

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-183664

DATE: July 15, 1975

MATTER OF: Coastal Mobile and Modular Corporation

DIGEST:

1. Since step one of a two-step procurement is a qualifying and not competitive phase, contracting agency should make reasonable effort to bring step one proposal to acceptable status, thereby increasing competition, rather than to classify the proposal as unacceptable.
2. Whether technical proposal for library kiosks under first step of two-step District of Columbia procurement is acceptable is matter requiring judgment and expertise of technically qualified personnel and GAO will accept determination of procuring agency where, as here, it is not clearly shown to be erroneous or arbitrary.
3. Since District of Columbia Government has consented to be guided by Federal Procurement Regulations where, as here, its regulations are silent, and since solicitation included provisions similar to those prescribed by FPR for two-step procurements, Comptroller General decisions concerning administrative discretion with respect to evaluation of technical proposals are applicable.

The District of Columbia, Department of General Services, issued invitation No. 0727-AA-02-0-5-CC on January 6, 1975, for the "Design and Construction of Library Kiosks" under two-step procurement procedures. The D.C. Fiscal Year 1975 budget provides for three "Kiosk Libraries" to be built under Project CE-103-75 for the D.C. Public Library. These facilities are to be highly visible, small libraries located within the city where branch libraries are not readily available to the public. Each "Kiosk Library" is to hold approximately 1,000 books on two rotating bookracks--visible from the outside. Work space is to be included for a single librarian, as well as a work counter, storage closet and an electrical toilet for the librarian's use.

On March 24, 1975, six offerors submitted technical proposals without pricing in response to the solicitation. After evaluation it was determined that two proposals met all the requirements. By

mailgram of April 15, 1975, Coastal Mobile and Modular Corporation (Coastal) was informed that its proposal was deficient, and therefore unacceptable, in the following respects: (1) the net area of the structure submitted was substantially less than the approximately 120 square feet required; (2) the roof drainage was not piped down and out beneath the encircling concrete slab as required; and (3) the design submitted did not meet the library's functional need from an architectural standpoint in that the librarian is isolated from the rotating bookshelves and has no visual control of the door or the rotating bookshelf nearest the door.

By letter of April 17, 1975, Coastal protested the rejection of its step-one design as unfair for the following reasons. First, Coastal states that for reasons of aesthetics it reduced the square footage by approximately 8 square feet in order to maintain the curved appearance of the glass and the square footage was lost in the curve not in the outside measurements. Second, Coastal contends that if its method of roof drainage was not clear, it should have been asked to explain or detail the method proposed. Third, it is contended that the specifications do not state that the door must be visible to the attendant. Further, it is contended that the integrity of the design could be maintained simply by adding a mirror which would provide visibility. If such visibility was a basic requirement, Coastal maintains that the specifications should have so stated.

The D.C. Department of General Services responded to Coastal's allegations by stating that several basic requirements of the specifications had not been met. First, paragraph 1.I of Section 3 on page 3-1 of the specifications requires that the construction system offered should fulfill the functional, aesthetic, structural, maintenance, security, health, welfare, safety and durability requirements of the D.C. Government, although great latitude would be allowed in the selection of a construction system. It is stated in the administrative report that although the Coastal proposal was technically correct from an engineering standpoint, it was not functionally adequate and showed shortcomings from an architectural standpoint. In particular, it is noted that the librarian is not in a controlling position within the facility since she cannot see the door from her normal position nor can she control movement through this door. The librarian cannot see the revolving bookrack nearest the door. The report concludes that "fully half of the public portion of the facility is not within her vision and the facility cannot be considered 'secure'."

Second, paragraph 2.A of Section 3, page 3-2 of the specifications provides that the net area of the building shall be approximately 120 square feet with a ceiling height of 9 feet minimum. Contrary to the assertion by Coastal that its proposal was 8 square feet less than the target figure, the administrative report states that the actual submitted net area was 93.8 square feet. Such a deviation from the standard, it was concluded, could not be tolerated in such a small facility with functional requirements for circulating 1,000 books.

Finally, it is stated in the report that it was impossible to determine from the roof design how the interior downspout was to be integrated as part of the roof drainage system as specifically required by the specifications. Further, it is asserted that Coastal knew of the requirement that its original submission stand on its own merits without the necessity for additional clarification or supplementary information (paragraph 5.A of Section 1 on page 1-3 of the specifications). Therefore, the agency argues that it had no obligation to discuss changes to Coastal's design or to engage in any clarification.

