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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Scot, Incorporated

File: B-292580

Date: October 3, 2003

Barron J. Daly and Bob LaFrance for the protester.

Michael R. Lund, Esq., Department of the Air Force, for the agency.

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

DIGEST

Agency's prior approval of the awardee for inclusion on a qualified source list for impulse cartridges, without pre-award testing, is reasonable, where the awardee had acquired a firm that was already a qualified source at one facility and had requested qualification at a recently acquired facility to which it was transferring technology and assets from the qualified source that had designed and produced the impulse cartridge, the recently acquired facility had previously manufactured similar impulse cartridges, and the solicitation included a provision permitting waiver of any or all qualification requirements for firms with experience producing the same or similar cartridges.

DECISION

Scot, Incorporated protests the award of a contract to Pac Sci Quantic under request for proposals (RFP) No. F42630-03-R-3233, issued by the Department of the Air Force, for BBU-63/B impulse cartridges.¹ Scot contends that Pac Sci Quantic is not a qualified source for the cartridges as required by the RFP.

We deny the protest.

The RFP, issued March 12, 2003, contemplated the award of a fixed-price contract for base and option quantities. The RFP contained the standard "Qualifications Requirements" clause, as set forth in Federal Acquisition Regulation (FAR) § 52-209-1, which provided notice that the award was limited to firms offering to

¹ These cartridges are used on the B-2 aircraft bomb ejector rack to jettison bombs.

meet certain qualification requirements. The clause states in part that (1) products, manufacturers, or sources must be qualified at the time of award whether or not the product, manufacturer, or source is actually included on the appropriate list and (2) if, after award, the contracting officer learns that an applicable qualification requirement has not been met at the time of award, the contracting officer may either terminate the contract for default or allow performance if that is in the government's best interest and adequate consideration is offered.² RFP at 14-15; FAR § 52-209-1 (b) and (d). The clause also provides:

Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

RFP at 14-15; FAR § 52-209-1(f).

The RFP incorporated the source qualification statement for this cartridge that provides for the waiver of the qualification requirements as follows:

Any offeror who has had previous experience in the production of Cartridges or other similar item may apply to the design control activity for a waiver of all or part of the [qualification] requirements. A waiver will be granted only if the design control activity can establish the qualification of the offeror from previous knowledge/interface or from written inputs from the offeror.

Agency Report, Tab 3e, Source Qualification Statement, § C ¶ 12.

Offerors were advised that the agency would “utilize the Performance Price Trade-Off . . . technique” to arrive at a “best value” award decision. The application of this technique here involved determining the acceptability of each offeror's proposal (determined here by ascertaining whether the offeror “has been notified by the Government that they are a qualified source”), ranking all acceptable proposals by evaluated price, and assigning the proposals a past performance risk rating of high confidence, significant confidence, confidence, unknown confidence, little confidence, or no confidence. The solicitation added that if the lowest priced proposal had a “high confidence” past performance risk rating, then that proposal was to be considered the best value for award; otherwise, the agency would make a

² On the same date that the RFP was issued, the agency published a synopsis of the RFP identifying the following qualified sources: Scot, Pacific Scientific, and Special Devices, Inc. (SDI). Agency Report at 2, Tab 6, Synopsis of RFP (Mar. 12, 2003), at 2.

tradeoff determination considering the differences in past performance and price to determine which proposal represented the best value to the government. RFP at 31-32.

The agency received proposals from Scot and Pac Sci Quantic. The agency evaluators referred to the agency's "Screening Analysis Worksheet" for the cartridges, which is the agency's internal list of qualified sources, and found that both Scot and Pac Sci Quantic were listed.³ Agency Report, Tab 10, Best Value Memorandum (Apr. 28, 2003), at 1. The agency thus evaluated both proposals as technically acceptable. The agency next determined that although Pac Sci Quantic's past performance rating was slightly higher than Scot's, the difference was negligible. The agency concluded that Pac Sci Quantic's proposal represented the best value to the government, given its significantly lower price. *Id.* at 2-3.

After filing an agency-level protest (which was dismissed in part and denied in part), Scot protested to our Office. Scot argues that Pac Sci Quantic is not a qualified source for the cartridges, and that the award to Pac Sci Quantic was thus improper.

