



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Chant Engineering Co., Inc.--Request for Costs

File: B-274871.2

Date: August 25, 1997

Philip Chant for the protester.

John E. Lariccia, Esq., Department of the Air Force, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office recommends that protester be reimbursed the costs of filing and pursuing its protest where the agency unduly delayed taking corrective action in response to the protest.

DECISION

Chant Engineering Co., Inc. requests that we recommend that it be reimbursed the costs of filing and pursuing its protest challenging the award of a contract to AAI/ACL Technologies, Inc., under request for proposals (RFP) No. F04699-96-R-A010, issued by the Department of the Air Force, McClellan Air Force Base, California, for two electrohydraulic servovalve test stations for testing F-16 aircraft.

We recommend that the agency reimburse Chant its protest costs.

The RFP, issued May 8, 1996, contemplated the award of a firm, fixed-price contract for the design, manufacture, verification and installation of two electrohydraulic servovalve test stations. The RFP contained six pages of specifications which covered the test stations' general requirements, computer requirements, electronic console (EC) requirements, hydraulic test console requirements, installation requirements, and delivery, maintainability and training requirements. With respect to the EC, the RFP stated that:

"a. All components of the EC shall be enclosed within the console cabinet.

"b. All components of [the] EC shall use IEEE-488 standard interface."

Award was to be made to the offeror submitting the lowest-priced, technically acceptable offer.

Of five proposals received, the Air Force found four technically acceptable, including the proposals submitted by Chant and AAI. AAI's price was \$541,043; Chant's price was \$549,925. The Air Force awarded the contract to AAI as the lowest-priced, technically acceptable offeror. Chant protested to our Office, alleging that AAI's proposed EC did not satisfy the RFP requirement that all components in the EC "shall use IEEE-488 standard interface." In its initial protest submission, Chant stated that it was prejudiced by the Air Force's actions in relaxing this requirement for the awardee because Chant had "allowed additional time and higher component costs in [its] pricing to meet IEEE-488 standards." Chant further asserted that if it had been informed that it need not fully comply with the IEEE-488 specification, its "pricing would have been lower, resulting in the contract award."

At the request of the agency, the November 4 agency report due date was extended and the Air Force's report on the protest was filed on November 18. In its report, the Air Force contended that Chant misinterpreted the requirement for the IEEE-488 interface and the awardee's proposal. Contrary to Chant's position that the RFP required that "all components" of the EC use the IEEE-488 standard interface, according to the agency, the sole purpose of the RFP's IEEE-488 standard was to facilitate the transmission of data between independent components, which otherwise would not be able to interface with one another. Therefore, the Air Force took the position that the requirement for the IEEE-488 interface only applies to inter-component communication; the IEEE-488 standard does not apply, and there is no need for it to apply, where the communication is "intra-component." The agency also stated that the awardee's test instrument combined what might otherwise be considered separate components into one component. These separate components were installed on one circuit board and, because these components were now "packaged" as one unit in AAI's proposal, the agency argued that the IEEE-488 standard was not applicable. The agency took the position that the EC proposed by AAI had only two components, the data acquisition and control unit and the power supply. However, the awardee's submissions specifically stated that only the power supply on AAI's EC meets the IEEE-488 standard interface requirement.

Chant filed comments on November 29, again arguing that the specifications were clear and that AAI's EC did not meet the interface requirement. The protester also challenged the agency's argument that AAI's EC was made up of only two components, arguing that AAI's EC was composed of many different components from many different manufacturers. The protester argued that the contracting officer should have recognized that AAI's proposal was not in compliance with the IEEE-488 requirement and either eliminated the proposal from consideration or, if AAI's approach was considered acceptable, the Air Force should have amended the solicitation and given all offerors an opportunity to propose under the same requirement as AAI.

On December 5, the Air Force filed a supplemental response to Chant's comments, again asserting that the protester misunderstood the RFP's requirements. The agency argued that Chant's interpretation would impose too restrictive a requirement and that the IEEE-488 standard governs only inter-component communication. The agency stated that:

"[i]n specifying that the IEEE-488 standard would apply to all components of the EC, the Air Force sought an EC which would possess a uniform interface for all inter-component communication. The [statement of work] SOW never intended, nor did it require, the individual parts (circuit boards) of each piece of equipment to be IEEE-488 compliant."

