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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:** Johnson Controls Government Systems, LLC

**File:** B-404654

**Date:** March 17, 2011

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David R. Johnson, Esq., and Jenny J. Yang, Esq., Vinson & Elkins LLP, for the protester.

Robert W. Schlattman, Esq., General Services Administration, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest of the agency's evaluation of the protester's past performance is denied where record shows that the agency reasonably relied on a poor past performance reference.

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### DECISION

Johnson Controls Government Systems, LLC, (JCGS) of Milwaukee, Wisconsin, protests the failure of the General Services Administration to award the firm a contract under request for proposals (RFP) No. GS08T10BPR0084, which provided for the award of multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts for medical treatment facilities (MTF) maintenance services. JCGS complains that GSA's evaluation of its past performance was unreasonable.

We deny the protest.

### BACKGROUND

The RFP provided for the award of up to eight ID/IQ contracts for maintenance, repair, and minor construction of MTFs. Offerors were informed that contractors would have an opportunity to compete for task orders to provide MTF services at various Department of the Air Force sites worldwide, and that seven task orders would be issued concurrently with the award of the contracts.<sup>1</sup> RFP at 5.

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<sup>1</sup> The RFP provided that other Department of Defense agencies may order similar services under the contract.

The RFP provided that awards would be made on a best value basis, considering price and the following technical evaluation factors (listed in descending order of importance): past performance, management approach, technical approach, and qualifying experience. The technical evaluation factors were stated to be more important than price.

With regard to the past performance evaluation factor, the RFP stated that offerors would be evaluated on how well the firm had performed similar contracts. Specifically, the RFP explained that the “standard for evaluation” would be met when all references for the offeror were satisfactory under 5 past performance subfactors: problem solving, risk management, timeliness, quality control performance, and corporate worldwide geographic coverage. Offerors were told to identify all past (within the last 5 years) and current experience similar to the services being procured here, and provide a brief description of the services provided under each of the 5 subfactors. RFP at 192, 195. The RFP stated that, in evaluating offerors, GSA would consider references provided by the protester (the RFP required 3 references), as well as other references. RFP at 193.

GSA received a number of proposals, including the protester’s, which were evaluated by the agency’s source selection evaluation board (SSEB). With respect to the evaluation of JCGS’s proposal, one member of the SSEB informed the other evaluators that JCGS had significant negative past performance at Nellis Air Force Base (AFB), Nevada. Specifically, this SSEB member stated that JCGS, which was the operations and maintenance firm responsible for the preventative maintenance/corrective maintenance program at Nellis AFB, had failed to properly maintain three of the boilers at the Nellis AFB medical facility, such that these boilers had prematurely failed and needed to be replaced. See Agency Report, (AR), Tab 3, Email to SSEB Members, Oct. 1, 2010.

GSA informed JCGS of this reported adverse past performance information and requested an explanation. AR at 2. JCGS responded that the boilers’ location and the death of an individual (who was maintaining a critical manual operation of the boilers) may have contributed to the boiler failures, which occurred after the firm’s contract to perform this work had expired. See id., Tab 4, JCGS Letter to GSA, Oct. 20, 2010. GSA provided JCGS’s response to the Air Force, which disagreed with JCGS’s explanations that the location of boilers or the failure to perform a certain manual maintenance operation was the cause of the boilers’ failure. See id., Tab 5, Air Force Email, Oct. 26, 2010.

The SSEB did not accept JCGS’s explanation for its performance at Nellis AFB and evaluated JCGS’s proposal as poor under the past performance factor. Specifically, the SSEB found that, although the firm’s past performance references evaluated JCGS’s performance as ranging from satisfactory to good, the adverse past performance information that the board received with respect to the firm’s

performance at Nellis AFB warranted poor ratings under the risk management, timeliness, and quality control past performance subfactors. AR, Tab 9, SSEB Report at 33. The board noted that JCGS's explanation of the failure of the boilers was reviewed by an engineer at Nellis AFB, who "fully disagreed" with the protester's explanation and that the "engineer inspected the boilers and found that the problem was caused by several years of non[-]maintenance (the new vendor has only been working for approx 12 months)." Id.

GSA made award to seven other firms. The awardees' technical proposals were found to be technically superior to JCGS's proposal. AR at 4; Tab 9, SSEB Report, at 43. This protest followed.<sup>2</sup>

## DISCUSSION

The protester objects to the agency's evaluation of its past performance. Specifically, the protester contends that it was improper for the agency to base its source selection decision on one poor past performance reference because, in doing so, the agency relied on limited information and gave that information undue weight. Comments at 8, 14. In this regard, the protester asserts that GSA failed to review "basic documentation" about JCGS's performance at Nellis (including a report of the investigation of the boiler failures, records of JCGS's maintenance at Nellis, and records of the follow-on contractor's performance), and that GSA failed to give proper weight to the good ratings the firm received by other references.<sup>3</sup>

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. See JVSCC, B-311303.2, May 13, 2009, 2009 CPD ¶ 138 at 5. A protestor's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

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<sup>2</sup> Apart from its objection to the agency's evaluation of its past performance, JCGS does not challenge GSA's selection decision.

<sup>3</sup> JCGS also challenges the contention that JCGS did not perform "any maintenance" on the boilers. In this regard, JCGS asserts that Air Force has failed to produce any past performance evaluation of the firm's work supporting this contention. JCGS also argues that its performance at Nellis AFB was satisfactory, noting that that the Air Force exercised options under JCGS's contract and provided a performance award to a JCGS "key employee" at Nellis AFB. Given that the Air Force learned of the boiler problems after the expiration of JCGS's contract, we fail to see how these facts demonstrate that the agency's conclusion that JCGS's failed to perform its required maintenance duties was unreasonable.

Here, the record supports the agency's judgment concerning the protester's performance at Nellis AFB. That is, the record shows that, after GSA received adverse past performance information concerning JCGS's performance at Nellis AFB, the agency obtained both the protester's and the Air Force's views concerning JCGS's performance. Although JCGS continues to disagree that it was responsible for the boiler failures, we find that GSA was entitled to rely on the information it received from the Air Force. In this regard, GSA was not required, as JCGS apparently believes, to conduct its own investigation into the boiler failures. See Firetech Automatic Sprinkler, B-296626, Sept. 22, 2005, 2005 CPD ¶ 174 at 3-4 (an agency is permitted to rely upon a reference where nothing on its face would reasonably lead the agency to look behind it).<sup>4</sup>

We also do not find that GSA gave "undue weight" to the protester's past performance at Nellis AFB medical facility, the relevance of which is undisputed. The record shows that the agency in its past performance evaluation of JCGS's proposal recognized the protester's satisfactory and good performance of other contracts. See AR, Tab 9, SSEB Report at 33. Nevertheless, the agency remained concerned that JCGS's negative performance at the Nellis AFB medical facility presented a performance risk. Although JCGS disagrees with this judgment, it has not shown that the agency's concern was unreasonable.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>4</sup> With its comments, JCGS provided various documents supporting its contention that the firm is not responsible for the boiler failures. None of these documents were presented to GSA when it sought a response from JCGS regarding the boiler failures. In any event, these documents do not demonstrate that GSA unreasonably relied upon the Air Force's views that JCGS was responsible for the boiler failures.