

1 direct and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any
2 greater weight than the other.”

3 On 29 January 2020 GSA amended the Request for Proposal to change the evaluation
4 criteria. This was done months *after* publication and distribution of the RFP to potential
5 offerors. As a result of the change, a wholly new criterion for evaluation was created “[t]o
6 demonstrate (*sic*) ‘Voucher System’ to manage, approve, and verify record services will be
7 performed.” *See Amendment 6, GSA/ RFP-20-0240-001, 29 January 2020.* The requirement for
8 a voucher system has been present in the law for years and was known to GSA when the RFP
9 was drafted.

10 Prior to the change in law, a “voucher system” was not required or used in the
11 performance of medical referral services and neither offerors nor the GSA presently know what
12 the voucher system means, will be nor how it will be used. *See Procurement Record at Tab 6,*
13 *DOA Letter to GMRS dated 23 December 2019,* “A voucher system that will be approved, will
14 be discussed during negotiation.” *And See Id at Tab 10, DOA Letter to GMRS dated 27 January*
15 *2020,* “The Voucher System that is to be developed is an internal control between the Guam
16 Medical Referral Office and the winning Offeror to manage, approve and verify and record
17 services being received by each patient (and authorized escort.)” *Id, emphasis added.* This is of
18 course untrue. 5 Guam Code Ann. §11.102(e)(1) states that,

19 “(e) For those residents who are not eligible for existing services provided by health
20 insurance companies, referring facilities, or local not-for- profits, **the MRAO¹** may:
21 **(1) develop a request for proposal** to provide assistance services from a duly registered
22 Guam-based not-for-profit organization that can provide such services, including
23 coordination of appointments, transportation, and lodging. **This proposal shall use a**
24 **voucher type system to provide direct services to residents seeking off-island care.**

25 *Id, emphasis added.*

1 The MRAO is a “Medical Referral Assistance Office (MRAO) within the Office of I
Maga’lâhen Guåhan (the Governor of Guam)” and is distinguished from the contracted service
provider. *See 5 Guam Code Ann. §11.101.*

1 The law states that the MRAO and not the contracted provider has the responsibility for
2 developing the voucher system, that is the Medical Referral Assistance Office within the Office
3 of the Governor and **not** the contracted assistance provider. That is evident from the use of the
4 definite article “this” to refer to the prior-mentioned request for proposals. Having no real
5 understanding of the applicable law, it is not surprising that the GSA has re-weighted evaluative
6 factors to favor its preferred “rooster”.

6 On or about 25 February 2020 the GSA filed an Agency Report responding to GMRS’
7 Appeal of GSA’s denial of a protest. That Report, in its entirety says,

8 “We stated that in reviewing the law that establishes the criteria for the medical referral
9 assistance program, a voucher system was a required item. As such inclusion of this
10 system in the evaluation criteria was appropriate to ensure that it met the requirement of
11 law. . .” *See Agency Report at Tab 1.*

11 It should be noted that all manner of things are necessary to meet the requirements of law and
12 make a successful response to the Request for Proposals, e.g. the offeror must be a not-for-profit,
13 the offeror must not have colluded with another to obtain a contract, the offeror must agree to the
14 general and special conditions etc. None of these aspects were given weight as a criterion for
15 selection though, contrary to law and sense, the creation of a voucher system was.

15 As re-weighted, the Request for Proposal now assigns one-fifth of the possible points
16 awarded to an undeveloped system that is not germane to performance². There is no reason for
17 this, and a review of the Procurement Record contains no evidence of any consideration or
18 analysis of the propriety of the inclusion nor the re-weighting of criteria³.

18 As an example of the re-weight absurdity, where an entity has performed similar
19 services, the weighted value of that prior performance is now **reduced** to 15% of possible
20 awarded points though this is by any measure a cardinal, relevant requirement. As a further

21 ² The GSA itself sees the voucher system as no more than an accounting practice to ensure
22 proper billing and compensation.

23 ³ Appellant is aware of no prior protest concerning the weight assigned to the categories and
24 concludes that this change is a result of improper influence or ex parte communication between
25 the agency and a potential offeror.

1 example of the bias, where an entity has specific experience performing the service, the value of
2 that experience is **diminished** to 15% though this too is an obvious, necessary, relevant
3 requirement. As another example of the re-weight bias, where an entity has a record of past
4 performance of similar work, the value of that work is also **diminished** to 15% though this is, like
5 the preceding criteria, a cardinal, relevant requirement. Yet another example of this weight bias
6 is found in the importance assigned an offeror's demonstrated ability to meet schedules or
7 deadlines. Here the GSA reassigned a **lesser** value of 15% to that demonstrated ability though it
8 too is of central importance to determining qualification. By contrast, the GSA assigned the
9 lion's share of points to a "voucher system" which is unrelated to contract performance.

10 Taken as a whole, it appears that GSA has done this in order to assist an inexperienced
11 offeror to the detriment of any offeror which has the necessary experience. Functionally, the
12 GSA post-publication amendment works to the prejudice of Appellant and the advantage of other
13 inexperienced offerors by including this new criterion unrelated to contract performance and
14 discounting the value of relevant criteria. At the outset, this is an impermissible amendment⁴.
15 Criteria for selection must be made before publication of the Request for Proposal. *See 5 Guam*
16 *Code Ann. §5216(e)*, "Award shall be made to the offeror determined in writing by the head of
17 the purchasing agency or a designee of such officer to be best qualified based on the evaluation
18 factors set forth in the Request for Proposals". Secondly, offerors are competing for points by
19 demonstrating an ability to comply with a system that has not and does not yet exist. There is no
20 explanation for this other than Agency outcome bias.

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1. GSA Gives Away the Game

GSA has a desired outcome in this procurement and a preferred offeror; GSA gives the
game away when it states,

"Along the same vein, this is a whole new program per the amended statute, so perhaps it
would be prudent for the MRAO **not to give so much weight to experience**⁵. Rather,

⁴ GSA argues it has reserved for itself the right to amend the RFP. This may be so, but no
improper exercise of this reservation is possible. Does GSA believe it could award additional
points to those offerors who are not Caucasian?

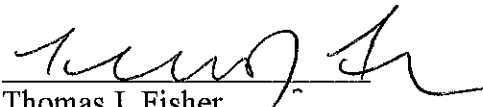
⁵ It should be noted that the United States electorate operated under this idiotic model in 2016.
We are now reaping the fruits of that disastrous decision

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the MRAO may want an offeror that can demonstrate an ability to take the new ball and run with it.”

This is stupid. The GSA wants a contractor that can get the job done and is not subject to start-up stumbling. No cardiac patient ever said to his surgeon “I know you don’t have experience, but you appear quite gung-ho; let’s do it.”

Regardless of political persuasion, ethnicity or skin color, the GSA is expending taxpayer money and has no choice but to create and maintain a level playing field


Thomas J. Fisher
Attorney for Appellant