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**Comptroller General
of the United States**

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

Decision

Matter of: Pflow Industries, Inc.

File: B-289970

Date: May 20, 2002

Tom Archie for the protester.

William J. Spriggs, Esq., Spriggs & Hollingsworth, for ACRA, Inc., an intervenor.

Craig D. Haughtelin, Esq., Naval Supply Systems Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging technical evaluation of proposals is denied where agency reasonably found awardee's proposal entitled to higher ratings than protester's based on level of detail found in the proposals.

2. Past performance evaluation rating of satisfactory was reasonable, and did not require discussions, where it reasonably reflected agency's experience with protester's work on prior projects.

DECISION

Pflow Industries, Inc. protests the award of a contract to ACRA, Inc. under request for quotations (RFQ) No. N00406-01-T-1181, issued by the Naval Supply Systems Command (NAVSUP) for design and installation of a vertical reciprocating conveyor (VRC) at the Puget Sound Naval Shipyard (PSNS), Bremerton, Washington. Pflow challenges the agency's evaluation of its and ACRA's proposals.

We deny the protest.

The RFQ sought proposals to design, fabricate, install, and test an 8,000-pound capacity VRC for dry dock No. 2 at PSNS. The VRC is used to transport material and equipment to and from the bottom of the dry dock in support of repair and overhaul of naval warships. The VRC was to be a commercially available system, modified to fit its intended environment, and was to be designed such that it could be disassembled and stored/attached to a nearby building. The RFQ contemplated award of a fixed-price contract.

Proposals were evaluated on the basis of three factors: technical, past performance, and price. The technical and past performance factors were of approximately equal importance, and price slightly less important. Under the technical factor, the RFQ called for proposals to include information on 11 areas, including design/engineering/production capabilities, safety and environmental protection, and subcontractors. RFQ at 39-41. With regard to past performance, proposals were to include information on up to five of the contractor's (three of any subcontractor's) most recently completed federal, state, or local government, or commercial contracts. Id. at 42. Award was to be made to the firm whose offer provided the best value to the government.

Pflow and ACRA submitted the only proposals. The technical evaluators found ACRA's proposal sufficient as submitted, but that Pflow's required discussions to obtain additional information. As revised following discussions, both proposals were rated overall satisfactory under the technical and past performance factors. ACRA's price (\$951,669), was slightly higher than Pflow's (\$948,810).

In making the award decision, the contracting officer considered that, although the proposals received the same overall satisfactory rating, ACRA's was superior to Pflow's, given ACRA's outstanding ratings under the design/engineering/production capabilities and subcontractor subfactors (compared to Pflow's satisfactory ratings), and Pflow's marginal rating under the environmental subfactor (compared to ACRA's satisfactory rating). The contracting officer concluded that ACRA's proposal overall was technically superior to, and represented a lower risk than, Pflow's, and made award to ACRA despite its higher price. Agency Report (AR), Tab I, at 6. After receiving notice of the award and a debriefing, Pflow filed this protest.

Pflow challenges the technical and past performance evaluations on numerous grounds. In reviewing a protest against a procuring agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Nat'l Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. We have reviewed all of Pflow's arguments and find that none has merit. We discuss the central arguments below.

PFLOW'S PROPOSAL

Pflow argues that the agency unreasonably rated its proposal marginal under the safety/environmental protection subfactor. In this regard, the RFQ required a description of an offeror's "experience with on-site environmental protection programs in compliance with state and federal regulations related to environmental awareness, hazardous material and hazardous waste management, spill prevention, and water and air pollution control." RFP at 41, ¶ E. The record shows that the agency downgraded Pflow's proposal in this area because it failed to include any information regarding environmental compliance, even after the agency requested

additional information for this subfactor during discussions. AR at 6. We have reviewed Pflow's proposal, and find that the agency correctly found the required information lacking. Pflow argues that its proposal was not lacking in this area, because the RFQ only required submission of a waste management plan (WMP) 10 days after award (RFQ § 17.1.2), and Pflow told the agency that it planned to submit the WMP from a prior VRC contract. As noted, however, the RFQ in fact required other specific descriptive information, apart from the WMP required after award. Since Pflow failed to provide this information, the agency reasonably assigned its proposal a marginal rating for this subfactor. An offeror is responsible for submitting an adequately written proposal, and runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3.

