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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: SKJ & Associates, Inc.

File: B-291533

Date: January 13, 2003

Joseph M. Jankite for the protester.

Mike Colvin, Department of Health & Human Services, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency did not have a reasonable basis to reject the protester's quotation under request for quotations (RFQ) for training services where the RFQ required submission of a technical proposal but gave no guidance as to its content or how it would be evaluated; the protester submitted a technical proposal; and the agency then rejected the proposal as "unresponsive" because it was too short and too general and failed to provide evidence that the firm understood how to perform the work or to include a plan showing how the firm would implement the substance of the work.

DECISION

SKJ & Associates, Inc. protests the award of a purchase order to Policy Research Associates, Inc. under request for quotations (RFQ) No. 02M000077, issued by the Department of Health and Human Services (HHS), for intensive training in the social security income application process. SKJ contends that the agency's evaluation was not in accordance with the evaluation criteria.

We sustain the protest.

The Substance Abuse and Mental Health Services Administration (SAMHSA), an agency within HHS, provides funding (under the Projects for Assistance in the Transition from Homelessness (PATH) program) to states and territories to offer community-based services for people who have serious mental illness who are homeless or at risk of imminent homelessness. One of the services provided to these individuals is to assist in obtaining social security income (SSI) and social security disability income benefits for which they are eligible. This responsibility is

performed by various case managers associated with PATH-funded programs and other federal agency programs.

The RFQ, issued August 28, 2002, under simplified acquisition procedures as a total small business set-aside, represented a collaborative effort between SAMHSA and the Social Security Administration. The basic purpose of the RFQ was to obtain intensive training for case managers assisting in the SSI and social security disability income application process.

In the statement of work, the RFQ listed the specific requirements of the work under nine separate tasks. These tasks included (1) "post-award telephone conference call and memorandum," (2) "submit quarterly progress reports," (3) "coordination with other agencies," (4) "propose preferred methods of training," (5) "develop toolkit," (6) "develop teaching guide and training material," (7) "assess the toolkit and teaching materials," (8) "conduct training," and (9) "submit material and documents for formal SAMHSA approval." RFQ at 2-4. The RFQ also included a schedule of deliverables and payments, which required the contractor to satisfy various requirements by certain specified times over a 200-day period.

The cover letter to the RFQ stated that "proposals will be evaluated on price and price related factors." It further advised vendors that they were required to "submit an original and three (3) copies of their technical proposal and cost proposal." Id.

The agency answered several questions about the evaluation scheme, of which the following are relevant here:

What is the technical proposal based on? Is it based on the nine (9) tasks or some other basis? **The proposal is based on the 9 tasks.**

. . . .

Can you provide any guidance on the evaluation criteria and relative weights that will be used to review proposals? **The criteria and weight are to be determined.**

. . . .

[D]o you have any other requirements for the proposal, such as client references, resumes, etc.? **No.**

RFQ, Questions and Answers, at 2, 4. No other advice as to the expected contents of the technical proposal or how it would be evaluated was provided.

HHS received three quotations in response to the RFQ, including SKJ's and Policy Research's. SKJ's quoted price (\$83,620) was the lowest and Policy Research's

quoted price (\$99,501) was next low. After evaluating the quotations, the project officer determined that SKJ's quotation was "unresponsive" and that Policy Research should receive the award because it submitted a "technically sound" quotation. See Agency Report, Tab 7, Project Officer's Letter. With regard to SKJ's quotation, we quote the project officer's findings in their entirety:

The proposal for [SKJ], the lowest bidder, indicates that the firm has experience in developing policy and procedure manuals. While this is tangentially related to the development of a toolkit, the proposal submitted by [SKJ] is unresponsive to the RF[Q].

SKJ has provided no plan, other than to list the tasks, indicating how it will implement the substance of the work. Its "Technical Proposal" consists of only three pages, containing 21 paragraphs. About half of the paragraphs laud, in general terms, the capabilities, business principles and energy of the firm and its leader. There is no explanation on how the firm will carry out each task of the statement of work.

