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**Comptroller General
of the United States**

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

Decision

Matter of: PestMaster Services, Inc.

File: B-404193

Date: January 14, 2011

Lynda Sargent for the protester.

Gary R. Allen, Esq., and Erika L. Whelan Retta, Esq., Department of the Air Force, for the agency.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated past performance is denied where the record demonstrates that the agency assessed the relevance of the protester's and awardee's past performance and reasonably determined that the protester's poor record of performance on a very relevant contract justified a lower past performance rating as compared to the awardee, and the agency reasonably determined that that protester's lower price did not outweigh advantages of awardee's higher-rated past performance.

DECISION

PestMaster Services, Inc., of Bishop, California, a small business, protests the award of a contract to United Rodent & Pest Services, Inc., of Tehachapi, California, by the Department of the Air Force under request for proposals (RFP) No. FA9301-10-R-0009 to perform commercial pest control services at Edwards Air Force Base in California. PestMaster argues that the Air Force miscalculated the past performance of both PestMaster and United Rodent, and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

On May 25, 2010, the Air Force issued the RFP as a commercial item solicitation, seeking proposals to perform pest control services including general monthly services, mosquito larvae control, athletic field treatment, hanta virus control, vacant

housing services, emergency calls, and weed control. See generally RFP at 3-21.¹ Among other things, the RFP required the contractor to use integrated pest management techniques, and to apply treatments (including chemical insecticides, rodenticides, and herbicides) in strict compliance with California and Air Force regulations. Id. at 68. The RFP provided for some services to be delivered on an indefinite-delivery/indefinite-quantity (ID/IQ) basis, and other services to be delivered on a fixed-price monthly basis. Id. at 54, 69-70.

The RFP specified that award would be based on the evaluation of past performance and price, with past performance significantly more important than price. Id. at 33. To permit the evaluation of past performance, the RFP directed offerors to submit up to four references, provide contact information to the agency for each reference, and send to each reference a past performance questionnaire. Id. at 31-33. The references were to complete the questionnaires and submit them directly to the agency. Id. at 33.

The RFP stated that the relevance of each referenced past performance contract would be assessed in the following six areas: scope (similarity of the tasks to those in the RFP), magnitude/complexity (similarity of the workload to that in the RFP), contract type (ID/IQ more relevant than fixed-price), contract environment (most relevant for performance at military sites in California), recency of performance (most relevant where performance was within the past year), and task order dollar value (large task orders were more relevant). Id. at 34. For each of the areas, the RFP stated that the past performance contract would be evaluated as very relevant, relevant, somewhat relevant, or not relevant based on stated definitions²; these ratings were then rolled up into an overall rating of relevance for each contract. Id. at 34. Based on an evaluation of both the relevance and quality of the offeror's past performance, the RFP indicated that past performance would be assigned an overall factor rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence if the offeror had an inadequate performance record for evaluation. Id. at 35.

¹ In this decision, we use page numbers for the RFP that were apparently applied by the agency in preparing the agency report, which therefore may not correspond with the pagination originally used in the RFP.

² For example, under the scope criterion, a very relevant contract was defined as one in which the offeror had been responsible for pest management services "equal to or exceeding" the tasks required by the RFP; a relevant contract was one involving services "somewhat less" than those in the RFP; and a somewhat relevant contract was one involving services "significantly less" than those in the RFP. Similar definitions of very relevant, relevant, and somewhat relevant were provided for each of the six areas to be evaluated under the past performance factor. RFP at 34.

The Air Force received four proposals, including proposals from both PestMaster and United Rodent. PestMaster proposed to perform the services under the RFP at the Edward Air Force Base using its existing office in Lancaster, California. PestMaster's proposal acknowledged that there were "issues" with the firm's past work providing pest control services at Edwards Air Force Base, and that "[i]n the period between 2005 and 2007 we had negative write ups, and deservedly so." Agency Report (AR), Tab 8, PestMaster Proposal, at 4. The firm described its employees as having "wandered off the high standard," resulting in "what we would call 'justified terminations.'" Id. PestMaster stated that it had replaced the employees in its Lancaster office, and it had implemented an internal quality control program to address the performance issues. Id. at 1, 4.

