



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Chant Engineering Company, Inc.

File: B-279049; B-279049.2

Date: April 30, 1998

Michael H. Payne, Esq., and Joseph A. Hackenbracht, Esq., Starfield & Payne, for the protester.

Robert Martin, Esq., Simon, Turnbull & Martin, for Rexroth Corporation, an intervenor.

Glenn Heisler, Esq., Panama Canal Commission, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation of protester's proposal was reasonable and consistent with solicitation providing for submission of preliminary design for hydraulic power systems where agency reasonably found the information submitted with the preliminary design insufficient to establish that design could meet the agency's technical requirements.
2. Allegation that awardee received an unfair competitive advantage under solicitation to design and manufacture hydraulic systems for lock gate, because it performed an earlier contract to design a prototype system, fails to state a valid basis of protest, in the absence of evidence showing preferential or unfair action by the government.

DECISION

Chant Engineering Company, Inc. protests the award of a contract to Rexroth Corporation under request for proposals (RFP) No. CNC-82163-LM-29, issued by the Panama Canal Commission for hydraulic power systems to operate miter gates. Chant asserts that the evaluation and rejection of its proposal were unreasonable.

We deny the protests.

On October 1, 1997, the Commission issued the RFP for a multiyear (8-year) fixed-price contract to design, fabricate, deliver, and supervise the installation of hydraulic power systems to replace the existing machinery for operating miter gates at locks in the canal. RFP §§ B, C.1.1. The RFP advised offerors that: the gates

were nearly 65 feet in length and 7 feet in thickness, with heights ranging from 47 to 82 feet; the machinery had to open or close the gates within 2 minutes; and the canal's three locks included 80 gates, all requiring the new systems. RFP § C.1.3. The RFP advised potential offerors that the moving machinery consisted of a large gear, or crank gear, revolving in a horizontal plane, with a vertical pin at the periphery connected to a strut attached to the lock gate. The crank gear room, into which the hydraulic cylinder would be installed, is subject to flooding and is separated from a compensating gear room by a watertight bulkhead.

The solicitation provided for award to the responsible offeror whose proposal the Commission determined "most advantageous (in other words represents the best value)," based upon listed evaluation criteria. RFP § M.1. These criteria included three "technical merits" subfactors, as follows: technical design and ease of installation; experience of the firm; and past performance. RFP § M.2.A The combined value of these subfactors was to be significantly more important than price. RFP § M.2.B.

For evaluation under the technical design and ease of installation subfactor, section L of the RFP instructed offerors to furnish detailed technical information presenting the offeror's preliminary design for the hydraulic power system, in accordance with section C, the statement of work. According to the RFP, § L.1, this information was to include the following:

- a. Preliminary design for the hydraulic cylinder and hydraulic power unit.
- b. Preliminary design calculations for the forces exerted by the existing miter gate moving machine.
- c. A hydraulic control schematic for the main hydraulic power unit.
- d. A written description of the hydraulic system explaining how it will operate to meet the design parameters listed in the specifications. Particular emphasis should be placed on the pumps to be used and how they will be controlled.
- e. A written description and/or drawing showing ability to shop test the hydraulic cylinder under simulated field loading conditions.
- f. Electrical and control schematics with control operations sequence description.
- g. Electrical single-line, and elementary diagrams to indicate functions of equipment components.

h. Step-by-step installation procedure.

i. Ease of Installation: Offerors shall submit information as to how their proposed hydraulic powered system will be installed. Particular emphasis shall be placed on providing an installation scheme that will reduce the outage time required to perform the installation. Ease of removal of the hydraulic cylinder and other components and their maintainability shall also be contemplated.

With respect to the second subfactor, experience, offerors were to submit evidence that they could provide a mix of design, engineering, and manufacturing capabilities adequate to complete the contract. In particular, they had to provide evidence of having successfully manufactured similar systems within the previous 10 years. Regarding the third subfactor, past performance, the RFP provided for evaluation of each offeror's organization, capacity, and capability, requiring offerors to provide a description of facilities, an organizational plan, and information on previous contracts of comparable size, involving similar work.

The solicitation contained schematic drawings of a hydraulic system, with details of the existing equipment. RFP § C.1.4a, J. It listed certain design parameters, including the maximum hydraulic operating pressure, the maximum motor size, and a maximum cycle time of 2 minutes. RFP § C.1.4b(1). The solicitation advised offerors that currently the lock control boards presented a miniature representation of the locks, showing the position of the miter gates; the contractor would have to replace this system with a new system showing the actual position of the gates while opening and closing. RFP § C.1.4e(4), (6). In addition, the RFP provided for a site visit within 15 days of notice of award, to allow the contractor "to thoroughly familiarize himself with all details of the work and working conditions, to verify dimensions and clearances in the field, and . . . [to] then advise the Contracting Officer of any discrepancies" RFP § C.1.7.

