



The Comptroller General
of the United States

Washington, D.C. 20548

VAN SCHAIK
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Decision

Matter of: Perceptics Corporation

File: B-227170

Date: August 31, 1987

DIGEST

1. Protest concerning removal of small business set-aside and closing date extensions is dismissed because it was filed after the closing date for receipt of initial proposals. Alleged improprieties which are apparent from the face of the solicitation must be protested no later than the closing date for receipt of initial proposals.
2. General Accounting Office (GAO) will question a selection official's determination of whether an offeror is in the competitive range only upon a clear showing that it was unreasonable, arbitrary or in violation of procurement laws or regulations.
3. GAO Bid Protest Regulations require the contracting agency to provide protest submissions to interested parties except for material that is privileged and is so identified by the protester.

DECISION

Perceptics Corporation protests the Customs Service's changing of request for proposals (RFP) No. CS-I-86-031 for automatic currency readers/comparators from a small business set-aside to an unrestricted procurement and repeated extensions of the solicitation's proposal due date. Perceptics also argues that its proposal should not have been excluded from the competitive range. We dismiss the protest in part and deny it in part.

The solicitation, issued on August 14, 1986, was originally set aside for small businesses and had a September 15 closing date. By amendment of August 25, the small business set-aside was deleted and the closing date was extended to October 14. The closing date was extended again to November 3.

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Three proposals were submitted. The proposals were evaluated by each member of a three member evaluation panel. The solicitation's technical evaluation criteria for this highly sophisticated special purpose equipment, used to rapidly compare serial numbers of paper currency to serial numbers already in a computer memory, included, in descending order of importance, the following factors: compliance with the statement of work, prior experience, technical understanding, ability to design, fabricate and field test a prototype, qualifications of personnel, facilities, understanding of the required level of effort and comprehension of contract objectives. The individual evaluation scores were averaged and the resulting technical scores were as follows:

Ektron Applied Imaging	186
HyDisk Systems, Inc.	110
Perceptics	103

The contracting officer decided to exclude from the competitive range the two lowest rated proposals, including that of Perceptics. By letter of May 20, 1987, Perceptics was informed that its proposal had been excluded from the competitive range because its proposal was not in compliance with the solicitation's statement of work and revealed a lack of understanding of the difficulty and level of effort required to move paper currency at a high rate of speed.

Perceptics principally contends that the removal of the small business set-aside and the closing date extensions created an unfair situation for small businesses. The protester maintains that these actions were taken because contracting officials did not want to make award to a small business firm. Further, the protester challenges the agency's reasons for excluding its proposal from the competitive range. According to Perceptics, it has a proven record and it dedicated significant personnel and financial resources to proposing a viable system. Perceptics argues, in this respect, that contracting officials excluded it from the competitive range because they are biased against small businesses.

We dismiss as untimely Perceptics' protest of the removal of the small business set-aside and the closing date extensions. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), alleged improprieties which are apparent from the face of the solicitation must be protested no later than the closing date for receipt of initial proposals. Professional Construction Services, Inc., B-225691, et al., Apr. 16, 1987, 87-1 CPD ¶ 418. Here, the set-aside was removed and the closing date was twice extended by solicitation amendments dated August 25

and October 9. Perceptics, however, did not protest these matters until May 28, more than 6 months after the November 1986 closing date. Thus, we will not consider these issues.

Perceptics also argues that its proposal was excluded from the competitive range, not because of a lack of technical merit, but as a result of agency bias against small business firms. The agency's evaluation of Perceptics' proposal shows that the evaluators found the proposal deficient in several areas. For instance, the evaluators found that the firm's proposed method of currency reading was not appropriate for reading and identifying large numbers of bills which have been defaced by writing and that the firm had no prior experience in building such a sophisticated system. Further, the evaluators noted that Perceptics' proposal took exception to required terms of the statement of work by, for example, failing to agree to the required 5 percent minimum error rate for currency reading.

The protester does not detail the basis of its objections to the agency technical evaluation except to state that the solicitation requirement for a 5 percent read error rate is unreasonable and that other differences of opinion in technical matters should be resolved by a "technical arbitrator."

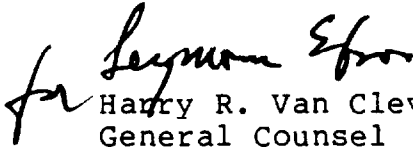
In reviewing complaints about the agency's determination of whether an offeror is within the competitive range, our function is not to reevaluate the firm's proposal or have "any arbitrator of [our] choice" reevaluate the proposal and make an independent determination about its merits. W&J Construction Corp., B-224990, Jan. 6, 1987, 87-1 CPD ¶ 13. Rather, the reasonableness of the evaluation of a technical proposal and the resulting determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's reasonable exercise of discretion. Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114. Hence, although we always closely scrutinize an agency decision which results, as here, in a competitive range of one, we will not disturb that determination absent a clear showing that it was unreasonable, arbitrary or in violation of procurement laws or regulations. Id.

Based on the record before us and the lack of specific reasons from the protester for its disagreement with the agency's technical judgment, we have no grounds upon which to disagree with the agency's decision to reject Perceptics' initial proposal. As indicated above, we will not conduct, or have someone else conduct, an independent evaluation of

a protester's proposal. W&J Construction Corp., B-224990, supra. Further, if Perceptics objected to the error rate requirement contained in the solicitation, the time for protesting that requirement was prior to the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Finally, in view of the protester's failure to show that the technical evaluation was faulty, there is no support for its argument that the proposal was rejected simply because it was submitted by a small business.

Perceptics complains that the agency should not have provided a copy of its protest to the awardee without its permission. On the contrary, our regulations require the contracting agency to furnish copies of protest submissions to awardees and other interested parties. 4 C.F.R. § 21.3(a). Further, the regulations specifically state that material submitted by a protester will not be withheld from interested parties except where permitted or required by law or regulation and the protester specifically identifies allegedly protected information. See 4 C.F.R. § 21.3(b). Perceptics' protest submission does not identify any material as privileged.

The protest is dismissed in part and denied in part.

for 
Harry R. Van Cleve
General Counsel