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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** GFS Group, LLC

**File:** B-401560.2

**Date:** September 14, 2009

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John Spencer Stewart, Esq., and Robert B. Coleman, Esq., Stewart Sokol & Gray LLC, for the protester.

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Richard J. Huber, Esq., and Julio Ocampo, Esq., Naval Facilities Engineering Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency’s evaluation unreasonably ignored awardee’s poor past performance record under predecessor contract is denied where positive evaluation of awardee’s past performance record was supported by underlying contract performance assessments and by agency’s explanation of alleged negative information and of basis for changes to performance review assessments.

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### DECISION

Global Food Services, LLC d/b/a GFS Group, LLC, of Hagatna, Guam, protests the award of a contract to Chugach World Services, of Anchorage, Alaska, under request for proposals (RFP) No. N40192-09-R-9000, issued by the Department of the Navy for housing operations and maintenance services for military facilities at various locations in Guam. GFS challenges the evaluation of its and Chugach’s proposals.

We deny the protest.

The RFP, a section 8(a) set-aside, consolidates the existing housing maintenance, operations, and change of occupancy maintenance (COOM) services requirements for the Navy and Air Force in Guam. The RFP contemplated award—on a “best

value” basis--of a contract with fixed-price and indefinite-quantity line items for a base period of 6 months, with 4 option years.

Proposals were to be evaluated under four factors--technical approach, past performance, contractor experience, and price. Non-price factors were weighted equally and, combined, were considered equivalent to price. Proposals were to be evaluated on an adjectival basis (excellent, good, satisfactory, marginal, poor, or--for past performance only--neutral).

Eight offerors, including GFS and Chugach, submitted proposals, which were evaluated by the technical evaluation board (TEB). The TEB’s consensus evaluation rated Chugach’s proposal excellent under all three non-price factors, for an overall rating of excellent. The TEB rated GFS’s proposal good overall based on an excellent rating under the technical approach factor, good for past performance, and satisfactory for experience. GFS’s price of \$141.6 million was the sixth lowest proposed and Chugach’s \$133.9 million price was fourth lowest. The source selection board (SSB) reviewed the evaluations and recommended award, without discussions, to Chugach based on its excellent proposal ratings, significant technical strengths, and other advantages associated with its teaming agreement. The SSB considered GFS’s technical ratings and strengths, but found that Chugach had stronger past performance and experience at a lower price. As relevant here, the source selection authority, based on his own review of the proposals and prior evaluations, concluded that Chugach’s proposal, with the highest non-price rating and lower price, represented the best value to the government over GFS’s lower-rated and higher-priced proposal, and thus made award to Chugach. After a debriefing, GFS filed this protest challenging the agency’s past performance evaluation.

## CHUGACH EVALUATION

GFS asserts that the agency’s evaluation of Chugach’s past performance as excellent was unreasonable because it ignored the poor performance of the awardee’s sister company on the predecessor COOM contract in Guam.<sup>1</sup> GFS’s assertions are based on its position as the current housing operations and maintenance services contractor, which allegedly allowed it to observe both Chugach’s poor performance and agency contracting officials’ dissatisfaction with that performance. Specifically, GFS asserts that Chugach has repeatedly performed its work late and has regularly requested extensions of renovation completion dates (RCD).

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<sup>1</sup> In support of its past performance, Chugach submitted records of the past performance of some of its sister companies including Chugach Government Services Inc., the contractor performing the predecessor COOM contract in Guam. References in this decision to Chugach include both the offeror and its sister companies.

We will review an agency's past performance evaluation only to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 10; Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency's evaluation was unreasonable. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

This argument is without merit. In support of its allegations of late performance, GFS has submitted e-mails and RCD schedules from June, July, August, September, November, and December 2008, and January, February, March, and June 2009, reflecting requests for changes in RCDs. Declaration of GFS Family Housing Manager (FHM), Exh. A. However, apart from GFS's opinion as a competing contractor and its identification of RCD changes and requests for changes, nothing in the e-mails or schedule changes indicate that the majority--if any--of the change requests were due to performance problems on Chugach's part. For example, the agency explains that the majority of change requests in March 2009 were due to the unavailability of government inspectors, who were in training. Declaration of Senior Performance Assessment Representative (SPAR), ¶ 4. Although the agency does not specifically account for each RCD change, it explains that other changes were due to issues such as supply shortages, lack of funds, additional work ordered around the time of the original RCD, and failure of tenants to move out on time. Id.; Declaration of Performance Assessment Representative (PAR), Mr. P. In this regard, the e-mails indicate that a number of requests for RCD changes (from June through September 2008) were attributable to flooring issues, including delays in delivery of carpet and ceramic tile which apparently were not Chugach's fault. See Declaration of GFS FHM, Exh. A, at 6-7, 11, 14. The record shows that overall, the agency has been satisfied with Chugach's performance, as evidenced by monthly performance assessment summaries from July 2008 through June 2009, which reflect very good to excellent ratings for Chugach's COOM work. Agency Report (AR) Tab 14. Since the record shows that the agency was fully aware of the RCD changes under Chugach's contract and, as explained by the agency, the changes in RCDs have not been due to Chugach's poor performance, there is no basis for us to question Chugach's past performance evaluation.