The purpose of the qualification requirements system is to allow the efficient procurement of items that require substantial testing to demonstrate compliance with specification requirements. The procurement of qualified products is a two-step process in which (1) a firm's products or services are tested for compliance with the specifications and, if found in compliance, are included on the appropriate list, and (2) products on the list may then be procured. The system is intended to be used prior to, and independent of, the specific procurement action. *See* FAR § 9.203(a); Goodyear Tire & Rubber Co., B-247363.6, Oct. 23, 1992, 92-2 CPD ¶ 315 at 5.

Under the applicable statute, contracting officers have the authority to determine that an offeror or an offered product meets (or will meet) the qualification requirement by the time of award regardless of whether the offeror or product is actually listed on the qualified source list, or has been formally approved by an authorized agency activity. 10 U.S.C. § 2319(c)(3) (2000); Phaostron Instrument & Elec. Co., B-284456, Apr. 20, 2000, 2000 CPD ¶ 65 at 2-3. We will review an agency's actions under this authority, in the context of a protest under a solicitation, to determine whether the actions are reasonable and consistent with the solicitation and applicable statutes and regulations. *See Goodyear Tire & Rubber Co.*, *supra*,

³ Pac Sci Quantic's proposal stated that it would produce the cartridges at its facility in Hollister, California. This facility was previously that of Quantic Industries, Inc., which was acquired by Pacific Scientific in 2001; it is now referred to as "Pac Sci Quantic" or "Quantic." Agency Report, Tab 9, Pac Sci Quantic Proposal, Technical Proposal, at 3.

at 5-17; Hiltronics Corp., B-241450 et al., Jan. 18, 1991, 91-1 CPD ¶ 57 at 3; Automated Power Sys., Inc., B-236545, Nov. 7, 1989, Nov. 7, 1989, 89-2 CPD ¶ 439 at 2.

Here, the record reflects that the agency did not require Pac Sci Quantic to produce and test a qualification article, but rather approved Pac Sci Quantic as a qualified source at its Hollister, California facility, based on, among other things, Pacific Scientific's corporate experience with the BBU-63/B cartridge, previous production of similar cartridges at the Hollister facility, and an RFP requirement for first article testing. As discussed below, we find that the agency's approval was reasonable and consistent with applicable law and regulation, as well as the terms of the RFP.

The contracting history of this cartridge is relevant to the agency's actions. In 1997, the Air Force awarded a contract to an aircraft manufacturer for this cartridge as well as the bomb ejector rack. The aircraft manufacturer subsequently contracted with Scot to design and manufacture the cartridge and rack, and Scot subcontracted the work on the cartridge to SDI (SDI was the parent corporation of Scot at that time). Contracting Officer's Statement at 2. Following approval of the cartridge developed by Scot and SDI, the Air Force purchased the technical data package (TDP) for the cartridge. Agency Report, Tab 5, Affidavit of Project Engineer (July 28, 2003), at 2.

In April 2001, Pacific Scientific acquired SDI, and in August 2001, Pacific Scientific acquired Quantic.⁴ Contracting Officer's Statement at 2; Agency Report, Tab 9, Pacific Scientific Proposal, Technical Proposal, at 8, and App. D at 2. The record reflects that in the spring of 2002, Pac Sci Quantic approached the agency about being qualified as a source for the BBU-63/B cartridge. Contracting Officer's Statement at 2.

The cognizant project engineer explains that she considered the above-described history in reviewing Pac Sci Quantic's request that its facility be approved as a qualified source. That is, according to the project engineer, she considered that SDI had been acquired by Pacific Scientific, that SDI had extensive experience in building the BBU-63/B cartridge, and that SDI's technology and assets related to the BBU-63/B cartridge were being transferred to the Pac Sci Quantic facility in Hollister.⁵ Agency Report, Tab 5, Affidavit of Project Engineer (July 28, 2003), at 1-2.

The project engineer also considered that the Hollister facility included manufacturing, testing, and machine shop space, as well as the fact that similar

⁴ Scot was not part of these acquisitions.