Part 2 of the statement of work contained specific requirements for materials and mechanical equipment (§ C.2.1), electrical equipment (§ C.2.2), and other requirements such as testing and training (§ C.2.3). Section C.2.3c provided for shop testing of the pumps for the hydraulic power units to "verify flow and pressure ratings"; section C.2.3d provided for field testing of the hydraulic systems at the agency's expense "[a]fter the hydraulic system has been erected, adjusted, and otherwise made ready for operation at the site" Section C.2.2f contained requirements for electrical control devices and wiring, including a programmable logic controller (PLC), which would monitor data on the status of the lock opening or closing to control the operation of the system.

The agency received two proposals on November 5, one from Chant and one from Rexroth, and referred them to a technical evaluation board (TEB) on November 6. Chant's initial offer was high in price [deleted]. Further, the TEB considered

Chant's electrical proposal too vague, because [deleted]. The evaluators also found that the proposal lacked specifics on the position measuring system; that Chant had not provided sufficient detail on the hydraulic sequence of events for them to determine the acceptability of the design; and that the installation procedures were vague. In addition, the TEB was not satisfied that Chant had sufficient experience with contracts similar in size and dollar value. In the area of past performance, the evaluators were concerned that Chant's facilities were [deleted]. TEB Report, Nov. 10, 1997.

By letter dated November 13, the Commission advised Chant of the TEB's concerns and stated that its price was "way too high." In its best and final offer (BAFO), Chant cut its price [deleted]--to \$20,092,112, as compared to Rexroth's BAFO price of \$21,990,812. While Chant's BAFO satisfied some of the agency's concerns, many remained. The TEB found that Chant's electrical proposal remained vague [deleted]. The TEB also found that Chant had neither [deleted] nor provided information on [deleted], information considered necessary to determine whether the hydraulic operator would meet the RFP's 2-minute opening and closing requirement. With respect to the position measuring system, the evaluators concluded that both of the designs proposed by Chant were unacceptable. TEB Report, Dec. 19, 1997, at 1-2.

With respect to Chant's experience, the Commission initially concluded that Chant had performed one comparable contract of similar size, a contract with the Corps of Engineers to install 16 miter gate machines and power units at the London and Marmet locks. The Corps of Engineers subsequently informed the Commission that, contrary to Chant's assertion that it had designed the system at the Marmet and London locks, the Corps itself had designed that system, providing detailed drawings for Chant, whose only responsibility was fabrication (for gates one-third the size of the miter gates here) and oversight of installation. Pending clarification of Chant's responsibilities for the Marmet and London locks contract, the TEB concluded that, assuming the Corps's initial report was correct, the protester had essentially no design experience with hydraulic systems for miter gate operation.

In sum, the TEB concluded that Chant's proposal was incomplete, did not meet minimum requirements, and, owing to its vagueness, presented a high risk of failure.

On December 19, the Commission issued a second request for BAFOs, to allow Chant to respond to the information from the Corps regarding its contract at the London and Marmet locks. Chant's December 23 response, which essentially disagreed with the Corps's analysis, did not alleviate the agency's concerns. Neither offeror revised its proposal in response to the second BAFO request. On January 12, 1998, in view of the TEB's recommendation that Chant's proposal be considered technically unacceptable, the contracting officer selected Rexroth for award. At Chant's request the agency provided a debriefing by letter dated January 15, and this protest followed.

Chant protests the agency's evaluation of its offer and conclusion that the proposal was technically unacceptable. Chant asserts that the RFP required only a "preliminary design," and that it accordingly submitted technical information at a level of detail commensurate with a preliminary design. The protester notes that, in 1995, the agency issued a solicitation (No. CNP-89207-LM-29) for a prototype design of the hydraulic systems, under which Rexroth was selected for award. Rexroth was therefore able, Chant argues, to submit a design that the Commission had already approved, at a level of detail beyond the "preliminary design" called for here and which prompted the Commission to require an unreasonably detailed explanation from Chant. The protester argues that the Commission (and the same group of evaluators) found acceptable Chant's 1995 proposal responding to essentially the same requirements and was therefore unreasonable in finding the current proposal, which was essentially the same, technically unacceptable. In a supplemental protest, filed after receipt of the agency report, Chant asserted that Rexroth had an unfair competitive advantage for the instant procurement because of its experience with the prototype contract.

