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DECISION



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

FILE: B-195624

DATE: January 15, 1980

MATTER OF:

SDC Integrated Services, Inc.

DLG1368
[Protest of D.C. Government Contract Award]

DIGEST:

1. Protest--against manner in which agency conducted oral discussions--first raised more than 10 working days after oral discussions (date alleged impropriety was known or should have been known) is untimely under GAO Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1979), and will not be considered on merits.
2. Protester, initially considered to be in competitive range, participated in discussions and submitted revised proposal. Where agency's evaluation of revised proposals results in revised competitive range not including protester's proposal, there is no requirement for further discussions with protester nor for agency to request protester's best and final offer.
3. Protester objects to agency's determination--that its proposal is outside competitive range for failure to present acceptable related corporate experience and related project team experience--arguing that awardee's corporate experience could not have been better and that agency evaluators did not recognize kind of project team experience required. Protest is denied where record shows evaluators reasonably determined that awardee demonstrated related corporate experience and where protester's disagreement with agency is only evidence in support of contention that evaluators miscalculated project team experience.

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4. Price need not be considered when unacceptable technical proposal is submitted.

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SDC Integrated Services, Inc., a subsidiary of System Development Corporation (SDC), protests the award of a contract to any firm other than SDC arising out of request for proposals (RFP) No. JA/79177 issued by the District of Columbia Government, Department of Human Resources (DC), for the analysis, design and implementation of the Automated Client Eligibility Determination System (ACEDS). The RFP contemplates a two-phase program: phase I for systems requirements and alternatives analysis, and phase II for detailed design and implementation. The initial contract would be for phase I on a firm-fixed-price basis with an option to continue with the phase II contract on a firm fixed price calculated by using labor rates submitted prior to the award of phase I. CNG,00029

I. Procurement Background and Protest

Proposals received in response to the RFP were evaluated by a panel of six evaluators to determine technical acceptability as outlined in the RFP: corporate experience, project team experience, approach and understanding of the problem, and corporate financial capability. At least one evaluator contacted some persons identified by offerors in their proposals to determine the quality of identified corporate and project team experience. The results of these interviews were used in the proposal evaluation.

The record shows that the evaluators followed an evaluation scheme and arrived at point scores for each technical proposal submitted. Only one proposal, the awardee's, exceeded the predetermined cutoff score, so discussions were held with that offeror only, and its best and final offer was requested and received. The evaluators recommended award to that offeror. Since this procurement is one which cannot be completed without consultation with the Comptroller General, among others, the recommendation was referred to a GAO audit group for review. The audit group

recommended the elimination of the cutoff score to determine proposal acceptability, continued proposal evaluation, and an opportunity for an oral presentation be provided to offerors which submitted marginally acceptable proposals. Another meeting of the evaluation panel resulted in the determination "that the potential did exist for SDC to improve its proposal."

By letter, SDC was advised that due to "a possible administrative error in the technical evaluation" SDC was requested to make an oral presentation "to answer several questions relating to your proposed staff, experience and work plan." The letter also stated that:

"The areas of our concern include:

- "1. Your experience and approach in analysis and design of systems for welfare programs (Medicaid, Food Stamps, Public Administration, Social Service, WIN, etc.)
- "2. The experience and commitment of certain key personnel as related to ACEDS.
- "3. Your roles and experiences in certain projects referenced in the proposal, specifically the Florida Medicaid Project, New Jersey Eligibility System, LA County Welfare Case Management and the HUD Mortgage Insurance Accounting System.
- "4. Skills mix of proposed staff members."

Following the oral presentation, SDC submitted a revised proposal which replaced the initially proposed project manager with another and slightly revised team managers. Aside from these revisions, essentially no changes were made by SDC.

DC's evaluation of SDC's revised proposal resulted in the slight reduction of SDC's point score reflecting the evaluators' judgment that the new proposed project manager was less qualified. Further, the evaluation panel concluded that SDC's revised offer was not in the competitive range--eliminating the need to consider SDC's proposed fixed price--and the panel recommended award to the only firm in the competitive range. SDC discovered the award determination, protested here, and while the matter was pending, DC made award to a firm other than SDC.