In its reply to the administrative report, Coastal indicates that the report portrays the procurement as an architectural competition while the specifications simply require good design and construction based on sound architectural and engineering practice. In addition, Coastal points out that the Department of General Services speaks of step one as a competitive process whereas Section 1 of the Technical Services Criteria indicates that compliance with design and technical criteria is the goal of this step.

The administrative report does in fact state that "Coastal had to realize that they were in a competitive process for functional and aesthetic design against the requirements of the specifications." Section I of those specifications provides:

"Step 1 of this procedure consists of the preparation of drawings and specifications (Technical Proposals) by the offerors that indicate compliance with design criteria and technical criteria set forth herein." (Emphasis added.)

We agree with Coastal; step one of a two-step procurement is a qualifying and not a competitive phase. Technical proposals are to be classified as either acceptable or unacceptable during step one. When a reasonable effort on the part of the contracting agency could bring a proposal

to an acceptable status and increase competition such effort should be made prior to classifying the proposal as unacceptable. Clearly, competition in a two-step procurement occurs in step two, the goal of step one is the qualification of proposers. We recommend that the Department of General Services conduct subsequent two-step procurements in accordance with the policy enunciated above.

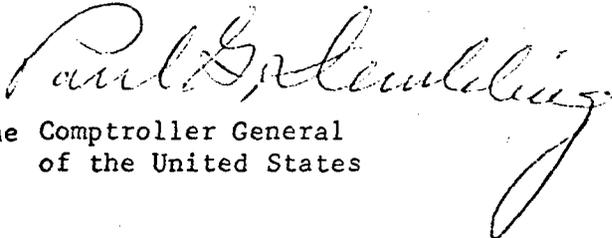
On the other hand, the protest is of a type which has been the subject of decisions by this Office on many occasions, in that it concerns the question of whether the deficiencies in a proposal are of a minor nature, and whether an opportunity to correct the proposal should have been afforded. Although those decisions have involved procurements under regulations governing two-step procurements applicable to Federal agencies, the D.C. Government has consented to be guided by the Federal Procurement Regulations where, as here, its own regulations are silent. B-178559, June 25, 1973. In this connection, we note that the solicitation provides similar guidance with respect to two-step procurements as that set forth in FPR. Specifically, notice to the effect that proposals which in the judgment of the contracting officer are not reasonably susceptible to being made acceptable will be classified as unacceptable, no discussions will be initiated, and the offeror will be so notified. This Office has held that questions as to whether technical proposals submitted under two-step procedures are deficient and whether they are reasonably susceptible of being made acceptable without major revision are basically matters requiring the judgment and expertise of technically qualified personnel. Metis Corporation, 54 Comp. Gen. 612 (1975). This Office will ordinarily accept the considered judgment of the procuring agency's specialists and technicians as to the adequacy of a technical proposal, unless it is clearly shown that the agency action was erroneous, arbitrary, or not made in good faith. 52 Comp. Gen. 387 (1972); 40 Comp. Gen. 35 (1960); B-164302, July 11, 1968. In the present instance the record shows that the decision to reject the Coastal proposal was not clearly erroneous or arbitrary. While it might reasonably be argued that it was unreasonable to reject the proposal because in the proposed design the door would not be visible in the absence of a specific requirement to that effect or because an interior downspout was not provided, we believe the other reason advanced for finding Coastal's proposal unacceptable (providing only 93.8 net square feet rather than the required 120 net square feet) was reasonable.

Furthermore, the rejection of Coastal's proposal without discussion was not objectionable in light of paragraph 5.A of Section I, Technical Services Criteria, page 1-3 which states:

"Prospective offerors are cautioned that, in the event of receipt of an adequate number of initial proposals, which in the opinion of the Contracting Officer, require no clarification or supplementary information, technical proposals may be evaluated without further discussion. Hence, proposals should be submitted initially on the most complete and favorable terms from a technical standpoint which the offeror can submit to the Government." (Emphasis added.)

The Department of General Services was not therefore under any obligation to conduct discussions with proposers whose submissions were determined to be materially deficient. Metis Corporation, 54 Comp. Gen. 612, supra.

Accordingly, the protest is denied.


For the Comptroller General
of the United States