The Commission responds, generally, that the RFP used the term "preliminary design" only in reference to the hydraulic cylinder and hydraulic power unit and calculations for forces exerted by the miter gate moving machine. See RFP, Data To Be Submitted With Proposal, § L.1.a, b. Further, even to the extent that the RFP called for a "preliminary" design, the agency notes that it required "detailed technical information" regarding that design, id. at § L.1, and argues that Chant did not submit the detail required to demonstrate that its design would operate as required. Regarding the prior contract with Rexroth, the agency states that, prior to design of the prototype, its engineering personnel were unfamiliar with hydraulic miter gates and that the earlier procurement was in part designed to give the Commission some experience and familiarity with such equipment. It did not, however, specify Rexroth's prototype design for use in the instant procurement because of certain concerns that it had with that design (cylinder size and installation problems, for example), was searching for alternatives, and, in any event, wanted the selected contractor to be responsible for making the design work.

It is not the function of our Office to evaluate proposals de novo. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of competing proposals is primarily a matter within the contracting agency's discretion. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 7. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Medland Controls, Inc., B-255204, B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260 at 3. We find the evaluation here reasonable and consistent with the solicitation and the stated evaluation criteria.

As a preliminary matter, our review of the evaluation record associated with award of the prior contract for a prototype design indicates that, although the agency found Chant's proposal under that solicitation technically acceptable, the protester's proposal shared many of the problems encountered here--[deleted]. With regard to the primary technical factor, Chant's scores were essentially the same in the two procurements--[deleted].

What changed significantly from the prototype procurement to the one at issue here was the agency's perception of Chant's experience. Viewing Chant as experienced, under its Corps of Engineers contract, with the design of similar systems, the evaluators under the prior procurement were more willing to accept the protester's technical representations; further, they awarded Chant [deleted], considerably enhancing the protester's overall score. Technical Evaluating Committee Report on Solicitation No. CNP-89207-LM-29 Hydraulic Powered Miter Gates, Oct. 18, 1995, at 1. However, the information subsequently received from the Corps in connection with the current procurement cast substantial doubt on whether the protester had ever performed a similar design effort. The statement of work in the solicitation for the Marmet and London locks contract--an invitation for bids (IFB)--indicates that Chant was to "fabricate," rather than design, the operating machinery. Similarly, a statement from the chief of the Corps's design branch indicates that the IFB specified 42 specific parts "or equal," with Chant providing [deleted]; apart from shop drawings, the only drawing prepared by Chant was a dimensional layout of components on top of the reservoir. We do not find it unreasonable that the TEB was less willing to accept gaps in Chant's data, once reasonable doubts were raised whether the protester had experience in designing similar systems. Each procurement is a separate transaction, and neither disparate evaluation scores nor different conclusions about an offeror's record of past performance between identical offers submitted under similar procurements demonstrate that the evaluation was unreasonable. See Continental Serv. Co., B-274531, Dec. 17, 1996, 97-1 CPD ¶ 9 at 7.

With regard to its technical submissions, the Commission states that Chant's design of the electrical control system failed to provide [deleted], and thus was unacceptable. The protester contends that its electrical schematics were sufficient for a preliminary design, that the RFP did not require programming the PLC,¹ and that such programming is more appropriate for the contractual design effort. The agency denies that it expected offerors to program the PLC for their proposals, but states that it did expect them to describe the components and sequence of operations, show circuits, and provide enough information for the TEB to understand how the system would work. Specifically, the Commission explains the

¹As noted above, § C.2.2f of the RFP contained requirements for electrical control devices, including a PLC, which would monitor data on the status of the lock opening or closing.

required process as follows: the PLC takes incoming information (or "inputs") and processes it by applying a programmed logic that arranges the inputs into a sequence, which is then issued as an "output." The output controls the hydraulic movement of the system. According to the Commission, Chant listed a vague series of inputs, but did not describe the logic or sequence the PLC would use to achieve control of the hydraulic movement. Further, the drawing Chant submitted with its BAFO, in response to the Commission's questions in this area, showed a system of relays (inputs and connected outputs), with no PLC at all. While Chant asserts that the drawings provided with its BAFO were intended to supplement rather than revise or substitute for its initial design, there is nothing in the proposal to indicate this. An agency's evaluation is dependent upon information furnished in a proposal, and it is the offeror's burden to submit an adequately written proposal for the agency to evaluate. DATEX, Inc., B-270268.2, Apr. 15, 1996, 96-1 CPD ¶ 240 at 6. We cannot conclude that the TEB's concerns about Chant's electrical design were either unreasonable or inconsistent with the solicitation criteria.

With respect to Chant's position measuring system, the Commission concluded that both of the designs proposed by Chant were unacceptable. The Commission regarded the first proposed design, [deleted], as prone to damage from logs and floating debris. Although Chant argues that the solicitation did not warn offerors to avoid such dangers, the Commission reasonably asserts that such conditions are not design criteria but existing Panamanian field conditions, which any offeror would be expected to take into account. The Commission also concluded that the alternate design would require extensive physical modification to the existing crank gear room; Chant does not rebut the Commission's position.

