

DECISION

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

FILE: B-186002

DATE: September 10, 1976

MATTER OF: Struthers Electronics Corporation

61458
98064**DIGEST:**

1. Contracting officer's rejection of technical proposal submitted under first step of two-step formally advertised procurement was proper exercise of discretion since proposal was determined unacceptable and there is no evidence of record that determination was unreasonable or made in bad faith. Since evaluation and overall determination of technical adequacy of proposal is primarily function of procuring activity, which will not be disturbed in absence of clear showing of unreasonableness or abuse of discretion, judgment of agency's technical personnel will not be questioned where such judgment has reasonable basis merely because there are divergent technical opinions as to proposal acceptability.
2. While solicitation under two-step formally advertised procurement provided contracting officer with authority to request additional information from offerors of proposals which were considered reasonably susceptible of being made acceptable, fact that protester was not afforded opportunity to revise or modify its proposal was not improper since procuring activity reasonably determined proposal unacceptable and that it could not be made acceptable by clarification or additional information, but would require major revision.
3. No requirement exists for numerical scoring of technical proposals submitted under step one of two-step procurement as step one is qualifying phase of procurement, not competitive.

On December 5, 1975, the Federal Aviation Administration (FAA) issued request for technical proposals (RFTP) No. LGM-6-7365 for instrument landing systems (ILS) as the first step of a two-step formally advertised procurement. Struthers Electronics Corporation (Struthers) submitted a technical proposal in response to the RFTP which was found to be technically unacceptable by the FAA. Struthers has protested this determination to our Office.

Struthers' protest is based on the contention that the FAA did not fairly evaluate Struthers' proposal as indicated by the FAA technical

evaluation report which, allegedly, contains incorrect statements and draws conclusions not based on factual information contained in the proposal. Further, Struthers alleges that the FAA did not comply with the intent of the Federal Procurement Regulations (FPR) relating to the consideration of technical proposals under two-step formally advertised procurement procedures.

Struthers argues that several pertinent documents, including the synopsis of the evaluation team's findings, do not contain any factual information to support proposal rejection on an objective basis but merely characterize the content of the proposal with disparaging remarks and innuendos. The synopsis was a two-paragraph summary of the technical evaluation report on Struthers proposal and stated:

"Synopsis: The technical proposal submitted by Struthers Electronics Corporation, in response to RFTP LGM-6-7365, has been reviewed by the Technical Evaluation Team and it is the consensus of the team members that the proposal be categorized as unacceptable. This conclusion is based upon the team's determination that the offeror's engineering approach did not conform to the requirements of the RFTP in several major areas. In addition, the proposal exhibited a gross lack of understanding or purposely ignored the requirements and an unreasonable effort on the part of the Government would be required to obtain a proposal from the offeror that would be categorized as acceptable.

"The following is a summary of the significant deficiencies found. Those listed pertain to the proposed design and serve to illustrate the offeror's indifference to the requirements of the RFTP. The examples that follow do not describe all deficiencies found but are intended to establish that the offeror's proposal is unacceptable. The balance of the deficiencies will be provided when the evaluation teams worksheets are forwarded at the conclusion of the evaluation."

Struthers objects to the use of such phrases as "gross lack of understanding or purposely ignored." We do not find such phrases improper in and of themselves, if supported by the evaluation report. In any event, we find that the evaluation report taken as a whole reflects a tone consistent with the purposes for its preparation.

The ILS was to be of solid-state design employing semiconductor and microelectronic devices in accordance with certain FAA specifications cited in the RFTP. The technical evaluators found that the schematic diagrams in Struthers' proposal indicated solid-state devices that were not in compliance with this requirement nor any discussion of the requirement in the proposal. Since the FAA considered this requirement critical because a major redesign effort is normally required to adopt an existing design to changes in the solid-state devices, Struthers' proposal was found to be technically unacceptable to this requirement. Struthers argues that its proposal did discuss this requirement and cites three portions thereof which satisfied the requirement. The FAA has responded that two of these references are merely a replay of the specification in the RFTP and the third is a general procedure which does not deal specifically with semiconductors and microelectronic devices. Struthers further states that if the FAA had conducted discussions with it, a simple explanation could have clarified the proposal.

