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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: John Blood

File: B-290593

Date: August 26, 2002

John Blood for the protester.

Lynn W. Flanagan, Esq., Department of Agriculture, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly evaluated protester's past performance in a procurement using simplified acquisition procedures is denied where at the time of its selection decision agency had no reason to question the validity of the information furnished by the protester's references. Agency was not required to conduct discussions or otherwise communicate with protester regarding the adverse past performance information obtained from the protester's references.

DECISION

John Blood protests the issuance of a purchase order to URI Forestry Services, Inc. under request for quotations (RFQ) No. RFQ-RMAST-02-033, issued by the Forest Service, United States Department of Agriculture, for tree thinning and snagging services at the Nebraska National Forest. Blood challenges the evaluation of the firm's past performance record and award to a higher-priced vendor.

We deny the protest.

The RFQ, issued as a small business set-aside under simplified acquisition procedures, contemplated the issuance of a fixed-price order to the commercial vendor whose quotation represented the best value to the government. Quotations were to be evaluated on the basis of price and past performance; past performance was stated to be as important as price. To evaluate past performance, vendors were required to provide specific information about recent relevant similar contracts from the last 3 years that support past and present performance, as well as contact information for three references. This information would be reviewed by the agency

to assess the quality of each vendor's past performance in the following areas: (1) quality of services; (2) customer satisfaction; (3) business relations; (4) timeliness; and (5) responsiveness and reliability. The agency planned to issue a purchase order based on initial quotations without conducting discussions.

The agency received six quotations. In assessing the vendors' past performance, the contracting officer's representative (COR) conducted telephone interviews with references either furnished by the vendors in their quotations or otherwise identified by the agency. He then assigned adjectival ratings on the basis of the interview results for each firm.¹ As relevant here, URI was evaluated as qualified/low performance risk based on information received from two of the vendor's listed references. Each reference provided generally good assessments of URI's performance, except that one reference identified some safety concerns and indicated that URI had received a time extension of a few days. AR exh. 8, Evaluation Rating Worksheets. In rating Blood's past performance, the COR contacted four of Blood's listed references. The responses indicated unfavorable assessments of the protester's performance in the areas of quality of services, business relations, timeliness, responsiveness and reliability. Based on the information provided by these four references, the COR assigned an unsatisfactory/very high performance risk rating to Blood's past performance record. Id.

After evaluation of quotations and price verification, Blood was the apparent lowest priced vendor at \$21,098, and URI's quote of \$23,716 was second low. In making her award decision, the contracting officer stated:

[The contracting officer] has determined that John Blood does not represent the best value to the Government given his past performance record. Specifically:

Quality of Services -- Demonstrated ability to meet the contract specifications and conformance to standards of good workmanship. John Blood refused to meet the contract specifications for 7' minimum spacing between trees for the Tree Thinning Services: Whiskey Park Tree Planting contract number 43-8508-9-0507. On the

¹The following adjectival ratings were used in the evaluation of past performance: highly qualified/very low performance risk (contractor is able to meet or exceed the government's requirements, consistent high quality excellent performance can be expected); qualified/low performance risk (contractor is able to meet the government's requirements, good or acceptable performance can be expected); and unsatisfactory/very high performance risk (contractor is unable to meet the government's requirements, unacceptable performance can be expected from the contractor). Agency Report (AR) exh. 5, Evaluation Rating System.

Uinta National Forest John refused to perform Item 2 of the contract.

Business Relations -- Effectiveness of management working relationships and cooperative behavior. John Blood's response to inquiries and technical/service/administrative issues were not effective on the Whiskey Park Tree Planting contract. John hung up on the CO and COR during a teleconference. Communications with the government were unprofessional. John's relationship with the MBR National Forest can be characterized as adversarial.

Timeliness -- Compliance with schedules. John did not start work on time for a Uinta National Forest contract. On the Whiskey Park Tree Planting contract John had major difficulty meeting milestones and delivery schedules.

Responsiveness and Reliability. John missed mutually scheduled meetings with the Government on the Whiskey Park Tree Planting contract and did not attend the pre-work meeting as he said he would. John was difficult to contact . . . during the Whiskey Park Tree Planting contract. Extensions were needed for contracts John performed on the MBR National Forest.

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The difference in price between John Blood, the apparent low quoter rated Unsatisfactory and the next lowest quoter, URI rated Qualified is \$2,618 (\$23,716 - \$21,098). . . . The best value for the Government given the difference in price of \$2,618 is to contract with a contractor determined to be Qualified, which is URI.