With regard to the hydraulic sequence of events, the Commission states that Chant's proposal failed to show the hydraulic oil flow and pressure plotted over the cycle of the miter gate opening and closing; this information would allow the agency to determine if the hydraulic operator could meet the RFP's 2-minute opening and closing requirement. Chant contends that the solicitation did not identify the different hydraulic pressures and oil flow as parameters and argues that such a detailed analysis would ordinarily be part of the contractual design effort and not performed during development of a proposal. The evaluators, however, considered such information necessary to establish that the proposed design could meet the critical 2-minute opening/closing cycle requirement; lacking any data on oil flow and pressure, and with questions as to Chant's experience in designing hydraulic systems, the TEB could not determine whether the design would work even as a "preliminary" one. Although Chant argues that agency engineers could have verified the feasibility of the design from data provided with the proposal, it is the offeror's responsibility to provide, within the four corners of its proposal, the information for evaluation. See EOD Tech., Inc., B-266026, Dec. 18, 1995, 95-2 CPD ¶ 273 at 4.

We believe that the agency had a reasonable basis for finding that Chant's proposal was altogether too "preliminary," in that there was a significant risk that major

components would not work as planned, especially in view of the data submitted by Rexroth and in the absence of any real analysis by the protester.² In our view, the solicitation did not envision a contractor completely redesigning the system during performance, particularly in view of § C.2.3d, which provided for testing at the agency's expense after the system had been installed at the site. Section C.1.7, providing for a site visit to ascertain "details" of the work, does not imply that a contractor could wait until the site visit to make basic decisions on the type of system that he will supply. Based on the record here, the agency reasonably concluded that Chant's proposal presented too high a risk, particularly in view of the evidence that Chant was inexperienced with design work of a similar nature.³

Chant's supplemental submissions, asserting that Rexroth had an unfair competitive advantage in the procurement, fail to state a valid basis of protest. Chant essentially argues that the knowledge gained by Rexroth during its design of the prototype allowed the awardee to submit nearly complete data on the system proposed for this procurement. In support of its contentions, the protester offers only the fact, conceded by Rexroth, that many of the drawings submitted here are copies of those prepared for, or incorporate information gained during, design of the prototype. Our Office has consistently held that there is no obligation for an agency to take steps to redress one offeror's competitive advantage, so long as the advantages do not result from preferential or unfair action by the government; specifically, knowledge gained through performance of a prior contract, without more, does not constitute an "unfair" advantage. See Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44 at 7.

²For example, the power necessary to drive the rod was part of a tradeoff against stress. In response to a discussion question, Rexroth provided extensive data indicating that a broader (lower psi) cylinder than it proposed could not achieve the 2-minute cycle time, while a cylinder with a smaller cross-section would not meet requirements for a safety factor of three against buckling. Rexroth letter, Nov. 18, 1997 (response to BAFO request) at 2, with attachment "Comparison Between Cylinders." Data submitted to support the latter part of the analysis used a cylinder of the precise size proposed by Chant; Chant's failure to submit any data of its own added to the agency's concerns. In addition, § C.2.3c of the RFP provides for shop testing to "verify" flow and pressure ratings for the hydraulic power unit, at a minimum suggesting that the offerors were expected to provide some data on flow and pressure as a basis for identifying the ratings proposed in the design.

³As noted above, the Commission also found Chant's installation procedure vague and, under the past performance factor, had concerns about the capacity of the protester's facility. Given our conclusion that the Commission reasonably found Chant's proposal technically unacceptable on the grounds discussed above, we need not address the evaluation in these other areas. Keco Indus., Inc., B-261159, Aug. 25, 1995, 95-2 CPD ¶ 85 at 8.

In its final submission to our Office, Chant raised additional issues, challenging the adequacy of the discussions held here and asserting that its inclusion in the competitive range was improper, given the initial disparity in the technical ratings assigned to the two offerors. Both issues are untimely. Our Bid Protest Regulations require that protests based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1997). Chant's bases of protest stem from the material in the agency report; since Chant waited more than a month--from February, when it received that report--to raise these issues, for the first time on March 23, its objections are clearly untimely.⁴

The protests are denied.

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⁴Chant's allegations regarding retention of its proposal in the competitive range imply bias on the agency's part--that the agency wanted to make award to Rexroth and that the negotiations were only a subterfuge to create an appearance of competition. We do not attribute unfair or prejudicial motives to agency officials on the basis of inference or supposition; a protester must provide credible evidence clearly demonstrating such bias. Rockhill Indus., Inc., B-278797, Mar. 16, 1998, 98-1 CPD ¶ 79. The record shows that, while Rexroth had unique expertise in producing hydraulic systems, the competition was genuine; indeed, the agency had some concerns with Rexroth's design, and nothing in the record indicates that its selection was a foregone conclusion.