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**Comptroller General
of the United States**

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

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Decision

Matter of: Insect Shield Manufacturing, LLC

File: B-408067.3

Date: August 8, 2013

Ruth E. Ganister, Esq., Rosenthal and Ganister, LLC, for the protester.
Victor Kubli, Esq., for Pine Belt Processing, Inc., an intervenor.
William Robinson, Esq., and Pawandeep K. Chatha, Esq., Department of Justice, for the agency.
Peter D. Verchinski, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency improperly evaluated offerors' proposals under the past performance factor is denied where the agency reasonably considered the relevance of the offerors' respective past performance.

DECISION

Insect Shield Manufacturing, LLC, of Greensboro, North Carolina, protests the award of a contract to Pine Belt Processing, Inc., of Stonewall, Mississippi, under request for proposals (RFP) No. CT2114-13, issued by the Department of Justice, Federal Prison Industries, Inc. (UNICOR), for permethrin treatment for Army combat uniforms.¹ Insect Shield challenges the agency's evaluation of proposals and the selection decision.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside under the streamlined commercial acquisition procedures of Federal Acquisition Regulation Subpart 12.6, provided for the award of one or more fixed-price, indefinite-delivery/indefinite-quantity contracts for permethrin treatment for Army combat coats and trousers for a 3-year period.

¹ Permethrin treatment is an application of insect repellent to garments. Protest at 2.

Firms were informed that award would be made on a best value basis, considering technical acceptability, past performance, and price.² With respect to the past performance factor, offerors' proposals were to include "Business Management Questionnaires," or references, with information regarding recent and relevant contracts for the same or similar items. RFP at 14-15. Offerors were directed to the agency's website to download the reference forms, on which they would provide information such as dates of award and completion; contract dollar value; percentage of work completed by the offeror; and description of services provided and relevancy of the work. Id. at 15.

Insect Shield and Pine Belt submitted the only two proposals, which were both found acceptable under the technical evaluation factor.³ With regard to the evaluation of past performance, the agency reviewed four vendor evaluation forms submitted by Insect Shield's references, and four evaluation forms (or comments by telephone) submitted by Pine Belt's references. Agency Report (AR), Tabs 6, 10, Evaluation Forms. The agency also reviewed one report in the Past Performance Information Retrieval System (PPIRS) for Insect Shield, and one report in PPIRS for Pine Belt. AR, Tab 6, at 10-12; AR, Tab 10, at 5-7. The offerors' references and reports reflected the following:

	Contract	Value	Rating
Insect Shield	[DELETED]	\$1,100,000	Excellent
	[DELETED]	\$126,000	Good
	[DELETED]	\$1,629,582	Excellent
	[DELETED]	\$211,000	Excellent
	[DELETED]	\$1,060,200	Satisfactory
Pine Belt	[DELETED]	\$306,791	Excellent
	[DELETED]	\$8,512,843	Excellent
	[DELETED]	\$77,269	Good
	[DELETED]	\$5,024,250	Excellent
	[DELETED]	\$1,284,000	Satisfactory

AR, Tabs 6, 10, Evaluation Forms.

The contracting officer, acting as the source selection authority, compared the performance ratings as submitted by their references and, taking into account their

² The RFP did not state the relative weight of the evaluation factors.

³ The RFP, as amended, provided for evaluation under the technical factor to be based essentially on whether an offeror's product had passed its first article testing. RFP, amend. 1, at 17-18.

evaluations on quality, delivery, and customer service, concluded that both offerors merited an overall excellent rating for past performance. AR, Tab 14, Source Selection Decision, at 8. The contracting officer recognized, however, that there was a significant difference in the size of the contracts the two offerors had performed. Id. The contracting officer concluded that there was “some risk in awarding such a large contract to Insect Shield when considering it has not had any contracts in the past close to the estimated size” of this requirement, and had not acted as the prime contractor on a contract of comparable size. Id. at 9.