The technical evaluation report continues to list seven other significant deficiencies in the Struthers proposal. Struthers rebuts all of these by similar arguments as the one above, stating that either the FAA did not understand the proposal or that Struthers misread the specification and the information could have been easily supplied. The main thrust of Struthers' protest is that if discussion had been conducted, explanations by Struthers' personnel would have clarified any problems. The FAA considered the proposal to be unacceptable and that only through an extensive rewrite could the proposal be raised to an acceptable level to qualify Struthers for the second step of the two-step procurement. The evaluation team did not consider the shortcomings of the proposal of the type which only needed clarification as is contended by Struthers.

As is evident from the above, there is strong disagreement between Struthers and the FAA as to the validity and severity of the technical deficiencies raised by the technical evaluation team. However, it is not the function of our Office to resolve technical disputes of this nature. See 52 Comp. Gen. 382, 385 (1972). The overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion in the evaluation of proposals. Kirschner Associates, Inc., B-178887, April 10, 1974, 74-1 CPD 182; B-176077(6), January 26, 1973. Since determinations as to the needs of the Government are the responsibility of the

B-186002

procuring activity concerned, the judgment of such activity's specialists and technicians as to the technical adequacy of proposals submitted in response to the agency's statement of its needs ordinarily will be accepted by our Office. B-175331, May 10, 1972. Such determinations will be questioned by our Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations. Ohio State University; California State University, B-179603, April 4, 1974, 74-1 CPD 169; B-176077(6) supra.

Although Struthers has provided detailed technical arguments in support of its protest, we are unable to conclude on the record that the procuring activity's determination that its technical proposal was unacceptable was arbitrary or unreasonable. It appears from the record that the proposal was evaluated in accordance with the specifications and the stated evaluation criteria and was found to be technically unacceptable and not reasonably susceptible of being made acceptable without major revisions on the basis of a comprehensive evaluation. The record does not indicate that this evaluation was improper or unfair or that the contracting agency abused its discretion in finding the Struthers proposal unacceptable. We do not believe it is appropriate for this Office to question the FAA's technical judgment when the judgment has a reasonable basis merely because there may be divergent technical opinions as to the acceptability of a proposal. Thus, we are unable to agree with Struthers' claim that its proposal should have been regarded as acceptable. See Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

While the solicitation provided the contracting officer with authority to request additional information from offerors of proposals which the Government considered reasonably susceptible of being made acceptable, it did not so provide for proposals determined unacceptable. Furthermore, we stated in B-165457, March 18, 1969:

"We view the above provision as investing in the technical and procurement personnel * * * considerable latitude in framing the requirements to be met by proposals and in their evaluation. * * * Whether a proposal needs clarification to be deemed acceptable, whether a proposal can be made acceptable by clarification and reasonable effort by the Government * * * are all matters of judgment on the part of the procurement agency, which we will not question unless there is evidence of fraud, prejudice, abuse of authority, arbitrariness or capricious action."

B-186002

Since we find no evidence of such conduct in the instant case, there is no basis for our Office to question the determination not to seek clarification or modification of the protester's proposal.

F. A. Villalba & Company, B-179286, January 30, 1974, 74-1 CPD 42;
METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44.

Concerning Struthers' contention that the FAA did not comply with the intent of the FPR's in attempting to qualify as many firms as possible for the second step, we find, based on the above, that the FAA conducted the first step in accordance with the applicable FPR's.

Finally, Struthers requests our Office to review the other proposals found to be acceptable to ascertain if they were evaluated in the same manner as Struthers' proposals. Struthers argues that, as it was not furnished copies of any scoring sheets regarding the evaluation factors listed in the RFTP, it is not certain these factors were applied as listed.

The FAA did not score the proposals. However, we have reviewed the technical evaluation of the other proposals and have found that they were subjected to the same analysis as the Struthers proposal. There is no requirement that proposals submitted under the first step of a two-step procurement must be scored numerically, as is often done in a competitive negotiated procurement to determine which offerors are within the competitive range. Step one of a two-step procurement is a qualifying and not a competitive phase. Proposals are classified as either acceptable or unacceptable on their own merits and are not in competition with other proposals submitted. Coastal Mobile and Modular Corporation, B-183664, July 15, 1975, 75-2 CPD 39.

Accordingly, for the foregoing reasons, the protest is denied.

Proff K. 11m
Acting Comptroller General
of the United States