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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Poly-Pacific Technologies Inc.

File: B-295496.3

Date: January 18, 2006

Karen Christian for the protester.

Maj. Peter H. Tran, Department of the Army, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that the contracts referenced in the awardee's proposal were relevant to the agency's past performance evaluation.

DECISION

Poly-Pacific Technologies Inc. protests the award of a contract to Opti-Blast Inc. under request for proposals (RFP) No. W912JC-04-R-4020, issued by the National Guard Bureau, for plastic and glass media for use in removing paint from Army vehicles, and for the recycling of the used media. Poly-Pacific argues that the agency's evaluation of Opti-Blast's proposal under the solicitation's past performance evaluation factor was unreasonable.¹

We deny the protest.

The RFP provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base period of 1 year with two 1-year option periods. The solicitation stated that award would be made to the offeror whose proposal was determined to represent the "best value" to the government, based upon the evaluation factors of past performance, technical, and price. The RFP specified that

¹ The protester was not represented by counsel that could be admitted to a protective order and, therefore, did not have access to source selection sensitive and proprietary information. Accordingly, our discussion is necessarily general. Our conclusions, however, are based on our review of the entire record.

while proposals would be evaluated on a qualitative basis under the past performance factor, they would be rated as either “go” or “no-go” under the technical factor.

The agency received proposals from three offerors, including Poly-Pacific and Opti-Blast. The proposals of Poly-Pacific and Opti-Blast were both evaluated as “low risk” under the past performance factor and “go” under the technical evaluation factor, at evaluated prices of \$2,385,000 for Poly-Pacific and \$2,216,000 for Opti-Blast. Agency Report (AR), Tab 10, Source Selection Evaluation Report and Award Decision, at 1-3; Tab 16, Price Evaluation. The source selection authority (SSA) selected Opti-Blast’s proposal for award, and this protest followed.

Poly-Pacific argues that the agency’s evaluation of Opti-Blast’s proposal under the past performance factor was unreasonable.

The RFP informed offerors that “[e]valuators will consider current, relevant and trends of the performance information while conducting its performance evaluation,” and that “[c]urrent is performance occurring within the last five (5) years for the period beginning May 1999 through the solicitation release date.” The solicitation added that “[i]n assessing relevancy to the solicitation requirement, the Government will consider an offeror’s references for the similarity of product, size, scope and complexity of contract performed to those required for the proposed effort,” and that “[c]ontracts that may be considered similar in size, scope and complexity are projects requiring delivery and recycling of the product within 10% of the quantities required herein.” The solicitation concluded that under the past performance factor an “[e]valuation will be made of the Quality and extent of related past performance comparable to the requirements of this solicitation.” RFP at 33. In order to facilitate the past performance evaluation, the RFP stated that proposals were to include “information on the number of contracts held, contract number, contract period, description of material an[d] work performed, contract dollar value, and point of contact and telephone number” regarding “contracts awarded to the contractor within the prior five (5) years.” RFP at 31.

Opti-Blast’s proposal included information regarding nine contracts awarded since 1999 as well as a lengthy client list. AR, Tab 22, Opti-Blast Proposal. The record reflects that three completed past performance questionnaires were received by the agency regarding the contracts detailed in Opti-Blast’s proposal. AR, Tab 23, Completed Past Performance Questionnaires. The agency found Opti-Blast’s performance of two of these contracts to be “very relevant,” given the quantity of media and work involved, with one of the references rating Opti-Blast’s overall performance as “exceptional” and the other as “very good.” Opti-Blast’s performance of the third contract was found to be only “semi-relevant” given that, among other things, it was for a relatively small quantity of media; this reference evaluated Opti-Blast’s overall performance as “exceptional.” The agency assigned a rating of “low risk” to Opti-Blast’s proposal under the past performance factor based

upon Opti-Blast's performance of the two "very relevant" contracts. AR, Tab 10, Source Selection Evaluation Report and Award Decision, at 1.

In challenging the agency's rating of Opti-Blast's proposal under the past performance factor as "low risk" the protester asserts, without explanation, that "Opti-Blast did not have the required experience or history in recycling (90% of the intended volume) at the time the original solicitation was closed (June 2004)." Protest at 1; see Protester's Comments at 2.

Where a solicitation requires the evaluation of the offerors' past performance, an agency has the discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and in a manner consistent with the solicitation's requirements. Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 5.

We first note that the protester's argument here appears to be based on its belief that the RFP mandated that a successful offeror have performed contracts involving quantities of media within 10 percent of the estimated quantity for this contract to be considered for award. Notwithstanding the inartful wording of the past performance evaluation factor (set out above), we do not believe the terms of the RFP expressly require that an offeror, as a prerequisite for award, have performed a contract of such size; nor did it prohibit other contracts from being considered similar in size, scope and complexity where reasonable.

In any event, the record reflects that contrary to Poly-Pacific's assertion, Opti-Blast has in fact performed one contract involving the same quantity of media as estimated by the RFP here as well as another contract involving more than 80 percent of the RFP's estimated quantity here. Both of these contracts were considered "very relevant" by the agency. AR, Tab 22, Opti-Blast's Proposal, Past Performance Documentation, at 1-2; Tab 23, Opti-Blast's Completed Past Performance Questionnaires. Giving due deference to the agency's broad discretion to determine whether a particular contract is relevant to the evaluation of past performance, we believe that the agency's consideration and evaluation of the two contracts discussed above, and its evaluation of Opti-Blast's proposal as "low risk" under the past performance, were unobjectionable. All Phase Env'l, Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 7.

We further note that as pointed out by the agency report, Poly-Pacific's proposal was evaluated as "low risk" under the past performance factor, even though neither the proposal nor Poly-Pacific's references "provided any information on the quantities, poundage, or contract price of previous contracts" with regard to the two contracts for which the agency received completed past performance questionnaires. AR at 8; see Tab 10, Source Selection Evaluation Report and Award Decision, at 2. That is, Poly-Pacific's proposal provided information regarding the value of the contract and amount of media provided for only 2 of the 14 contracts listed, and neither of these 2 references completed past performance questionnaires for the agency to consider

under the past performance evaluation factor. As such, the record demonstrates that Poly-Pacific benefited from by the flexible way in which the agency approached the evaluation of both offerors' past performance, and the protester cannot reasonably claim to have been prejudiced by the agency's use of such flexibility in assessing Opti-Blast's past performance.

The protest is denied.

Anthony H. Gamboa
General Counsel