Pine Belt’s evaluated price (\$10,876,200) was lower than Insect Shield’s evaluated price (\$11,185,000). Id. The contracting officer selected Pine Belt for award, citing its excellent past performance rating, technical acceptability, lower price and lower risk to the government. Id.

This protest followed.

DISCUSSION

Insect Shield challenges the agency’s past performance evaluation. The protester contends that UNICOR applied unstated evaluation criteria by improperly considering the size of the past performance contracts and considering whether Insect Shield had performed as a prime contractor, among other things.

Where, as here, a solicitation contemplates the evaluation of vendors’ past performance, the contracting agency has the discretion to determine the relevance and scope of the performance history to be considered, and our Office will not question the agency’s judgment unless it is unreasonable or inconsistent with the terms of the solicitation or applicable procurement statutes and regulations. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3. A protester’s disagreement with the agency’s judgment, without more, does not establish that an evaluation was unreasonable. Sam Facility Mgmt., Inc., supra, at 3.

We do not agree that UNICOR applied unstated evaluation criteria when it considered the size of the protester’s past performance contracts and whether the protester had performed as the prime contractor. An agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3. Here, the RFP specifically stated that offerors were to submit relevant contracts for the agency’s past performance evaluation, and requested information (on the business management questionnaires) about the dollar value of the contracts the offeror had listed as references, and the percentage of the work the offeror had performed. RFP at 14-15; AR, Tab 4, Protester’s Proposal at 18. In this regard, we think that it is both illogical and unreasonable to presume that an agency will pay no attention to

the size and similarity of past contracts in its evaluation, since such factors are germane to the relevance of the past performance information. J. A. Jones Grupo de Servicios, SA, B-283234, Oct. 25, 1999, 99-2 CPD ¶ 80 at 7. Given this, we find the agency's consideration of the dollar value of the contracts and the offeror's role (as prime or subcontractor) in performing prior contracts consistent with the past performance evaluation.

Insect Shield nevertheless argues that the agency's past performance evaluation should have taken into account the value of the contracts on a per-year basis, and not merely focused on the total value of the contracts. In this regard, Insect Shield notes that Pine Belt's largest contract (for \$8.5 million) only amounted to a per-year value of \$1.2 million, while one of Insect Shield's contracts, which had a value of approximately \$1 million, was performed in only 6 months.

While the protester clearly believes its proposed method of comparison to be superior, it has not shown the agency's approach was unreasonable. The protester's contention that the agency should have considered the value of the contracts on a per-year basis constitutes nothing more than disagreement with the agency's judgment. In this regard, we find reasonable the agency's assessment of some risk associated with an award to Insect Shield, based on the low value of Insect Shield's contracts (none of which was more than \$1.7 million), relative to value of the contract here (approximately \$10 million).

Finally, we find no merit to the protester's argument that it was improper for the agency to consider whether Insect Shield had performed as a prime contractor with the government, or as a subcontractor. In this regard, the protester notes that the nature of the services being procured here (a finishing treatment to a garment) means that offerors "will for the most part be subcontractors to private industry primes." Protester's Comments at 4. We do not disagree with this general observation, but we note that the record shows that both of these offerors actually have past performance as prime contractors. The question for our Office is whether the contracting officer acted unreasonably in comparing Insect Shield's higher price with Pine Belt's lower price, and concluding that--based on evaluated differences in their generally excellent past performance (i.e., that Pine Belt has more experience as a prime contractor than Insect Shield)--there is no reason to pay Insect Shield's

higher price. While Insect Shield may disagree, its disagreement does not mean the agency's exercise of its judgment in this area was unreasonable.

The protest is denied.⁴

Susan Poling
General Counsel

⁴ Although the protester complains that the agency did not make multiple awards, the RFP did not require the agency to do so. UNICOR decided not to make multiple awards due to a concern that multiple awardees, using differing methods of treating clothing with permethrin, might produce end garments in slightly different shades of color. AR, Tab 14, Source Selection Decision, at 10.