The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: HSQ Technology

File: B-227054

Date: July 23, 1987

DIGEST

1. The General Accounting Office (GAO) will not independently review proposals submitted on the first step of a two-step sealed bidding acquisition, since the judgment of the relative merits of proposals is in the first instance the responsibility of the contracting agency; nor will GAO question the exclusion of the protester's proposal as unacceptable where that proposal appears to have reasonably been found deficient and the protester has presented no reasons for concluding otherwise.

2. The Architect of the Capitol is not subject to the terms of the Competition in Contracting Act of 1984 or the Small Business and Federal Procurement Competition Enhancement Act of 1984; however, even if these statutes were applicable, they did not require the agency to conduct discussions with an offeror whose proposal had been determined not to be susceptible to being made acceptable.

DECISION

HSQ Technology protests the rejection of its proposal under request for proposals (RFP) No. 8606, issued by the Architect of the Capitol as the first step of a two-step sealed bidding acquisition of software, field interface devices (FIDs), and peripheral equipment for a computerized energy control management system, including installation and training of government personnel in its operation. HSQ objects to the rejection of its proposal without discussions and complains about the Architect's continuation with the second step of the procurement even though only one offeror was eligible to submit a bid.

We deny the protest.

The RFP described the two-step process as a hybrid acquisition combining the elements of sealed bidding with negotiation. According to the RFP, the step-one procedure was to be similar to a negotiated procurement in that the Architect would request technical proposals, conduct discussions with those offerors whose proposals were considered reasonably susceptible of being made acceptable and request best and final offers (not including prices) from those offerors. Step two was to be a price competition conducted in accordance with sealed bidding procedures, which was to be limited to those firms that submitted acceptable proposals under step one.

The RFP was issued on February 28, 1986. Four firms submitted proposals. Evaluation of these proposals resulted in the rejection of three of them, including HSQ's, as unacceptable. Although only one proposal was found to be acceptable, the Architect proceeded with the second step of the process, with the one offeror that submitted an acceptable proposal and solicited a bid from that firm. An award was subsequently made on the basis of the single bid.

According to a letter dated April 14, 1987, the Architect informed HSQ that its proposal was rejected because of the following seven "major specific failures" of the proposed system to meet RFP requirements: (1) the system was not comprised of standard regularly manufactured components but was to be custom designed, (2) the system's communications rate did not meet the minimum of not less than 9,600 baud, (3) the system was not of the distributed processing type, as specified, (4) it could not be expanded as required, (5) the printer was not capable of handling large reports, (6) the operation of the system was too difficult, and (7) the operator at the system's control processor could not modify the software within the FID while the FID is on-line.

The protester maintains that the Architect's evaluation was erroneous and insists that it could easily have corrected any deficiencies in its proposal had it been given the opportunity to discuss them with the agency. In this regard, HSQ argues that the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 252 et seq. (Supp. III 1985), and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Enhancement Act), Pub. L. 98-577, 98 Stat. 1175 (1984), require that HSQ as a small business be given the opportunity to cure any deficiencies in its proposal through discussions. While declining the opportunity to detail the basis of its disagreement with the agency regarding the seven points raised in the Architect's rejection letter, the protester requests that our Office conduct an unbiased technical evaluation of the proposal.

Our review of an agency's technical evaluation under the first step of a two-step sealed bid acquisition is limited to the question of whether the evaluation is reasonable. ICSD Corp., B-222542, July 23, 1986, 86-2 CPD ¶ 97. In making this assessment, it is not our function independently to evaluate proposals, AT&T Technology Systems, B-220052, Jan. 17, 1986, 86-1 CPD ¶ 57, instead, we will accept the considered judgment of the procuring agency unless it is shown to be erroneous or in violation of procurement statutes or regulations. See Herblane Industries, Inc., B-215910, Feb. 8, 1985, 85-1 CPD ¶ 165. An agency need not further consider those offerors whose initial proposals are deemed unacceptable and not reasonably susceptible of being made acceptable through subsequent discussions; the burden is on the offeror to submit sufficient information with its initial proposal. Datron Systems, Inc., B-220423, et al., Mar. 18, 1986, 86-1 CPD ¶ 264.

Based on the record before us and the protester's refusal to specify the reasons for its disagreement with the agency's technical judgment, we have no grounds upon which to disagree with the agency's decision to reject HSQ's initial proposal without conducting discussions. As indicated above, this Office will not conduct an independent evaluation of a protester's proposal in order to determine whether it is, in our view, acceptable or not. AT&T Technology Systems, B-200052, supra. Further, we do not agree with the protester that either CICA or the Enhancement Act require an agency to conduct discussions with any offeror whose proposal under step one of a two-step acquisition has been judged not to be susceptible of being made acceptable through discussions. In any event, as the agency points out neither statute is applicable to procurements conducted by the Architect since the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §§ 471 et seq. (1982), which both CICA and the Enhancement Act amend in part, do not govern the Architect. See 40 U.S.C. § 474 (1982); 41 U.S.C. § 252 (1982); B-171918, Mar. 24, 1971.

Finally, HSQ questions whether outside influences may have affected the proposal evaluation and whether the price from a single firm can be found reasonable without having other bids with which to compare it. HSQ has offered no evidence to show the existence of any outside influences on the evaluation process. It also has not shown that the award price or the Architect's cost estimate with which it was compared was unreasonable. Further, although an agency may cancel step two and proceed to complete the procurement through negotiation, where as here there is only one

acceptable offeror, the agency is not required to do so. See, for example, Federal Acquisition Regulation, 48 C.F.R. § 14.503-1(i).

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel