Decision

Matter of: Fox RPM Corporation

File: B-409676.2; B-409676.3

Date: October 20, 2014


P. Russell Wong, Esq., Department of Health and Human Services, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency’s evaluation of awardee’s past performance was unreasonable is denied where the record shows that the evaluation was reasonable, permissible under the terms of the solicitation, and supported by the record.

DECISION

Fox RPM Corp., of Washington, D.C., protests the establishment of a blanket purchase agreement (BPA) between Gilbane Building Company, of Providence, Rhode Island, and the Department of Health and Human Services, Food and Drug Administration (FDA) under request for quotations (RFQ) No. FDA SOL 1112906 for services in support of the agency’s White Oak consolidation program. Fox argues that the FDA improperly rated Gilbane’s past performance as acceptable, in contravention of the stated evaluation criteria.

We deny the protest.

BACKGROUND

The RFQ was issued on August 10, 2013, and sent to six vendors holding General Services Administration Federal Supply Schedule (FSS) No. 7 contracts that the agency identified through market research as having the capability to satisfy the government’s requirements. Agency Report (AR), exh. 2, Contracting Officer’s Statement, at 1-2. The RFQ contemplated establishment of BPAs with no more
than two vendors on a best-value tradeoff basis, considering technical capability, relevant past performance, and price. RFQ at 25-26.

As relevant here, the RFQ instructed offerors to provide a narrative description of their “overall past performance on current and previous contracts over the past five years which are relevant in type, scope, complexity and size.” Id. at 24. The RFQ also informed offerors that the quotation “shall include a minimum of three for relevant experience provided.” Id. With respect to the evaluation, the RFQ notified offerors that, “[t]he Government will evaluate the extent to which the Offeror’s past performance demonstrates overall client satisfaction on relevant current and previous contracts.” Id. at 25.

Four quotations were received, including those from Fox RPM and Gilbane. AR, exh. 10, Award Summary Memorandum, at 8. The agency’s evaluation of the quotations yielded the following relevant results:

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<thead>
<tr>
<th></th>
<th>Gilbane</th>
<th>Fox RPM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Approach</td>
<td>Very Good</td>
<td>Satisfactory</td>
</tr>
<tr>
<td>Relevant Past Performance</td>
<td>Acceptable</td>
<td>Acceptable</td>
</tr>
<tr>
<td>Price</td>
<td>$4,874,715</td>
<td>$4,995,083</td>
</tr>
</tbody>
</table>

Id. at 10. The source selection authority (SSA) conducted a best-value tradeoff analysis of the submitted quotations, and ultimately decided to establish BPAs with Gilbane and another firm. Id. at 18. In her analysis, the SSA adopted the past performance evaluation conducted by the Project Advisory Group (PAG). Id. at 14-15. In its analysis, the PAG evaluated the three past performance references submitted by Gilbane. AR, exh. 9, Evaluation of Technical Proposals, at 11. The relevant portion of the evaluation at issue here stated:

Environmental Protection Agency, Infrastructure Replacement Agency: The scope of work for this project does not apply to the current solicitation. There was space planning involved as to how to consolidate work spaces to displaced workers until the building’s infrastructure was updated, but this scope of work is not relevant for our solicitation. The past performance questionnaire was answered by the EPA Program office with all the ratings responses as “Exceptional.”

Id. The PAG assigned Gilbane an acceptable rating for the relevant past performance factor, finding that the firm’s past performance demonstrates that it

1 Technical approach was to be evaluated using adjectival ratings of excellent, very good, satisfactory, and unacceptable. Id. at 12-13. Relevant past performance was evaluated as either acceptable or unacceptable. Id. at 13.
“has the expertise and experience to complete this contract.” Id. at 11; exh. 10, Award Summary Memorandum, at 11.

DISCUSSION

The sole ground of protest raised by Fox RPM is a challenge that the agency failed to reasonably evaluate Gilbane’s past performance. Specifically, the protester argues that the agency “improperly credited Gilbane for a past performance reference that was not relevant, in direct contradiction to the stated evaluation criteria, and therefore improperly rated Gilbane’s past performance as ‘acceptable.’” Supp. Protest at 1-2. In other words, Fox RPM argues that Gilbane’s failure to provide three relevant past performance references required the agency to evaluate its quotation as unacceptable. We disagree.2

An agency’s evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of agency discretion which we will not disturb unless the agency’s assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Global Defense Solutions, LP, B-408177, Jul. 5, 2013, 2013 CPD ¶ 170 at 4. Since the agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for reasonably based past performance ratings. Id.

The agency explains that it intended for each vendor to submit three past performance references that the vendor thought were relevant to the requirement, with the rationale that all three past performance references, when evaluated as a group, would give insight to the vendor’s capabilities and past experience related to the contract’s scope of work. Supp. Contracting Officer’s Statement, at 1. Further, the agency points to the fact that the PAG only found the disputed past performance reference to be not relevant with respect to scope of work, but that it was relevant with respect to type of work. Id. The agency states that in analyzing all three past performance references, it “concluded that Gilbane demonstrated it has the expertise and experience to complete this contract,” and based on this assessment,

2 Fox RPM raised various protest allegations in its original protest, to which the agency filed an AR responding to each of the allegations raised. See generally Legal Memorandum; AR, exh. 2, Contracting Officer’s Statement. However, Fox RPM failed to rebut or otherwise substantively address the agency’s arguments in its comments. Instead, the protester advanced a new argument, based on information disclosed in the AR, which we address in this decision. We conclude that Fox RPM abandoned its original protest and those arguments will not be considered further. IntegriGuard, LLC d/b/a HMS Federal--Protest and Recon., B-407691.3, B-407691.4, Sep. 30, 2013, 2013 CPD ¶ 241 at 4.
“the Government reasonably rated Gilbane’s past performance as being ‘Acceptable.’”  Id.

Fox RPM has given us no basis to conclude that the agency’s evaluation was unreasonable. While the RFQ did require the vendor to submit “a minimum of three for relevant experience provided” it does not state that the failure to provide three relevant past performance references would necessitate the exclusion of the vendor, as FOX RPM argues. RFQ at 24. The RFQ simply states that the submitted past performance references would be evaluated to determine “the extent to which the Offeror’s past performance demonstrates overall client satisfaction on relevant current and previous contracts.”  Id. at 25. The record shows that the PAG evaluated the three past performance references submitted by Gilbane, and provided a detailed rationale as to its assessment of the merits of these references. On this record, we conclude that the agency’s integrated assessment of the awardee’s past performance and its assignment of an acceptable rating to Gilbane for relevant past performance was reasonable, permissible under the terms of the RFQ, and supported by the record.

We deny the protest.

Susan A. Poling
General Counsel