There is no evidence that the offeror understands how to develop a toolkit and training material, and provide training to case managers assisting homeless clients with serious mental illnesses apply for SSI benefits. Only two paragraphs on page two refer obliquely to the content of the task. The firm indicates that it has visited the Social Security Administration web site, reviewed information on how to qualify for SSI benefits, and downloaded forms. "This background work," SKJ claims, "provides a solid foundation, enabling [SKJ] to begin immediately.["] There is no mention of mental health, homelessness or case managers.

The SKJ proposal indicates that a project manager and manager will be performing most of the work. And, the firm indicates how their time will be allocated to each task. But, there is no statement on the qualifications needed for each position or any indication who will fill the positions and his/her experience.

Id. On September 24, HHS made award to Policy Research. A debriefing was provided to SKJ on October 11. This protest followed.

SKJ challenges the rejection of its quotation as not "responsive" because the RFQ only provided for considering price and price-related factors in the award selection. Moreover, SKJ argues that its technical proposal included a "detailed" work plan based on the nine tasks that complied with the terms of the RFQ, and that HHS lacked a reasonable basis to reject its quote because the RFQ did not require vendors to demonstrate their qualifications to perform the work, or to possess any specific skills, or program knowledge.

Simplified acquisition procedures are designed to, among other things, reduce administrative expenses, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. Federal Acquisition Regulation (FAR) § 13.002. FAR § 13.106-2 affords contracting officers using simplified acquisition procedures discretion in determining how to conduct a procurement and in fashioning suitable evaluation procedures. In the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in Part 14 or 15 may be used. FAR § 13.106-2(b)(1). Where an agency seeks quotations, there is no legal requirement that it request technical proposals (as the agency did here).

Even when using simplified acquisition procedures, however, an agency must conduct the procurement consistent with a concern for fair and equitable competition. Elementar Americas, Inc., B-282698, July 16, 1999, 99-2 CPD ¶ 17 at 2-3. Moreover, FAR §§ 13.106-1(a)(2) and 13.106-2(a)(2) specifically require that solicitations advise potential quoters of the basis upon which award is to be made, and agencies must conduct evaluations based on the factors set forth in the solicitations. American Artisan Prods., Inc., B-278450, Jan. 30, 1998, 98-1 CPD ¶ 37 at 4.

Here, the sole award basis announced in the RFQ was the consideration of price and price-related factors. Even though a technical proposal was requested, the RFQ did not state how it would be evaluated or instruct vendors to include any specific information in their technical proposals, except to notify potential quoters that their technical proposals should be based on the various tasks. Thus, HHS failed to comply with the requirements in FAR §§ 13.106-1(a)(2) and 13.106-2(a)(2) that the RFQ clearly disclose the basis of award and that undisclosed factors not be used in the award evaluation. HHS admits that the RFQ was defective in that there was no mention of how technical proposals would be considered in the award evaluation.

These defects in the RFQ were apparent on the face of the solicitation, so that a protest challenging them had to be filed before quotations were due. 4 C.F.R. § 21.2(a)(1) (2002). That SKJ failed to do. So the question before us is whether the agency's evaluation and source selection, in the context of an admittedly defective solicitation, were reasonable.

HHS maintains that, when read as a whole, the only reasonable interpretation is that technical proposals would be evaluated on an acceptable/unacceptable basis with award to be made based on the lowest priced, acceptable quote. Thus, HHS argues that the evaluation and award was proper since award was based on the lowest acceptable quote.

We agree with HHS to the extent the agency is contending that SKJ was on notice that a technical proposal was required, so that the agency was free to reject a quotation that failed to include a technical proposal; SKJ, of course, submitted one. We also agree that SKJ was on notice that the technical proposal would somehow be

evaluated, so that the agency could reject a quotation that could not reasonably be viewed as acceptable. See Forestry, Surveys & Data, B-276802.3, Aug. 13, 1997, 97-2 CPD ¶ 46, at 2. Because of the agency's failure to provide vendors any guidance as to the content requested in technical proposals or the basis for evaluating them, we believe that any doubt in this case as to the acceptability of SKJ's technical proposal should be resolved in favor of the vendor. Cf. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 6 (where solicitation failed to identify evaluation criteria, GAO finds reasonable protester's understanding of what agency was seeking).

