>2</sup> The contracting officer stated that it inadvertently provided draft copies of amendment 0003 and 0004 in the agency report. Supp. COS at 1. He stated, however, that the copies of amendment 0003 and 0004 that HamHed included in its supplemental protest were the correct versions. *Id.* Therefore, those copies are the amendments we will reference here.

<sup>3</sup> The solicitation did not provide any further indication as to whether the award decision was to include a tradeoff analysis or be based on the lowest-priced technically acceptable quotation. The RFQ also did not provide any information regarding how the agency would rate quotations under the technical factors and did not indicate that the agency would assign adjectival ratings or rank quotations.

On October 1, 2021 the agency awarded the contract to LR-Associates, LLC. COS at 1. Following a protest filed by HamHed with our Office, the agency elected to terminate that award and reevaluate quotations. *Id.*; *HamHed, LLC*, B-420245, Oct. 22, 2021 (unpublished decision). On March 30, 2022, following the reevaluation of quotations, the agency awarded the contract to Spearpoint Logistics LLC. Protest at 2; COS at 1-2. Again, HamHed protested this award with our Office, and in response, the agency took corrective action, stating that it would reevaluate quotations. *HamHed, LLC*, B-420245.3, Apr. 22, 2022 (unpublished decision).<sup>4</sup> Following the reevaluation of quotations, the agency concluded that MBGIS and HamHed submitted the lowest priced quotations, and that both met the technical requirements and had strong past performance records. AR, Tab 13, SSD at 8. Because MBGIS submitted a lower price than HamHed, the agency awarded the contract to MBGIS on March 30, 2022. This protest followed.

## DISCUSSION

HamHed contends the agency unreasonably evaluated its quotation, and MBGIS's quotation, under the past performance and technical capability factors. Protest at 6-8. In its supplemental protest, HamHed contends that MBGIS was not a verified SDVOSB when the RFQ closed. Comments and Supp. Protest at 8. HamHed also contends the agency's use of in-house services during the pendency of this protest violated various statutes and regulations. *Id.* at 14-16. For reasons discussed below, we deny the protest in part, and dismiss it in part.<sup>5</sup>

As noted above, the RFQ here provided that quotations would be evaluated under FAR section 13.106-2(b), which pertains to simplified acquisition procedures. Comments and Supp. Protest, exh. 2, amend. 0003 at 18. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. *SSI Technology, Inc.*, B-412765.2, July 13, 2016, 2016 CPD ¶ 184 at 3; *Emergency Vehicle Installations Corp.*, B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. In reviewing a protest of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. *DOER Marine*, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3. The fact that the protester disagrees with the agency's evaluation, by itself, is not sufficient to sustain the protest. *DeWitt & Co., Inc.*, B-417194, Mar. 25, 2019, 2019 CPD ¶ 126 at 3.

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<sup>4</sup> During the course of these protests and corrective action periods, the agency made several extensions to HamHed's purchase order for janitorial services. COS at 1-2. Initially, the agency extended the purchase order period to February 28, 2022; it then extended it to March 31. *Id.* at 2. A second purchase order was issued to HamHed on April 18 that continued until August 17. *Id.*

<sup>5</sup> Although we do not address every argument raised by the protester, we have considered them and find none to be meritorious.

## Past Performance Evaluation

HamHed first challenges the agency's evaluation of MBGIS's past performance. Protest at 6. Specifically, HamHed contends that the awardee's past performance was not similar in size and scope because MBGIS submitted only one past performance reference that the agency considered recent and relevant, and this reference involved performing janitorial services in an office space, not a hospital or VAMC. *Id.*; Comments and Supp. Protest at 11. HamHed also argues the agency unreasonably relied on an interim Contractor Performance Assessment Reporting System (CPARS) rating when evaluating MBGIS's past performance. *Id.*

An agency's evaluation of past performance, including the agency's determination of the relevance and scope of a vendor's performance history, is a matter of discretion, which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Government and Military Certification Sys., Inc.*, B-411261, June 26, 2015, 2015 CPD ¶ 192 at 8-9.