Pflow asserts that the agency erred in evaluating its past performance as only satisfactory. Pflow believes its experience at PSNS supported a higher rating, and cites in support of this belief the agency's own comment that Pflow provided "two good-working machines" under its prior contracts at PSNS. AR, Tab H-3. Pflow claims the agency downgraded its proposal based on legitimate contract claims under its prior PSNS contracts.

The evaluation in this area was reasonable. The agency denies basing its evaluation on any contract claims and there is no evidence to the contrary in the record. Rather, the agency explains that the evaluation reflected Pflow's less than perfect performance of its two prior PSNS contracts, the only past performance record submitted by the protester. While the agency acknowledges that it found Pflow's prior VRCs to be "good-working," it states that the evaluation also took into account relevance and extent of prior contracts, quality and conformance to specifications, and customer satisfaction. Supplemental Report at 2; RFQ at 43. With regard to relevance, the design aspects of the project were repeatedly referenced in the technical and past performance evaluation criteria, and the agency considered the fact that there are significant design differences between Pflow's prior installed VRCs and those required here.¹ Further, the agency found only moderate customer satisfaction with the prior installations due to the need for the agency to perform additional work to correct design problems. AR, Tab H-4, ¶ C; Decl. of Evaluator B, ¶¶ 3-5.

Pflow disputes the agency's view of its contract performance and the necessity for additional work, but Pflow acknowledged in its own proposal that it experienced "problems" on both installations, Pflow Proposal at 5, and the record bears this out. With regard to Pflow's first installation, the agency accepted the VRC, but determined that there were certain design problems that would require an

¹ These included the sloping sides of the dry dock, different building attachment, and greater capacity storage system. Declaration (Decl.) of Evaluator R, ¶ 2.

engineering analysis and additional work to correct. While Pflow's contract apparently did not require the firm to perform an engineering analysis or to pay for the additional required work (Decl. of Evaluator B, ¶ 2), we see nothing improper in the agency's considering the need for this additional work in assessing the quality of the VRC as delivered, and Pflow's overall performance.

With regard to the second VRC installation, Pflow had to correct its engineering analysis to identify and correct the same design problem encountered on the first installation. The agency also had to perform additional welding that Pflow declined to perform, even though it found that the welding was indicated on Pflow's submitted drawings, and determined that it was required in order to conform to American Welding Society standards. Decl. of Evaluator B, ¶¶ 3-5. Although Pflow denies that it refused to perform this work, and states that its analysis showed that the additional welds were not required, Supplemental Comments at 3, we note that Pflow itself submitted two change orders to that contract showing that it accepted price reductions to offset the additional work performed by the agency. *Id.*, exhs. A, B. In any case, 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. Parmatic Filter Corp., B-285288, B-285288.2, Aug. 14, 2000, 2000 CPD ¶ 185 at 7, n.4, citing Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7. Thus, while Pflow attempts to provide a more favorable picture of its performance history than drawn by the agency, this does not alter the fact that there was sufficient evidence for the agency to conclude that the firm's proposal warranted a satisfactory past performance rating.²

ACRA'S PROPOSAL

Pflow asserts that ACRA's proposal was improperly evaluated as outstanding under the design/engineering/product capability subfactor, and the related subcontractors subfactor (under which subcontractors' design/engineering/production capability was assessed). Pflow asserts that ACRA's outstanding rating under the first subfactor is unjustified because, unlike Pflow, ACRA lacks "a proven track record of success in designing and manufacturing virtually identical equipment." Amended Protest at 2-3. With regard to the second subfactor, Pflow argues that ACRA's