For that reason, and as discussed below, we conclude that the agency lacked a reasonable basis for determining SKJ's technical proposal was "unresponsive" or unacceptable here. All of HHS's explanations for rejecting SKJ's technical proposal reflect evaluation criteria, and none of them were disclosed to SKJ or other vendors. For example, in response to the protest, HHS argues that SKJ's technical proposal was properly found unacceptable because "the purpose of the technical proposal was to determine whether or not offerors were capable of performing the required work," that "[t]he agency was reasonably expecting the offeror to describe its qualifications to do the work and its plan for doing the work," and that SKJ "merely parroted the requirements of the solicitation and gave no specifics that could be evaluated." Agency Report at 2; Contracting Officer's Statement at 4. The contracting officer contends that the RFQ put the burden on the vendors to demonstrate that they were qualified to perform the work, but that SKJ's proposal failed to "provide the names or any information about the personnel who would be assigned to the project." Contracting Officer's Statement at 5.

As noted by the protester, the RFQ did not expressly require vendors to describe their knowledge, skills, experience, understanding, ability or qualifications to perform the work. In answer to one of the questions (quoted above), the agency specifically advised that no resumes or references were required, which suggests that experience and qualifications were not to be part of the technical proposal.

The RFQ stated only that the technical proposal was to be "based on the 9 tasks." The protester asserts that its technical proposal provided a detailed work plan as to how it intends to accomplish the tasks set out in the RFQ. Our review of SKJ's proposed plan confirms that it breaks down the nine RFQ tasks into their various elements, where applicable, and states what resources will be devoted to each task element and when work on each element will start and finish.

Under the circumstances, we find the agency lacked a reasonable basis under this RFQ to find SKJ's quotation technically unacceptable. The quotation took no exception to the RFQ requirements and addressed the nine tasks in the RFQ.

We recognize that the agency may have reasonably desired, and certainly could have required, that technical proposals include a detailed plan, as well as evidence of the vendors' understanding of the requirements and their qualifications and experience.

That would be altogether appropriate and within the agency's discretion. Stating such desires and requirements is the purpose of evaluation criteria in a solicitation, and it is to provide transparency in our federal procurement process and fairness for those competing for federal contracts that, as explained above, agencies are required by procurement law to set out in the solicitation the evaluation criteria, and then to follow them. Here, the RFQ did not put vendors on notice of any of the requirements that the agency has now identified.¹ In our view, it would be unfair for the agency, after the fact, to evaluate technical proposals based on criteria that the agency was required to identify before vendors submitted those proposals. See FAR §§ 13.106-1(a)(2), 13.106-2(a)(2). We therefore sustain the protest.

We recommend that the agency amend the RFQ to state the desired content of proposals and the criteria to be applied in evaluating them and selecting the winner.² The agency should obtain revised quotations and if, upon reviewing quotations in response to the amended RFQ, the agency selects other than Policy Research, we recommend that HHS cancel that firm's purchase order and award to the selected company. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2002). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after the receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel

¹ This case is similar in some respects to Forestry, Surveys & Data and American Artisan Prods., Inc., supra, which also involved procurements conducted under simplified acquisition procedures, where the agency required technical proposals but did not describe how they would be considered in the award evaluation. In those cases, we found the protesters were not prejudiced by the agency's consideration of the technical proposal in the award evaluation. However, in both those cases, unlike the present case, the RFQs described what was to be addressed in the technical proposals so that the vendors were put on notice of what was to be evaluated.

² Here, the contracting agency decided to continue performance based on a finding that to do so would be in the best interest of the government. When an agency relies on that basis to continue performance, the Competition in Contracting Act of 1984 requires our Office to make our recommendation without regard to any cost or disruption from terminating, recompeting, or reawarding the contract. 31 U.S.C. § 3554(b)(2) (2000); 4 C.F.R. § 21.8(c) (2002).