



The Comptroller General
of the United States

Washington, D.C. 20548

Ayer - Pl

Decision

Matter of: Shughart & Associates, Inc.
File: B-226970
Date: July 17, 1987

DIGEST

1. Rejection of a proposal under the first step of a two-step sealed bid procurement was reasonable, where the proposal lacked a clear explanation how the offeror intended to comply with the government's requirements, and changes needed to make the proposal competitive would have constituted a major revision to the original offer.
2. Protest of allegedly defective specification in the solicitation for the first step of a two-step sealed bid procurement, filed after the closing date for receipt of step-one technical proposals, is untimely.

DECISION

Shughart & Associates, Inc., protests the rejection of its technical proposal under request for technical proposals (RFTP) No. N61339-87-R-2001, issued by the Naval Training Systems Center, Orlando, Florida. The RFTP was the first step of a two-step sealed bid procurement for training services.^{1/} Shughart contends that the Navy improperly evaluated its technical proposal and did not promptly notify Shughart of the decision to reject the proposal. Shughart

^{1/} Two-step sealed bidding is a hybrid method of procurement that combines the benefits of sealed bids with the flexibility of negotiations. Step one is similar to a negotiated procurement in that the agency requests technical proposals, without prices, and may conduct discussions. Step two consists of a price competition conducted in accordance with sealed bid procedures, except that the competition is limited to those firms that submitted acceptable proposals under step one. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.501 et seq. (1986); A.R.E. Manufacturing Co., Inc., B-224086, Oct. 6, 1986, 86-2 C.P.D. ¶ 395.

C39504

also asserts that the solicitation improperly called for personal services.

We deny the protest in part and we dismiss it in part.

The Navy issued the RFTP to acquire training services for aircrews on specialized flight simulators. The RFTP specified minimum requirements for the technical proposal's three major divisions (organizational structure plan, technical approach, and proposed labor hours) and stipulated that offerors should submit proposals that were acceptable without additional explanation, because proposals might be accepted or rejected as initially submitted, in which case the government would proceed with the price competition without requesting further technical information.

The Navy found Shughart's proposal technically unacceptable in 17 of 34 key areas, and marginal in the remaining 17. The Navy concluded that Shughart underestimated the effort required for instruction, the need for backup personnel, and the level of effort needed for activities other than training. The Navy also found that Shughart did not address items such as instructor proficiency training, replacement training, and scheduled/unscheduled absences of instructors.

Shughart protests that the Navy did not evaluate the proposal in accordance with the factors specified in the RFTP. In support of this assertion, Shughart has submitted its technical proposal and an explanation of what the proposal was intended to convey.

Our review of an agency's technical evaluation under the first step of a two-step sealed bid procurement is limited to ascertaining whether the evaluation is reasonable. In making this assessment, we ordinarily accept the judgment of the procuring activity unless the protester demonstrates that the agency acted unreasonably. ICSD Corp., B-222542, July 23, 1986, 86-2 C.P.D. ¶ 97.

We think the Navy reasonably concluded that Shughart's proposal failed to explain clearly how Shughart's training plan would meet the RFTP's basic requirements. Our review shows that Shughart's proposal was brief, with many unexplained cross-references to the RFTP and other parts of the proposal. For example, the proposal stated that the training site manager would act in three major capacities--liaison with the Navy for 8 hours a day, cover as an alternate for another site manager, and act as a part-time instructor--without explaining how the site manager would perform these three separate roles in an 8-hour day. The proposal simply did not convey Shughart's later-expressed reasoning that: (1) liaison with the Navy will

not require a full 8 hours because the Navy contact usually would not be available for a portion of the day; (2) the site manager rarely would have to serve as an alternate for another site manager; or (3) instructors could perform collateral support tasks at the same time they provided instruction. Substantially the same analysis applies to the balance of the evaluators' adverse comments concerning Shughart's lack of understanding of the need for backup personnel, the need for effort other than actual training (such as proficiency and replacement training), and the need to address the scheduled/unscheduled absences of its instructors. While Shughart has attempted to demonstrate a technical knowledge of these aspects of the procurement beyond that shown in its proposal, the fact remains that the Navy had to evaluate the proposal as submitted.

Generally, initial technical proposals submitted in the first step of a two-step acquisition need comply only with the basic or essential requirements, and not all the details of the specifications, since step one contemplates the qualification of as many technical proposals as possible through negotiation. Nevertheless, an unacceptable proposal may be rejected where the procuring agency reasonably concludes that the offeror cannot establish that essential requirements are met without extensive revision. Midcoast Aviation, Inc., B-223103, June 23, 1986, 86-1 C.P.D. ¶ 577. Moreover, while individual deficiencies may be amendable to correction, the aggregate of many such deficiencies may prevent the contracting agency from making an intelligent evaluation, and cause the offeror's rejection; the agency need not allow an offeror the opportunity to rewrite its proposal. Radiation Systems, Inc., B-211732, Oct. 11, 1983, 83-2 C.P.D. ¶ 434. In our view, the Navy was reasonable in concluding that Shughart's proposal did not meet the minimum technical requirements, and that it would have required major revisions before it would become acceptable.

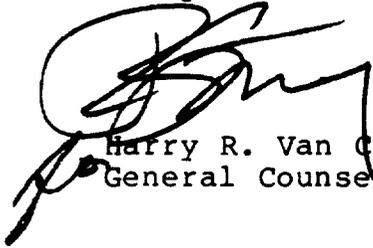
Shughart complains that the Navy did not promptly notify the company of the rejection of its proposal. This involves a procedural matter, however, and therefore does not provide a legal basis for disturbing an otherwise valid award. See RCA Corp., et al., 57 Comp. Gen. 809, 821 (1978), 78-2 C.P.D. ¶ 213.

Shughart also argues that the detailed requirements for staff qualifications, certification, training and availability are indicative of a prohibited personal services contract.

We will not consider this issue. A protest of an alleged solicitation impropriety that is apparent before the closing

date for receipt of initial proposals (here, the closing date of the step-one request for technical proposals) must be filed with the contracting agency or our Office before that date. 4 C.F.R. § 21.2(a)(1) (1986); BCI Communications Systems, Inc., B-220512.3, Dec. 13, 1985, 85-2 C.P.D. ¶ 662. Since Shughart's objection is founded on requirements clearly stated in the RFTP and Shughart did not protest until after the closing date for receipt of technical proposals, this contention is untimely and will not be considered.

The protest is denied in part and dismissed in part.



Harry R. Van Cleve
General Counsel