Here, we have no basis to object to the agency's evaluation of MBGIS's past performance. The RFQ did not require vendors to have experience performing janitorial services at a hospital or VAMC; it required only that the past performance be similar in scope and size to the requirements of the RFQ. RFQ at 19. In evaluating vendor past performance, the contracting officer noted that hospital experience was not required and would not be given any additional consideration over past performance in other service areas. AR, Tab 5, Pre-Discussion Checklist at 1. We see nothing unreasonable in the contracting officer's interpretation of the solicitation terms as not requiring hospital experience.

Accordingly, we find HamHed's contention that MBGIS should have been downgraded for failing to submit janitorial experience in a hospital to be without merit. Also without merit is HamHed's argument that the agency unreasonably considered an interim CPARS rating for MBGIS's past performance. The RFQ provided that "CPARS evaluation will be used as the primary means for evaluation of Past Performance." RFQ at 19. This language does not prohibit the consideration of an interim CPARS rating of an ongoing contract. As such, this protest ground is denied.

HamHed next challenges the agency's comparison of HamHed's past performance to MBGIS's past performance, arguing that HamHed's "long history of successfully performing janitorial services" at VA facilities around the country should have resulted in its quotation receiving a higher past performance rating than MBGIS's quotation. Protest at 6; Comments and Supp. Protest at 11-12. We have no basis to object to the agency's evaluation here.

Although HamHed submitted more past performance references than MBGIS, the RFQ did not provide that the number of references would affect a vendor's past performance rating. RFQ at 19. In conducting the past performance evaluation, the SSD noted that MBGIS had only one recent and relevant reference, but it received a rating of

“exceptional” for that contract; it also noted that HamHed’s performance record had ratings ranging from “satisfactory to exceptional.” AR, Tab 13, SSD at 8. The agency then concluded that both MBGIS and HamHed had “strong past performance records.” *Id.* We have no basis to challenge this conclusion as it is neither unreasonable nor inconsistent with the evaluation criteria. This protest ground is denied.

#### Technical Evaluation

HamHed next argues the agency “failed to conduct any evaluation” under the technical capability factor for HamHed and MBGIS. Comments and Supp. Protest at 11. The record does not support this argument. As stated above, vendors were required to provide a quality control plan, resumes for supervisors, a contingency plan for replacing personnel, and a training plan. RFQ at 7; see *also* AR, Tab 13, SSD at 6. The RFQ provided that the agency would evaluate quotations to determine if the contractor has the experience and capabilities to provide the requested services in a timely and efficient manner. RFQ at 19. To this end, the agency used a pre-discussion and post-discussion checklist to determine whether each vendor met the technical requirements. AR, Tab 5, Pre-Discussion Checklist at 1; AR, Tab 11, Post-Discussion Checklist at 1.

Although HamHed argues that the agency utilized a “bare-bones” approach by using these checklists, we have no basis to object to this evaluation method. A contracting agency is afforded discretion in technical evaluations because it bears the burden of any difficulties incurred because of a defective evaluation. *Sherikon, Inc.; Tech. Mgmt. & Analysis Corp.*, B-256306 *et al.*, June 7, 1994, 94-1 CPD ¶ 358 at 8. Our Office will question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the evaluation criteria. *Id.* Here, the RFQ provided that the agency would evaluate technical capability to ensure vendors had the requisite experience and capabilities; the checklists achieved that end.

Additionally, while HamHed objects to the agency’s evaluation as being inadequate, HamHed itself has not claimed any portion of MBGIS’s quotation failed to meet the requirements, despite being provided with the contents of MBGIS’s quotation. See AR, Tab 10c, Technical Quotation for MBGIS. Given the minimal documentation requirements associated with a FAR part 13 acquisition and HamHed’s failure to make a supported assertion that MBGIS’s technical quotation was inadequate, we find that HamHed’s challenges to the agency’s technical evaluation do not provide a basis for sustaining the protest. FAR 13.106-3(b) (“Keep documentation to a minimum.”). Accordingly, this protest ground is denied.

#### SDVOSB Status of MBGIS

HamHed next contends that MBGIS was not a verified SDVOSB at the time the solicitation closed, and therefore, it was ineligible for award.<sup>6</sup> Comments and Supp. Protest at 8. In support, HamHed points to a letter wherein the contracting officer informed a representative from MBGIS that although MBGIS was listed as a veteran-owned small business (VOSB) when the solicitation closed, its status had been corrected to reflect that it was an SDVOSB when the solicitation closed. *Id.* at 8-9; AR, Tab 8, Letter to MBGIS at 1. HamHed argues that nothing in the RFQ permitted MBGIS to change its status after closing. *Id.*

In response, the agency provided our Office with a letter from September 11, 2019 wherein the agency informed MBGIS that MBGIS's application for re-verification of its SDVOSB status had been approved and that MBGIS would be listed as an SDVOSB for a period of three years. Supp. AR, Tab 18, SBVOSB Verification Letter at 1. Because the three year period from September 11, 2019, encompassed the date quotations were due and the date the agency awarded the contract, we have no reason to object to the MBGIS's inclusion in the competition. The September 11, 2019 letter, and the representations made in the contracting officer's supplemental statement, make clear that MBGIS was erroneously listed as a VOSB instead of an SDVOSB at the time the solicitation closed and the alleged "status change" was nothing more than a correction of a mistake. See *id.*; Supp. AR, Tab 21, Supp. COS at 1. These facts do not provide us with a basis to sustain the protest ground and accordingly it is denied.

#### Best-Value Decision

HamHed also challenges the agency's best-value decision, alleging that the evaluation did not involve a tradeoff between competing quotations that weighed the strengths and weaknesses of each quotation; instead, HamHed argues, the procurement was converted into a lowest-price, technically acceptable procurement. Comments and Supp. Protest at 12-13. In response, the agency contends that all evaluation factors were equal, and the contracting officer did not identify any technical advantages in HamHed's quotation that warranted paying a higher price. MOL at 7; Supp. MOL at 11.

We deny this protest ground. The RFQ did not provide for a tradeoff; instead, it provided that quotations would be evaluated under FAR section 13.106-2(b), and that a comparative analysis of quotations would be conducted. Comments and Supp. Protest, exh. 2, amend. 0003 at 18. Here, the agency concluded that MBGIS and HamHed submitted the lowest priced quotations, and that both met the technical requirements and had strong past performance records. AR, Tab 13, SSD at 8. Because MBGIS submitted a lower price than HamHed, the agency awarded the contract to MBGIS. See *id.* This comparison of quotations, and the agency's subsequent decision to award the contract to the lower-priced quotation, was not unreasonable under these circumstances. *Id.*

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<sup>6</sup> The RFQ, through its incorporation of VA Acquisition Regulation 852.219-10, provided that (1) only SDVOSBs could submit quotations and (2) award could be made only to an SDVOSB. Comments and Supp. Protest, exh. 1, amend. 0004 at 7.

## Agency's Use of In-House Janitorial Services

HamHed also contends that the agency's decision to use in-house janitorial services during the pendency of this protest was a pretext to punish HamHed and circumvent the Competition in Contracting Act of 1984 (CICA) stay<sup>7</sup>, and violated the Veteran's Benefits, Health Care, and Information Technology Act of 2006, the Economy Act, and the FAR. Protest at 3-6. We dismiss this protest ground as legally insufficient.

As a general matter, our Office does not review agency decisions to perform in-house work, since such decisions are matters of executive branch policy, which are not within our bid protest function. *See, e.g., RAI, Inc.*, B-231889, July 13, 1988, 88-2 CPD ¶ 48 at 1-2. We have recognized, however, a limited exception to this rule where an agency utilizes the procurement system to aid in its determination by issuing a competitive solicitation for the stated purpose of comparing the costs of in-house performance with the costs of contracting. *Id.* We will consider a protest that the agency failed to follow established cost comparison procedures because we believe it would be detrimental to the procurement system if, after the submission of quotations, an agency were permitted to alter the procedures it had established and upon which bidders had relied. *Id.* HamHed does not allege this exception is applicable here. Therefore, this protest ground is dismissed.

The protest is denied in part, and dismissed in part.

Edda Emmanuelli Perez  
General Counsel

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<sup>7</sup> 31 U.S.C. § 3553(d) requires an agency that receives notice of a timely GAO protest to "immediately direct the contractor to cease performance under the contract," subject to enumerated exceptions. This suspension of performance is commonly referred to as a "CICA stay."