GFS asserts that in March 2009, 18 of 34 ratings on Chugach's quarters inspection forms were raised from less than excellent to excellent. See Declaration of GFS FHM, Exh. B. These inspection forms are filled out by the agency's PARs when the COOM contractor completes maintenance work orders for vacated housing units. Declaration of PAR, Mr. P. The SPAR reviews the monthly PAR ratings, and explains that, while she agrees with satisfactory or good ratings where discrepancies have been noted, in her view, it is unfair to rate any contractor's performance lower than excellent if the PAR has not annotated any discrepancies in completion of a work order. Declaration of SPAR, ¶¶ 1, 3. The SPAR states that here, in an effort to clarify individual PAR ratings that identified no discrepancies, she asked that some

PARs reconsider and change ratings to excellent where no discrepancies had been noted. Id. GFS asserts that the SPAR's doing so rendered the ratings meaningless.

We think the SPAR's methodology was reasonable. Ratings below excellent were based on the presence of discrepancies, while changes of lower ratings to excellent were based on a lack of discrepancies or where the form indicated that discrepancies had been corrected, making them consistent with other initial ratings of excellent. See Declaration of GFS FHM, Exh. B. In following this approach, the SPAR essentially assumed, for all contractors (including GFS under its current contract), that if supporting discrepancies were absent, the reduced rating was erroneous. As this approach ensured uniform treatment of all contractors' ratings without discrepancies noted, it was unobjectionable. Id.; Declaration of SPAR, ¶ 3. We conclude that there is no basis to question the evaluation based on Chugach's revised PAR ratings.

GFS alleges bad faith on the part of agency officials, claiming that they deliberately kept the negative performance information about Chugach's sister company from the evaluators. GFS Protest at 9. A protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. In support of its allegation, GFS provides declarations from its FHM and its assignment and termination supervisor (ATS), stating that the acting housing director (AHD) confronted the SPAR about the changed PAR ratings, and that the AHD and other PARs shared their concerns about Chugach's poor performance with GFS employees. Declarations of GFS FHM, ¶¶ 4-5, and GFS ATS, ¶¶ 3-5. However, the identified agency officials all deny ever having found Chugach's performance less than satisfactory or poor, see, e.g., Declarations of PARs Messrs. C. and P., and Mses. H. and A, and the AHD denies that she was upset with the SPAR's evaluation views and that she discussed the matter with GFS personnel. Declaration of AHD. Absent evidence substantiating GFS's claims, there is no basis for a finding of agency bad faith.<sup>2</sup>

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<sup>2</sup> In any event, Chugach's excellent past performance rating was made up of more than the excellent rating for its sister company's past performance on the Guam COOM contract. In this regard, the evaluators found four of Chugach's other past performance projects to be relevant based on size, scope, and complexity, with three rated overall excellent and the fourth rated overall good. AR, Tab 4A, attach. 1. Since GFS has not challenged any of these ratings, it does not appear that a less than excellent rating for its Guam work would have any significant impact on the evaluation of Chugach's past performance.

## GFS EVALUATION

GFS asserts that the agency improperly evaluated its proposal under the past performance and experience factors by using a “trend” method, *i.e.*, an offeror was required to have at least three past performance/experience references in order to be rated above good. Protest at 4. In this regard, GFS had only one relevant past performance reference and, while it reflected an overall rating of very good, the agency only rated its proposal good under the past performance factor and satisfactory under the experience factor. According to GFS, had it known of the agency’s methodology, it would have teamed with another contractor in order to have more past performance/experience references. GFS Supplemental Agency Report Comments at 9; Declaration of GFS President, ¶ 9. The agency explains that, while it looked at trends in offerors’ past performance, it in fact did not require a minimum number of past performance references for an offeror to achieve a particular score. Supplemental Agency Report at 5.

We need not resolve this issue because the record shows that GFS was not competitively prejudiced by any alleged evaluation error. In this regard, even if GFS prevailed on this protest ground and its technical ratings were increased to excellent under both the past performance and experience factors, its rating would be excellent overall, the same as Chugach’s, and its proposed price would remain more than \$7 million higher than Chugach’s. With price and technical factors being equal, there is no reasonable possibility that GFS’s higher-priced proposal would have been selected for award. *See American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3. Prejudice is an essential element of every viable protest; thus, where, as here, the agency’s allegedly improper actions did not affect the protester’s chances of receiving the award, the allegation provides no basis for sustaining the protest. *Joint Mgmt. & Tech. Servs.*, B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

The protest is denied.

Daniel I. Gordon  
Acting General Counsel