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**Comptroller General
of the United States**

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

Decision

Matter of: Gonzales-McCaulley Investment Group, Inc.

File: B-402544

Date: May 28, 2010

Ollie M. McCaulley and Aurora Gonzales, for the protester.
Phillipa L. Anderson, Esq., and Jo Spence, Esq., Department of Veterans Affairs, for the agency.
Paul N. Wengert, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that past performance evaluation was unreasonable is denied where, even though one weakness was erroneously attributed to protester's proposal, record shows that rating would remain no higher than acceptable due to reasonably assigned deficiency based on protester's limited experience performing similar services with the procuring agency.
2. Protest that evaluation under technical approach factor was unreasonable is denied where, even if protester's proposal received highest available rating under the factor, its rating would not be superior to successful vendor's, and protester's price was significantly higher than successful vendor's; protester therefore was not competitively prejudiced by alleged evaluation errors.

DECISION

Gonzales-McCaulley Investment Group, Inc. (GMIG), of Palmdale, California, a small business, protests the issuance of an order to NPI, Inc., of Edmonds, Washington, under request for quotations (RFQ) No. VA-798-10-RQ-0016, issued by the Department of Veterans Affairs (VA), to provide contracting training for the VA Acquisition Academy (VAAA). GMIG argues that its quotation was misevaluated and that the source selection decision was unreasonable.

We deny the protest.

On January 6, 2010, the VA issued the RFQ to small businesses holding Federal Supply Schedule contracts under schedule No. 874, the mission oriented business integrated services (MOBIS) schedule. The RFQ described the VA's requirement for

a vendor to teach standard contracting courses to contracting officers, and contracting officer's technical representatives (COTR). Vendors were permitted to quote on one or both courses.

Quotations were to be evaluated for "best value" based on three factors: technical approach, past performance, and price. The past performance evaluation encompassed three elements: three references with knowledge of the vendor's performance in delivering similar training; resumes of the vendor's proposed instructors; and the extent to which the courses offered were equivalent to similar Defense Acquisition University counterparts, but tailored to civilian agencies. RFQ at 6-7. The RFQ also advised vendors that "previous performance conducted within the VAAA will be considered more heavily than other previous performance outside of VAAA." RFQ at 6.

The VA received quotations from four vendors. Three vendors, including NPI, quoted both the contracting officer and COTR courses, while GMIG offered only the COTR course. The VA evaluators reviewed the quotations and prepared a report identifying the strengths and weaknesses of each quotation. The evaluators identified five deficiencies and two weaknesses in GMIG's technical approach, which resulted in a rating of unacceptable. They also assigned GMIG's quotation one deficiency (due to only one VAAA reference) and one weakness (for proposing to use only four main instructors and two backup instructors) under the past performance factor, resulting in a rating of acceptable. AR, Tab 4, Evaluation Report, at 3. NPI's quotation was rated excellent for technical approach and acceptable for past performance. *Id.* at 3-4.¹ GMIG's price (for the COTR course only) was \$527,775, which was approximately 52.4% higher than NPI's price for that course.² AR, Tab 5, Source Selection Decision Document (SSDD) at 3-4; Supplemental (Supp.) Report at 6. Based on the evaluation, the contracting officer issued an order to NPI. AR, Tab 5, SSDD, at 7-8.

GMIG argues that its proposal improperly was assigned a weakness under the past performance based on the number of instructors quoted, because the RFQ did not provide that the number of instructors would be considered in the past performance

¹ The protester is not represented by counsel who could seek admission under a protective order. Accordingly, our discussion of NPI's quotation necessarily is limited to information that is not source selection sensitive or proprietary. Also, our decision does not discuss the other two quotations received because they are not relevant to the protest issues.

² NPI's detailed pricing information has not been released to GMIG. However, we have reviewed the unredacted record and have validated the VA's calculation of the differential. To the extent that GMIG cites other procurements in which NPI has allegedly charged different (higher) prices, those allegations provide no basis to question the VA's evaluation of prices here.

evaluation. The protester also maintains that it was unreasonable for the agency to assign its quotation a deficiency based on its having only one past performance reference for teaching at the VAAA. Protester's Comments at 13-15.

The VA concedes that it erroneously assigned a weakness to GMIG's quotation based on the number of instructors proposed. However, it maintains that the error did not undermine GMIG's past performance rating because the deficiency assigned—for having only one reference for teaching at the VAAA—remains valid; GMIG's past performance rating thus would remain no higher than acceptable.³

Evaluation of a vendor's past performance is a matter within the discretion of the contracting agency, and we will not substitute our views for a reasonably based past performance rating. PMT Servs., Inc., B-270538.2, Apr. 1, 1996, 96-2 CPD ¶ 98 at 6.

We find no basis for objecting to GMIG's past performance rating. As noted, the RFQ specifically provided that "previous performance conducted within the VAAA will be considered more heavily than other previous performance outside of VAAA." RFQ at 6. In light of this provision, the protester was on specific notice that less past performance with VAAA would result in a lower rating, and it was reasonable for the VA to downgrade GMIG on the basis that only one of its three required references was for the VAAA. We note generally, in this regard, that in evaluating past performance, it is reasonable for an agency to accord greater evaluation credit for specific experience directly relevant to the work to be performed under the solicitation. MELE Assocs., Inc., B-299229.4, July 25, 2007, 2007 CPD ¶ 140 at 7. As for the weakness erroneously assigned, there is no reason to believe that eliminating the weakness would result in a different past performance rating. In this regard, our review of the complete evaluation record confirms that other vendors whose proposals were assigned significant weaknesses or deficiencies under the past performance factor similarly received ratings no higher than acceptable. Accordingly, there is no basis to conclude that GMIG could have received a past performance rating superior to NPI's.

GMIG asserts that its quotation also was misevaluated under the technical approach factor, objecting to each specific criticism. The VA concedes that some aspects of the technical evaluation of GMIG's proposal were erroneous, but argues that GMIG was not prejudiced because, even if its proposal received the highest technical rating of excellent, the same as NPI's, GMIG still would not have been in line for award

³ GMIG objects that the agency's supplemental report erroneously states that it submitted only one past performance reference. See Supp. Report at 6. However, the evaluation record clearly shows that the evaluators were aware that GMIG had submitted multiple references—although only one was for teaching at the VAAA. The misstatement in the agency's supplemental report therefore provides no basis for questioning the evaluation.

ahead of NPI, since its past performance rating was the same as NPI's and its price was 52.4 percent higher. We agree with the agency.

We will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, that, but for the agency's actions, the protester would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, even if GMIG's proposal were assigned the highest technical approach rating of excellent, it still would not be in line for receiving the order, since this would leave its technical approach and past performance ratings on par with NPI's, leaving price as the deciding factor. Since GMIG's evaluated price for the COTR course was significantly higher than NPI's, NPI would remain in line for the award. Under these circumstances, GMIG was not competitively prejudiced by any errors in the technical evaluation and, accordingly, there is no basis for sustaining its protest.⁴

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁴ GMIG seems to argue that the fact that the VA selected GMIG for award under a prior solicitation supports its receiving the order here. However, GMIG's receipt of prior contracts is irrelevant to the reasonableness of the VA's source selection here, since each federal procurement stands on its own. Sabreliner Corp., B-275163 et al., Dec. 31, 1996, 96-2 CPD ¶ 244 at 2 n.2.