



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gichner Iron Works, Inc.

File: B-230009

Date: May 16, 1988

DIGEST

Rejection of technical proposal under step one of a two-step procurement was reasonable where solicitation prohibited use of proposed component of required essential system, and changes to satisfy the requirement would require a major revision to the proposal.

DECISION

Gichner Iron Works, Inc., protests the rejection of its technical proposal under step one of a two-step procurement conducted by the Department of the Air Force under request for technical proposals (RFTP) No. F41608-87-R-2044. The RFTP was issued as a small business set-aside for 15 enclosed noise suppressor systems, or "mini-hush houses," which are essentially test chambers for small aircraft engine operations. Gichner contends the agency acted improperly in rejecting its step-one technical proposal as unacceptable, thereby excluding the firm from further competition; according to the protester, the evaluation of its proposal was unreasonable and the agency failed sufficiently to notify the firm of deficiencies.

We deny the protest.

Under step one of the procurement, offerors were requested to submit technical proposals in accordance with purchase description MME-585, which contained numerous functional and design requirements and referenced various military, federal, and industry specifications and standards, as well as an Air Force drawing. The RFTP listed five essential system elements to be evaluated, including engine test capability; engine test capability included the exhaust system (at issue here), described in the RFTP as a major component of the noise suppressor system. The solicitation advised that proposals would be evaluated as "acceptable,

susceptible to being made acceptable, and unacceptable"; it cautioned that any proposal that modified or failed to conform to the RFTP's essential requirements would be unacceptable and would cause automatic disqualification from step two. Step two was to consist of price proposals from those firms that submitted acceptable technical proposals under step one.

The Air Force received four step-one technical proposals. After requesting and evaluating clarifications from all offerors, the agency found three technical proposals to be acceptable; Gichner's proposal, however, was determined to be unacceptable and Gichner was notified that no proposal revisions would be considered. The Air Force found several deficiencies in Gichner's proposed exhaust system, including the use of acoustical splitters (a noise reduction device) in the exhaust stream, which was contrary to the purchase description's prohibition of them.^{1/}

The protester acknowledges that its exhaust system design utilized splitters, but asserts that the language of the RFTP in permitting mufflers, but prohibiting splitters, was ambiguous because splitters are a form of acoustical silencers or mufflers. However, the protester primarily complains that the agency's request for clarification did not indicate that the firm's exhaust system design encompassing splitters was unacceptable, and thus it was not given an opportunity to eliminate or correct the cited deficiency. According to the protester, had it been notified of the unacceptable design element it could have eliminated the splitters and modified its design with ease.

Our review of an agency's technical evaluation under an RFTP is limited to the question of whether the evaluation is reasonable. Datron Systems, Inc., B-220423 et al., Mar. 18, 1986, 86-1 CPD ¶ 264. In making this assessment, we will accept the considered judgment of the procuring activity unless it is shown to be erroneous, arbitrary, or made in bad faith. Lockheed California Co., B-218143, June 12,

^{1/} In connection with the exhaust system, the agency also found the description of the augmentor tube inner lining (through which exhaust gases flow) and the proposed turning vane design (which redirects exhaust gases upward through the vertical exhaust stack) to be unacceptable. In addition, the agency found Gichner's proposal to be deficient because it failed to provide for leveling equipment and to identify exterior materials finishes for the mini-hush house. We need not go into these perceived deficiencies since we find Gichner's inclusion of splitters in its proposal dispositive of the protest.

1985, 85-1 CPD ¶ 676. In order to be considered reasonably susceptible of being made acceptable, a proposal submitted in response to an RFTP need only comply with the essential requirements, not all the details of the specifications. See A.R.E. Mfg. Co., Inc., B-224086, Oct. 6, 1986, 86-2 CPD ¶ 395. However, the contracting agency nonetheless may reject a step-one proposal where the agency reasonably evaluates the proposal as not meeting essential requirements or where the proposal can be made acceptable only through extensive revisions. Id. Under these criteria, we find the Air Force's rejection of Gichner's proposal to be reasonable.