SDC attempted to obtain the documents supporting DC's award decision but its request was denied. We agreed to inspect all relevant documents which DC provided us, including both offerors' proposals, evaluators' scoresheets, panel summaries, and the award recommendations.

SDC's initial protest essentially contended that (1) while it participated in oral and written discussions (the presentation and revised proposal), it was not afforded an equitable opportunity to submit price, technical or other revisions in a best and final offer; (2) its proposal was excluded from the competitive range as a result of favoritism, bias and prejudice tantamount to an unreasonable, arbitrary and capricious act by the procurement officials; (3) its price for both phases would have been substantially lower than the firm that was selected for award; and (4) the proposed contract with the awardee excludes certain computer programs from the data rights clause in violation of mandatory RFP provisions.

DC's report addressed these bases of protest and relative to (4) DC reported that the proposed contract provision excluding those computer programs would be changed to comply with the requirements of the RFP. Accordingly, this basis of protest is moot and will not be further considered.

In response to DC's report, SDC offered additional arguments and raised another basis of protest by objecting to the manner in which it says that DC conducted the oral presentation, namely: (a) DC declined

to extend to SDC the courtesy of introducing DC's representatives, (b) there was substantial inattention and nonparticipation in the proceedings by DC's representatives, (c) the contracting officer left the meeting during discussions, thereby failing to direct the inquiry into proper channels relative to responsibility and assurance that correct weight would be given to the evaluation factors on experience.

This aspect of SDC's protest was first filed here 3-1/2 months after the oral presentation, or more than 10 working days after the basis of protest was or should have been known. Accordingly, it is untimely under our Bid Protest Procedures (4 C.F.R. § 20.2(b)(2) (1979)) and will not be considered on the merits.

II. DC's Failure to Request SDC's Best and Final Offer

SDC contends that the DC letter and the oral presentation constituted discussions, thus obligating DC to establish a cutoff date for best and final offers and to request SDC's best and final offer. DC reports that it conducted discussions with SDC to clarify certain points in the technical proposal, and SDC was afforded the opportunity to submit revised technical and business proposals. Following discussions and evaluation of SDC's initial technical proposal and revised proposal, DC reports that it determined that SDC's technical proposal was not technically acceptable and decided to terminate further negotiations with SDC. DC states that decisions of our Office have held that where an offeror's technical proposal is found to be technically unacceptable and outside the competitive range, no obligation exists to conduct further discussions with that firm or to request a best and final offer. Accordingly, in DC's view, it was not necessary to solicit a best and final offer from SDC.

The instant situation is similar to the one in WASSKA Technical Systems and Research Company, B-189573, August 10, 1979, 79-2 CPD 110, where the agency initially determined that four firms were in the competitive range and after discussions and evaluation of revised technical proposals revised the competitive range to only one firm; further discussions

were held with only that firm and it alone submitted a best and final offer. Neither in that case nor here are we aware of any basis to object to an agency's making more than one competitive range determination. Since WASSKA was not in the revised competitive range, there was no requirement for it to be given an opportunity to submit a best and final offer.

Similarly, here, SDC's proposal was determined to be outside the revised competitive range; therefore, DC was not obligated to request SDC's best and final offer. The decisions cited by SDC, New Hampshire-Vermont Health Service, 57 Comp. Gen. 347 (1978), 78-1 CPD 202, and others, are inapplicable since they relate to the requirement that offerors in the competitive range must be given an opportunity to submit best and final offers after discussions.

III. The Competitive Range and Proposal Evaluation

SDC states that applicable procurement regulations and the integrity of the procurement process demand that a proposal be found to be within the competitive range wherever possible, and that reasonable measures be taken to establish that a proposal falls within the zone of acceptability. It is SDC's belief that its proposal was found unacceptable primarily on the basis of an evaluation of its background and experience in designing and implementing eligibility systems. SDC contends that it and its subcontractors have as much experience as the awardee. SDC believes that an objective GAO review of the agency file, including the source selection documentation, will reveal that SDC's proposal was downgraded for lack of appropriate eligibility experience but SDC is not aware that the awardee designed and implemented an effective eligibility system so as to warrant a higher score for eligibility experience.