⁵ The transfer was completed prior to submission of Pac Sci Quantic's proposal in response to this RFP. Agency Report, Tab 9, Pac Sci Quantic's Proposal, Technical Proposal, at 12.

cartridges had been previously manufactured by Quantic at that facility. In this regard, the Hollister facility has regularly produced over nine different impulse cartridges for the military that are basically the same as the BBU-63/B cartridge. Additionally, the project engineer noted that the cartridge is of proven design, that the government owns the TDP, that future contracts will not require any new design, but rather only “building to print” using the government TDP, and that under the next scheduled acquisition (i.e., the present RFP), a first article test would be required. Based upon all of the above, the project engineer approved Pac Sci Quantic as a qualified source for the BBU-63/B cartridge. Agency Report, Tab 5, Affidavit of Project Engineer (July 28, 2003), at 1-2.

As acknowledged by the protester, Pacific Scientific and SDI were already qualified sources at other locations, and Pac Sci Quantic’s request for qualifying its Hollister facility was based in part on the recent acquisition of SDI and the transfer of that qualified source’s technology and assets to the Hollister facility. Thus, the qualification of Pac Sci Quantic concerned both a change in ownership and location of a previously qualified source.

The applicable qualification requirements provision states that a change in ownership or location of a previously qualified source requires reevaluation of the qualification. FAR § 52-209-1(f); RFP at 15. Our Office recognizes that an agency has broad discretion under this provision (and the related regulation, FAR § 9.207(b)) and, absent a showing that the agency’s judgment lacks a reasonable basis, we will not object to an agency’s approval of a qualified source without retesting under such circumstances. Master Power, Inc., B-238468.2, Nov. 28, 1990, 90-2 CPD ¶ 434 at 4; Automated Power Sys., Inc., supra. In our view, as detailed above, the project engineer’s rationale presents a reasonable basis for approving Pac Sci Quantic as a qualified source without requiring pre-award production and testing of a qualification item. Furthermore, in this case, the applicable source qualification statement also permits a waiver of any or all of the qualification requirements, including the testing requirement, for any offer that has previously produced the same or similar cartridge, regardless of whether the offeror is a previously qualified source at another location or under prior ownership. Since the agency approved Pac Sci Quantic based (in part) on Quantic’s production of similar cartridges and on SDI’s experience on the same cartridge, the agency’s judgment here is reasonable and consistent with the RFP and the applicable regulations.

The protester contends that, in any event, the award to Pac Sci Quantic was improper because Pac Sci Quantic had not been approved as a qualified source prior to award as required. Specifically, Scot alleges that a handwritten entry on the Screening Analysis Worksheet identifying the awardee as an approved source was not made prior to Scot’s protests, and thus Pac Sci Quantic was not on the qualified source list before award.

The agency’s qualified source list is compiled on the Screening Analysis Worksheet for this cartridge. The worksheet, dated June 17, 2002, lists four approved sources,

including Scot and Pacific Scientific. All of the approved sources except Pacific Scientific are further identified by location. In the space next to Pacific Scientific's name appears the following handwritten entry: "(Quantic)."

The "Quantic" entry is the only handwritten entry on the Screening Analysis Worksheet, so it may be reasonable to assume, as the protester alleges, that the handwritten entry was not entered on the same date as the other information. However, although there is nothing in the record that conclusively establishes the precise date when the "Quantic" entry was made, as explained below, the record does establish that the entry was made prior to the selection decision.

As mentioned previously, in the spring of 2002, Pac Sci Quantic approached the Air Force about qualifying its Hollister facility as a source for the cartridge. Contracting Officer's Statement at 2. The agency's project engineer responsible for maintaining the qualified source list states that she had reviewed Pac Sci Quantic's information and had determined that the source was qualified to produce the cartridge. Agency Report, Tab 5, Affidavit of Project Engineer (July 28, 2003), at 1. She did not state, however, when the "Quantic" entry was added to the worksheet.⁶ Nevertheless, the source selection decision for this acquisition, dated April 28, 2003, specifically states that "Quantic" is listed on the worksheet. Agency Report, Tab 10, Best Value Memorandum (Apr. 28, 2003), at 1. As such, the record shows that at some date between June 17, 2002 (the date of the worksheet) and April 28, 2003 (the date of the source selection here), the worksheet was updated to reflect that Pac Sci Quantic was an approved source for this cartridge.⁷ Regardless of when the facility was added to the list, the record establishes that Pac Sci Quantic was approved by the agency as a qualified source prior to award.

⁶ The project engineer did state that the worksheet is one of many qualification lists maintained, and that it is not always possible to keep all worksheets current; when a question arises about whether a source is qualified, the matter is resolved by the agency personnel involved in the matter. Agency Report, Tab 5, Affidavit of Project Engineer (July 28, 2003), at 3.

⁷ As Scot also points out, the most recent synopsis of the RFP on March 4, 2003 only identified Pacific Scientific, and not Pac Sci Quantic, as a qualified source. Scot alleges that the synopsis thus shows that Pac Sci Quantic was not added to the list until after the synopsis was issued. Although that could be the case, the date of the synopsis is earlier than the evaluation and source selection decision, and is thus not inconsistent with our finding here. Moreover, the synopsis did not identify a specific location for any of the qualified sources that were listed, and thus does not definitively indicate whether the Pac Sci Quantic facility was or was not qualified on the date of the synopsis.

The protester also points out that the BBU-63/B cartridge is used in a nuclear certified ejector rack, and argues that because of this, the qualification of Pac Sci Quantic should be subject to the concurrence of the agency's Nuclear Certification Board and other offices within the agency. In response, the agency explains that the cartridge itself is not nuclear certified and qualification is not subject to a broader review and approval than was done here. The agency adds that any agency requirement for concurrence of the Nuclear Certification Board concerns internal agency policy and is not for review by our Office. Additionally, the agency has presented statements from the Nuclear Weapons Directorate and the Air to Surface Munitions Directorate indicating that this matter did not require further review by their offices.⁸ Agency Report, Tab 5a, E-mail Messages. Given that the protester has not supported its position or refuted the agency's arguments, and the record does not otherwise indicate that the agency acted improperly, we deny this aspect of Scot's protest.

Finally, Scot argues that because it was subjected to testing prior to qualification, the waiver of the testing requirement for Pac Sci Quantic was unfair to Scot and perhaps to other potential offerors that are presently not qualified sources. The agency acknowledges that Scot underwent a more rigorous qualification process. The agency explains that, unlike Pac Sci Quantic, Scot was qualified based on a new design, so the qualification process at that time needed to include testing of a qualification item. Since the agency's actions here were proper, and the opportunity for waiver was clearly announced, this is not an example of unfair or unequal treatment of offerors.⁹ See Dash Eng'g, Inc.; Engineered Fabrics Corp.-Recon., B-246304.12, B-246304.13, Sept. 27, 1993, 93-2 CPD ¶ 184 at 5 n.5 (where waiver of a

⁸ In addition to stating that the cartridge was not a nuclear certified item, these agency offices stated that first article testing would be appropriate. Agency Report, Tab 5a, E-mail Messages. In its comments on the agency report, Scot alleges that first article testing is unnecessary for properly qualified cartridges. We note that the agency's use of first article testing in conjunction with a qualification requirement is generally not improper. See Hiltronics Corp., *supra*; Diemaster Tool, Inc., B-241239, B-241239.2, Jan. 30, 1991, 91-1 CPD ¶ 89 at 4-6. Additionally, the RFP required first article testing for all offerors and Scot did not take exception to this requirement or otherwise request a waiver. Agency Report, Tab 8, Scot Proposal, at 6. Therefore, Scot's belated objection to the first article test requirement is at best an untimely protest of the terms of the RFP. 4 C.F.R. § 21.2(a)(1) (2003).

⁹ There is no suggestion that the agency denied any waiver requested by the protester, or by any other potential offerors with circumstances similar to Pac Sci Quantic's.

statutory restriction on competition is permitted, waiver does not constitute unequal treatment of offerors, and allegations of prejudice to the protester are not to be considered).

The protest is denied.

Anthony H. Gamboa
General Counsel