² Pflow also asserts that the agency was required to bring any perceived past performance problems to its attention through discussions. We disagree. Agencies are not required to point out every element of acceptable proposals that receive less than the maximum evaluation rating. ITT Fed. Servs. Int'l Corp., B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 15-16. Here, Pflow's past performance was evaluated as satisfactory, with no identified weaknesses or deficiencies which would warrant discussions. In any case, the record shows that Pflow was fully aware of the circumstances surrounding its performance under its prior contracts.

proposal to use multiple subcontractors should not have been evaluated as outstanding, because multiple subcontractors increase risk and decrease contractor accountability.

This argument is without merit. The RFQ required offerors to submit an overview/highlights of the company's and major subcontractors' capabilities in the areas of: engineering, computer modeling, etc.; directly related past projects; fabrication and assembly of industrial equipment including production facilities; and installation and testing. RFQ, at 40-41, ¶¶ C, F. ACRA's outstanding ratings were based on its eight-page submission detailing its and its primary subcontractors' capabilities in these areas, including resumes of three key personnel, with a comprehensive list of their education, experience, and credentials. It also identified a wide range of equipment and software, including parametric modeling computer design, to be used by ACRA and its primary subcontractor. ACRA Proposal at 18-24, 28. The contracting officer observed that ACRA's proposal provided detailed, specific information on their design, engineering and production personnel; company capabilities and past projects, particularly concerning seismic zone requirements; outlines of engineering design tools to be used; and provided information addressing design capabilities on past projects closely related to VRC designs and systems applications. AR, Tab I, at 3-4. Based on the extensive experience detailed in the proposal, the contracting officer concluded that ACRA's design submittals would be thorough and exceed the desired performance requirements. Id. at 3. Similarly, he found that the background and previous associated work information on ACRA's subcontractors increased the assurance that they would meet and exceed expectations. Id. at 4. He therefore concluded that an outstanding rating for these subfactors was warranted.

In contrast, Pflow's initial proposal simply identified its project manager and its installation subcontractor, and provided approximately 1/3 page of text describing its production capabilities. Pflow Initial Proposal at 3-4. In response to discussion questions, Pflow provided experience and education information for its project manager, chief engineer, and design manager, and one page regarding its production capabilities. Pflow Revised Proposal at 1-4. The contracting officer observed that Pflow's provision of general information demonstrated that it had adequate design/engineering and production capability to meet the contract requirements. AR, Tab I, at 2. However, he also noted that, apart from identifying the installation subcontractor and its experience in installing the prior VRCs at PSNS, Pflow's proposal provided very little additional information regarding the subcontractor's previous projects. Due to the lack of detailed information, Pflow's proposal was rated satisfactory for the subfactors. Id.

Based on the clearly more detailed and extensive proposal from ACRA, the agency reasonably found it superior to Pflow's under these two subfactors.³ While Pflow disagrees with the agency's evaluation judgment, it provides no basis for finding the agency's evaluation unreasonable under either subfactor. Oceaneering Int'l, Inc., B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 6-7. Pflow's assertion that multiple subcontractors represent increased risk is not based on anything in ACRA's proposal, but only on Pflow's own view of the risks involved which, by itself, does not provide a basis for sustaining the protest.⁴ Symvionics, Inc., B-281199.2, Mar. 4, 1999, 99-1 CPD ¶ 48 at 8.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Pflow asserts that the agency ignored its submissions for this subfactor. This allegation is without merit; the evaluation documents plainly reference both Pflow's initial proposal and its revised submissions. AR, Tab H3.

⁴ In its supplemental comments, Pflow for the first time asserts that the evaluation was flawed because ACRA's VRC subcontractor lacks adequate experience. Supplemental Comments at 5. This argument is untimely and will not be considered. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 12-13. A protester may not delay raising additional protest grounds where, as here, the protester should have been aware of those grounds at the time of filing its protest.