Specifically, after reviewing the evaluators' comments on SDC's proposal, SDC argues that it is well recognized that ACEDS program's scope requires: a team of qualified personnel of many different disciplines to accomplish the objectives of the program; and qualified management capable of

planning and controlling integration of the respective disciplines. To either ignore this basic fact or downgrade evaluation of proposals because the personnel have not worked in and performed all of the disciplines, SDC states, is to exhibit bias or ignorance or both.

Finally, SDC notes that it was not formally notified that its proposal was not within the competitive range in accordance with the time requirements and prescribed procedure set forth in applicable regulations.

In response, DC reports that based on information provided by SDC in its initial proposal, oral discussions, and revised proposals, as well as information received from references cited by SDC, DC found SDC's proposal to be technically unacceptable. DC states that the evaluation process was not unreasonable, arbitrary and capricious; and the evaluation panel's conclusion was based upon deficiencies found in SDC's proposal, principally its lack of corporate experience in projects directly related to ACEDS and its lack of proposed project team experience in welfare eligibility determination systems. The evaluation team noted that SDC was afforded the opportunity, both at oral discussions and in a subsequent revision to its proposal, to improve its position but did not do so; thus, SDC's proposal was found technically unacceptable.

As stated in WASSKA Technical Systems and Research Company, supra, our Office reviews competitive range determinations very closely when the range is limited to one firm because procurement laws and regulations require maximum practical competition. We have reviewed the detailed memoranda related to the evaluation of SDC's and the awardee's proposals; we noted the deficiencies in SDC's proposal observed by the evaluators and reported by DC. We have reviewed each evaluator's scoresheets and comments provided by DC for our review--in all over 1,000 pages of information. From our review, we conclude that DC established a thorough technical evaluation scheme in accordance with the RFP's evaluation criteria and the evaluators followed it in evaluating both SDC's and the awardee's proposals. In essence, from the evaluators' comments SDC knew why its proposal was found unacceptable--lack of related

corporate experience and lack of related project team experience. SDC's reply is that the awardee's corporate experience could not have been better and that DC did not know what kind of project team experience was required to successfully accomplish the project.

In reviewing a procuring agency's evaluation of technical proposals, we will not substitute our judgment for the agency's determination of which proposals are technically acceptable unless it is shown to be arbitrary or in violation of procurement statutes or regulations. See Ads Audio Visual Productions, Inc., B-190760, March 15, 1978, 78-1 CPD 206; CompuScan, Inc., 58 Comp. Gen. 440 (1979), 79-1 CPD 288. The protester's disagreement with the agency's determination of what project team experience will satisfy its needs, without more, as here, is not enough to establish arbitrary action by the agency. See Peter J. T. Nelsen, B-194728, October 29, 1979, 79-2 CPD 302. Further, the evaluators determined that the awardee showed related corporate experience in the Maryland system, which they felt was similar to the project involved here. Based on the record, we have no basis to object to that determination.

Accordingly, we have no basis to conclude that SDC was unfairly treated concerning DC's evaluation of SDC's technical proposal.

IV. Price Considerations

SDC believes that its initial price proposal overall for both phases is less than the firm that was selected for award.

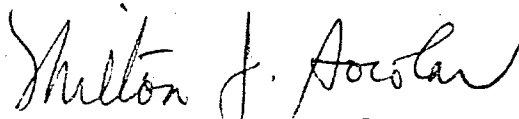
DC reports that it was under no obligation to consider SDC's proposed price since it had determined that SDC's technical proposal was outside the competitive range and since our Office has frequently recognized that price need not be considered when an unacceptable technical proposal is submitted.

A firm submitting an unacceptable proposal from nonprice standpoints is in effect not offering to meet the Government's needs; therefore, it matters not at

what price it offers to do so. DC is correct. Clearly, price need not be considered when an unacceptable technical proposal is submitted. See 52 Comp. Gen. 382 (1972) and decisions cited therein.

V. Conclusion

Protest denied in part and dismissed in part.



For the Comptroller General
of the United States