Initially, we note that Gichner's allegation that the specification concerning splitters was ambiguous appears to be untimely. Since the ambiguity Gichner raises is based on allegedly conflicting terms in the RFTP, the argument concerns an alleged solicitation deficiency that was apparent on the face of the solicitation and thus should have been raised prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1987); Datron Systems, Inc., B-220423, supra.

In any event, we find that the RFTP was not at all ambiguous regarding the use of splitters. The RFTP stated as follows:

"An air exhaust system incorporating augmentor(s), muffler(s), deflectors, exhaust stacks and turning section(s) as required shall be built into the system It shall not incorporate any device such as core busters, splitters and diffuser baskets, placed directly in the exhaust stream to break up the exhaust or provide additional attenuation."
(Emphasis added.)

Although, as Gichner contends, splitters may be a type of muffler, this does not establish that Gichner could reasonably conclude that splitters were permitted. In light of the quoted language, we think the only reasonable reading of the RFTP is that the use of splitters was not an acceptable means of meeting the solicitation requirement for mufflers.

Further, Gichner has not shown that the Air Force unreasonably found the firm's proposal to be unacceptable. Since Gichner proposed using splitters even though the RFTP prohibited them, Gichner's proposal clearly was inconsistent with the specifications and could not be accepted.

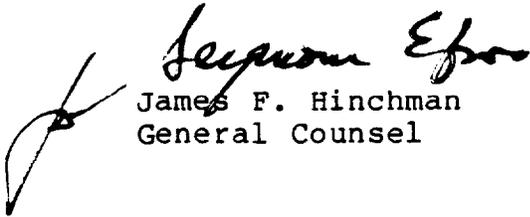
We also find no merit to the protester's contention that the agency's request for clarification regarding splitters was insufficient and misled the firm into believing that splitters were acceptable. The clarification request stated that Gichner's design "appeared to restrict" exhaust flow and asked for specific calculations. We believe that in view of prohibition on splitters, this request should have been sufficient to lead Gichner into the area of concern. In fact, Gichner's response states that if the acoustical splitters were found "not necessary," its design would "readily accept" their deletion. We believe this indicates that Gichner understood exactly the agency's concern in this area, but instead wished to continue negotiations. While the request for clarification did not specifically state that splitters were unacceptable, since the purchase description clearly set forth the prohibition, the agency was under no obligation to reiterate it or to continue successive rounds of clarifications so as to lead a technically unacceptable offeror to technical acceptability. Anchor Conveyors, Inc., et al., B-215624 et al., Oct. 23, 1984, 84-2 CPD ¶ 451. Under these circumstances, we conclude that the agency gave Gichner sufficient opportunity to revise its proposal so that a reasonable effort was made to assist it in becoming acceptable.

Gichner now contends that its proposal easily could have been modified to eliminate splitters and still comply with all of the RFTP requirements. However, the agency considers the exhaust system the core of the mini-hush house and redesign of the system, including the splitters, to encompass a major effort. A proposal is properly rejected where the agency reasonably determines that additional changes to make the proposal acceptable would constitute a major revision. A.R.E. Mfg. Co., Inc., B-224086.4, Apr. 15, 1987, 87-1 CPD ¶ 410.

The offeror bears the burden of submitting an adequately written proposal, Anchor Conveyors, Inc. et al., B-215624 et al., supra, and Gichner failed to detail exactly how the removal of the splitters could be accomplished without a major design revision. Nor has Gichner detailed in its protest how the change could be accomplished. In view of the fact that the protester has not supplied any information specifically refuting the agency's technical conclusion in this area, we have no basis to question the agency's determination that the elimination of splitters would constitute a major revision. See A.R.E. Mfg. Co., Inc., B-224086.4, supra.

Accordingly, Gichner's lack of compliance with the prohibition of splitters in the exhaust system, an essential requirement of the entire noise suppressor system, provided sufficient reason for agency rejection of the firm's proposal under step one.

The protest is denied.



James F. Hinchman
General Counsel