PestMaster's proposal identified past performance references for weed or pest control contracts performed at the China Lake Naval Air Weapons Station in California; Jacksonville Naval Air Station in Florida; National Aeronautics and Space Administration (NASA) Jet Propulsion Laboratory in California; Gainesville Veterans Administration Hospital in Florida; Los Angeles Department of Water and Power in California; and Annapolis Naval Academy in Maryland. AR, Tab 8, PestMaster Proposal, at 7-12. PestMaster requested past performance questionnaires from three of these references (China Lake Naval Air Weapons Station; NASA Jet Propulsion Laboratory, and Annapolis Naval Academy), plus one not mentioned previously—the Los Angeles Metropolitan Transit Authority (MTA). See AR, Tab 8, PestMaster Proposal, at 84-87. The Air Force determined that the Annapolis Naval Academy reference was not relevant because the contract involved services provided in Maryland, rather than in California, like the services here.³ Contracting Officer's Statement at 4; AR, Tab 9, PestMaster Past Performance Evaluation, at 6. The remaining three contracts were performed in California and were further evaluated.

PestMaster's performance under the NASA Jet Propulsion Laboratory and the Los Angeles MTA contracts was found to be "good/excellent overall." However, the contracts were considered only "somewhat relevant in scope and magnitude/complexity" because both involved "significantly less" tasks than required by the RFP. AR, Tab 9, Past Performance Evaluation, at 1. PestMaster's performance at the China Lake Naval Air Weapons Station was found to be very relevant and exceptional, but the agency noted that the work was not performed by Lancaster's office, which was the office PestMaster proposed to use here. Id. at 15, 18-20.

Although not identified by PestMaster as a reference, the Air Force also considered PestMaster's performance on the pest control contract performed at Edwards Air

³ PestMaster does not challenge the evaluation of this reference as not relevant, and therefore we do not discuss it further.

Force Base from February 2005 to September of 2009. The agency considered this contract to be “very relevant in scope and magnitude/complexity,” but noted that the firm “did not meet the requirements” of the contract. Id. at 1. Among other things, the agency noted that technicians arrived late on multiple occasions, the pest control services provided were inadequate, there were numerous customer complaints, the firm’s industry practices were substandard, and the firm did not follow their quality control plan. Id. In this regard, the agency considered a 2-page memorandum from Air Force officials dated September 26, 2009, describing specific instances of performance problems by PestMaster, as well as corrective action notices and e-mail communications to PestMaster about performance problems and the firm’s responses. Id. at 31-84. The agency recognized that although PestMaster had taken actions to remedy the issues, problems with performance continued into the summer of 2009 and did not negate the overall problematic performance. Id. at 1.

Considering all of the above, the Air Force assigned PestMaster a rating of satisfactory confidence under the past performance factor. Id. The agency also noted that PestMaster’s evaluated price was \$613,617. Id.

The evaluation of United Rodent’s past performance included the consideration of three contracts for pest services performed in California for the California Correctional Institution, the Federal Aviation Administration (FAA) Air Route Traffic Control Center, and Edwards Air Force Base. The agency found the first two contracts to be somewhat relevant because they were smaller in scope, magnitude, and complexity than the work required by the RFP here. AR, Tab 11, United Rodent Past Performance Evaluation, at 3, 8. References for these two contracts rated United Rodent’s performance good and exceptional. Id. at 1. With regard to the Edwards Air Force Base contract, the agency considered the contract to be very relevant and the firm’s performance of the contract to be exceptional. Id. at 1. Specifically, the agency noted that the “technicians have routinely coordinated and responded on time to every service call,” “have gone above and beyond to ensure customer satisfaction,” and reports and billings were on time and correct. Id.

Considering all of these references, the Air Force rated United Rodent as substantial confidence (the highest rating) under the past performance factor. The agency noted that United Rodent’s evaluated price was \$675,987. Id.

The contracting officer determined that United Rodent’s proposal provided a “high expectation that the offeror will successfully perform the contract.” AR, Tab 14, Source Selection Decision, at 3. Although the firm’s price was higher than PestMaster’s, the contracting officer determined that PestMaster’s lower price did not provide a substantial price savings to the government in light of the firm’s inferior record of past performance. The contracting officer selected United Rodent’s proposal for award as the best value to the government, finding that its

higher-rated past performance justified paying the higher evaluated price. After receiving notice of the award and a debriefing, PestMaster filed this protest.

DISCUSSION

PestMaster argues that the evaluation of past performance was unreasonable. As a general matter, the evaluation of past performance is within the discretion of the contracting agency, and we will not substitute our judgment for that of the agency. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a protester challenges the evaluation of past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. JVSCC, B-311303.2, May 13, 2009, 2009 CPD ¶ 138 at 5; S4, Inc., B-299817, B-299817.2, Aug. 23, 2007, 2007 CPD ¶ 164 at 9. A protester's mere disagreement with the agency's evaluation judgments does not demonstrate that those judgments are unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

PestMaster first challenges the relevancy ratings given to its contracts with the Los Angeles MTA and the NASA Jet Propulsion Laboratory. PestMaster argues that the contracts should have been considered very relevant, instead of somewhat relevant, because both contracts are similar in scope to the RFP here. Comments at 3.

The RFP identified that the agency would consider, among other things, the scope, magnitude, and complexity of the work performed in evaluating relevancy. The record shows that the Air Force considered these criteria and determined that the two contracts evaluated were of lesser scope, magnitude, and complexity to the RFP's required effort here, and the record establishes the reasonableness of these conclusions. For example, PestMaster provided weed control and not pest control services to the Los Angeles MTA, and the firm serviced only 280 buildings at the NASA Jet Propulsion Laboratory, which is significantly less than the 1,000 facilities and here. AR, Tab 14, Source Selection Decision, at 2; Contracting Officer's Statement at 4. Based on our review of the record, we find the agency's relevancy determinations to be reasonable and consistent with the evaluation criteria.

PestMaster next argues that its performance at Edwards Air Force base should have been rated higher because the firm has taken corrective action and terminated the

employment of the employees involved.⁴ Comments at 4-9. These objections nevertheless do not show that the evaluation was unreasonable. PestMaster concedes that there were issues of poor performance. The record shows that the Air Force properly considered the issues of poor performance, along with the firm's corrective actions, in determining that PestMaster's overall past performance rating should be no higher than satisfactory confidence. See Engineered Air Sys., Inc.; Hunter Mfg. Co., B-283011 et al., Sept. 21, 1999, 99-2 CPD ¶ 63 at 9 (negative evaluation of past performance was reasonable notwithstanding protester's remedial actions after performance problems occurred).

Finally, PestMaster challenges the past performance evaluation of United Rodent's proposal. The protester argues that United Rodent's past performance contracts were not relevant, and that the firm's work at Edwards Air Force Base was only for a 6-month period (as opposed to PestMaster's 15 years of performance). The protester contends that United Rodent is owned by one of the PestMaster employees that had been fired due to poor performance, and that this individual's poor performance while working for PestMaster should be "counted against" United Rodent as well. Protest at 5-6; Comments at 2-3.

As required by the RFP, the agency considered, among other things, the scope, magnitude, complexity, and recency of performance of each contract evaluated for past performance. The record shows that, consistent with these criteria (and as it had done in evaluating PestMaster's past performance), the agency reasonably determined that two of United Rodent's contracts were only somewhat relevant because each was smaller in scope, magnitude, and complexity to the required work here. The agency also reasonably determined, for both contractors, that their Edwards Air Force Base contracts were very relevant. The agency gave appropriate consideration to United Rodent's 6-month performance of its Edwards Air Force Base contract, given that the RFP required that performance during the 12 months prior to issuance of the solicitation would be considered very relevant. Furthermore, United Rodent's performance at Edwards Air Force Base during this time was exceptional, whereas PestMaster's performance at Edwards Air Force Base from

⁴ The protester also complains that the Air Force did not make PestMaster's headquarters office aware of continuing performance problems at Edwards Air Force Base in 2009, and that the Air Force did not provide PestMaster with an opportunity to respond to adverse past performance. Comments at 4, 10. However, the record shows that PestMaster's Lancaster office, which performed the work, was repeatedly advised of performance problems (through e-mails and formal corrective action reports), and that PestMaster was provided with adequate opportunities to respond. See, e.g., Comments, attach. A, Correspondence Between PestMaster and Air Force. Furthermore, PestMaster concedes that there were "communication issues" within its office, Comments at 7, which may account for why its headquarters office was not immediately advised of the performance problems.

2005 to 2009 reflected poor quality work that did not meet the requirements of the RFP. Finally, with regard to United Rodent's hiring of, or ownership by, PestMaster's former employee, there is no evidence of this person performing poorly on the United Rodent contract, and thus there is no basis to challenge the Air Force's rating of United Rodent's past performance. Given the overall positive performance history for United Rodent, we find unobjectionable the agency's conclusion that the firm's proposal deserved a rating of substantial confidence under the past performance criteria.

Altogether, the contemporaneous record here demonstrates that the Air Force reasonably evaluated both firms' proposals under the past performance factor, consistent with the criteria in the RFP. The record provides a reasonable basis for the award of the contract to United Rodent on the basis of the agency's finding that the firm's better past performance was worth paying the higher price, particularly since the RFP placed greater weight on past performance than price in the evaluation.

The protest is denied.

Lynn H. Gibson
General Counsel