AR exh. 9, Award Memorandum, at 3. The Forest Service issued the order to URI, as the best value vendor, and after receiving notice of the award Blood filed this protest.

Blood argues that the agency erred in evaluating his past performance as unsatisfactory/very high performance risk, alleging that the oral information obtained from his references were false and unverifiable hearsay. Protester's Comments at 2. Blood claims the agency downgraded his past performance record because of legitimate contract claims under his prior Forest Service contracts and expresses disagreement with the agency's evaluation, concluding that his past performance history supported a qualified/low performance risk rating. In support of his argument, the protester cites different accounts of his past performance that Blood obtained by contacting his references after receipt of the agency's report on the protest. Protester's Comments at 2-3; Protester's Supplemental Comments at 1. For instance, the protester states that his references denied statements attributed to

them, for example, that Blood was granted time extensions. As to the Whiskey Park Tree Planting contract, the protester also disputes that he failed to attend a scheduled pre-work meeting, missed milestones, or hung up on the CO and COR during a teleconference. Id.

Notwithstanding the challenges to the validity of the reference-furnished information that Blood now raises, the protester has not alleged, nor is there anything in the record to suggest, that at the time the contracting officer made her selection decision, she had any reason to question the accuracy of the information provided to her. Where an agency is not required to hold discussions or otherwise communicate with vendors regarding past performance information, as is the case where simplified acquisition procedures are employed, see FAR § 13.106-2(b)(2), and the contracting officer has no reason to question the validity of the past performance information, we think that she can reasonably rely on the information furnished without seeking to verify it or permitting the protester an opportunity to rebut it. Lynwood Mach. & Eng'g, Inc., B-285696, Sept. 18, 2000, 2001 CPD ¶ 113 at 7.² Moreover, we note that an agency's past performance evaluation may be based on a reasonable perception of inadequate prior performance, even where the protester disputes the agency's interpretation of the underlying facts.³ Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7. Thus, we conclude the agency's actions were unobjectionable.

In a related argument, Blood alleges that the agency violated the provisions of FAR subpart 42.15—which establishes policies and procedures for recording and maintaining contractor performance information—by failing to prepare past performance evaluation reports and by failing to provide the protester an opportunity to rebut any negative information contained therein. Protester's

²Blood incorrectly alleges that the agency's evaluation of his past performance constituted a determination of nonresponsibility of a small business that the Forest Service was required to refer to the Small Business Administration (SBA) for consideration under the SBA's certificate of competency procedures. Traditional responsibility-type factors, such as past performance, may be used for the comparative evaluation of quotations in relevant areas as it was here. Where a vendor's past performance is determined to be unsatisfactory pursuant to such a best value evaluation scheme, the matter is one of relative technical merit, not responsibility, and does not require referral to the SBA. T. Head and Co., Inc., B-275783, Mar. 27, 1997, 97-1 CPD ¶ 169 at 3-4.

³There is no merit to the protester's suggestion that the award to URI is somehow questionable because URI also received unfavorable past performance assessments. The agency has fully explained in the agency report and supplemental agency report how this unfavorable information was considered and we see nothing improper in URI's past performance evaluation.

Comments at 1-2. To the extent Blood is asserting that FAR subpart 42.15 establishes a blanket requirement to collect and maintain past performance information on all contracts, we disagree. As relevant here, agency contracting officers are to prepare past performance reports—either on an interim basis (voluntary), or at the conclusion of a contract (mandatory)—for all contracts valued in excess of \$100,000, regardless of the date of contract award. See generally FAR subpart 42.15. None of the references listed in Blood’s quotation fall within the monetary threshold requirements of this subpart. Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 8-9.

The protest is denied.⁴

Anthony H. Gamboa
General Counsel

⁴Blood also maintains that the Forest Service harbored some bias against Blood that influenced its evaluation and selection decision. Protest at 5-6. This accusation is unsupported. Government officials are presumed to act in good faith, and where a protester argues otherwise it must provide convincing proof, since our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Oceanometrics, Inc., B-278647.2, June 9, 1998, 98-1 CPD ¶ 159 at 6. In addition to producing credible evidence showing bias, the protester must demonstrate that the agency bias translated into action that unfairly affected the protester’s competitive position. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. Blood has offered nothing but bare assertions.