



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: FXC Corporation
File: B-227375.2
Date: November 6, 1987

DIGEST

Protester's technical proposal under step one of two-step sealed bid procurement properly was rejected as being technically unacceptable where the solicitation required detailed information supporting the proposed approach and the protester's proposal referenced prior test results casting serious doubt on the validity of its approach.

DECISION

FXC Corporation protests the rejection of its technical proposal as being technically unacceptable under letter request for technical proposals (RFTP) No. F41608-87-R-0806. The RFTP initiated step one of a two-step sealed bid procurement^{1/} conducted by the San Antonio Air Logistics Center, Department of the Air Force, for automatic mechanical parachute rip cord releases and related data. The Air Force determined that all but one of the technical proposals submitted under step one were technically unacceptable, and we previously upheld that determination regarding another disappointed offeror. Irvin Industries Canada Ltd., B-227375, Sept. 24, 1987, 87-2 CPD ¶ _____. In the present case, the protester, who previously had a contract involving essentially the same purchase description terminated for default, contends that its technical proposal satisfied every aspect of the purchase description and that the agency was biased against it. We deny the protest.

^{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 under sealed bid procedures among those firms that submitted acceptable proposals under step one. See Federal Acquisition Regulation (FAR), 48 C.F.R. subpart 14.5 (1986).

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The cover letter of the RFTP stated that a technical evaluation would be performed by a team of engineering personnel, equipment specialists and technicians, and that the evaluation would involve consideration of the proposed scientific engineering approach, as shown by information submitted with the proposal. The specific evaluation factors were: Technical, Schedule, Data, and Manufacturing capability. Technical proposal preparation instructions further stated that proposals must specify the details of the release's operation, and recommended addressing certain areas considered central to any proposal, including "Design Verification (Development test results)."

FXC's proposal was found to contain several informational deficiencies and deviated from the required delivery schedule.^{2/} The principal basis for rejection, however, was that the proposal cited "FXC Corporation Qualification Test Report Rev. 'A' QTR 7382" as verifying the validity of FXC's design. According to the Air Force, the cited test report states that FXC's device failed 22 of 26 tests (apparently conducted under FXC's defaulted contract). Since some of those tests involved critical requirements of the purchase description, the Air Force concluded that FXC's proposal represented an unacceptable engineering approach.

The protester objects to the Air Force's consideration of report QTR 7382, which FXC did not submit with its proposal but the Air Force had in its files. The protester also contends that, notwithstanding any failures, the report must have indicated a sound design because under the prior contract the agency permitted FXC to proceed to the next level of testing. The protester further asserts that it has since made major modifications to its release and that the Air Force has not seen the latest testing results for the release.

As we explained in Irvin Industries Canada Ltd., B-227375, supra, the contracting agency may reject a step-one proposal without discussions where the agency reasonably determines that the proposal is technically unacceptable, meaning that it fails to meet essential requirements of the solicitation or could be made acceptable only through extensive revisions. See FAR, 48 C.F.R. § 14.503-1(e)(1) (1986); Midcoast Aviation, Inc., B-223103, June 23, 1986, 86-1 CPD ¶ 577. Where, as here, the solicitation requires detailed

^{2/} The protester correctly points out that the RFTP contained conflicting provisions concerning the required delivery schedule, but concedes that its proposal exceeded the required delivery date under the interpretation most favorable to it.

information supporting the offeror's proposed approach, the offeror is responsible for supplying such information; if the offeror fails to do so, its proposal may be deemed technically unacceptable and excluded from consideration, no matter how capable the offeror may be. See, e.g., Baker & Taylor Co., B-218552, June 19, 1985, 85-1 CPD ¶ 701.

Because FXC cited report QTR 7382 as supporting and verifying its design, we believe the agency properly reviewed the cited report in evaluating FXC's proposal. The numerous reported equipment failures combined with the failure of FXC's proposal to describe solutions to the failures provided the agency with a reasonable basis to conclude that the proposal failed to meet the essential requirements of the purchase description. Even if FXC had made improvements to its release since the testing failures and obtained more recent test results, as FXC alleges, since these improvements were not detailed in its proposal, they properly had no effect on the technical acceptability of FXC's proposal. See McElwain, Inc., B-225772, May 28, 1987, 87-1 CPD ¶ 545.

Regarding the Air Force's permitting FXC to proceed to the next level of testing, the record does not disclose the agency's reasons, but it is entirely possible that the agency did find a sufficient basis to believe that FXC might be able to remedy the problems reflected in QTR 7382. The fact that the agency decided to give FXC an opportunity to cure deficiencies under a prior contract, however, in no manner estopped the agency from rejecting FXC's proposal under this procurement, since each procurement is a separate transaction; the acceptability of a proposal depends upon the facts and circumstances of the particular procurement and not upon prior procurements. See Midland Brake, Inc., B-225682, June 3, 1987, 87-1 CPD ¶ 566. The Air Force therefore had a reasonable basis to reject FXC's proposal as being technically unacceptable.

FXC expresses concern that a former Air Force employee, who was responsible for technical review of the program supported by this procurement, was hired as a consultant by the proposed awardee following his retirement in June 1987. FXC's proposal was evaluated and rejected prior to June 1987, however, and the record contains no evidence that the former employee ever exerted improper influence on behalf of the proposed awardee or that the proposed awardee received any improper consideration. The mere fact that the former government employee now works for the proposed

awardee is not, alone, a sufficient basis to challenge the award. See Louisiana Foundation for Medical Care, B-225576, Apr. 29, 1987, 87-1 CPD ¶ 451.

The protest is denied.

for Seymour Efron
James F. Hinchman
General Counsel