The Air Force repeated its argument that AAI's proposal complied with the requirement that all components of the EC be IEEE-488 compliant because all inter-component communication which occurs within AAI's EC is through an IEEE-488 interface.

On December 19, our Office conducted a telephone conference with the parties to clarify the agency's technical rationale and to request Chant to provide specific cost figures pertaining to its compliance with the requirement at issue. Air Force technical personnel and a General Accounting Office technical expert participated in the telephone conference. During that conference, the agency conceded that all components of AAI's proposed EC did not use the IEEE-488 standard interface and that, as noted above, only the power supply on AAI's EC met the IEEE-488 interface requirement. We specifically requested that Chant submit an estimate of the cost difference between its proposed EC with all components meeting the IEEE-488 interface requirement and what it would have offered if the solicitation had required that only inter-component communications meet the IEEE-488 standard. By letter dated December 23, Chant responded that if it did not have to comply with the IEEE-488 standard for all components, its proposed costs would have been reduced by \$12,000 to \$27,000--more than the price difference between the two proposals.

By letter dated December 24, the Air Force notified our Office that it intended to take corrective action on the protest. Specifically, the Air Force stated that it intended to revise the specifications and resolicit BAFOs. If the evaluation of BAFOs resulted in a new source selection decision, the Air Force stated that it would terminate AAI's contract and award a new contract. Because the agency was taking corrective action, our Office dismissed the protest as academic.

Chant contends that it is entitled to recover the costs of filing and pursuing its protest under section 21.8(e) of our Bid Protest Regulations. Under that provision, we may recommend that the agency reimburse a protester for its protest costs where, based on the circumstances of the case, we determine that the agency

unduly delayed taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558.

The Air Force asserts that reimbursement of such costs is unwarranted because the protester failed to allege prejudice in its initial protest and prejudice was not otherwise evident from the face of the protest. The agency argues that despite numerous attempts to obtain evidence of prejudice, none was provided until December 23, when, as noted above, Chant responded to our request concerning proposal cost differentials. The agency argues that it took prompt corrective action after receiving Chant's December 23 submission.

In deciding whether the corrective action was prompt under the circumstances, we review the record to determine whether the agency took appropriate and timely steps to investigate and resolve the impropriety. David Weisberg--Entitlement to Costs, 71 Comp. Gen. 498, 501 (1992), 92-2 CPD ¶ 91 at 3-4. In its initial protest and throughout the ensuing multiple filings, Chant argued that the agency had improperly permitted AAI to offer a noncompliant EC and had not considered the cost/price impact of that noncompliant EC. Contrary to the Air Force's position, while Chant did not supply a precise dollar figure, the protester did allege in its initial protest that it had been prejudiced by the agency's actions and that its price would have been lower if it had been informed that all components of the EC did not have to meet the IEEE-488 requirement. The RFP provided for a straight price competition, and the price difference between the two proposals was less than \$9,000. Under these circumstances, the protester's assertion that compliance had caused it to raise its proposed price was a sufficient assertion of prejudice. Global Assocs. Ltd., B-271693; B-271693.2, Aug. 2, 1996, 96-2 CPD ¶ 100 at 6.

The Air Force thus had an obligation to promptly and adequately investigate the validity of the protester's position that AAI's proposed EC failed to meet the specifications. The relevant information was apparent from the solicitation and the face of AAI's proposal. Specifically, the RFP clearly and unambiguously required that all EC components be IEEE-488 compliant and AAI's proposal offered an EC which listed 13 major components, all from different manufacturers and including, among other things, at least three "boards"¹ which, under the specifications here, should have met the IEEE-488 interface requirement. Yet, as noted above, the Air Force recognized at all times that only the power supply on AAI's proposed EC is IEEE-488 compliant.

While the agency argues that it quickly took corrective action 1 day after receipt of Chant's figures supporting the prejudicial effect of the agency's actions, more than

¹A "board" is a printed circuit board with electronic devices attached to it. Each board performs a different function, such as input/output, memory, or processing.

2-1/2 months had elapsed between the filing of the protest and the agency's conceding that AAI's EC did not meet the RFP specifications.² Because the initial protest challenged the propriety of AAI's award and the key evidence supporting that protest ground was apparent from the face of AAI's proposal, the agency's delay was not justified. See Griner's-A-One Pipeline Servs., Inc.--Entitlement to Costs, B-255078.3, July 22, 1994, 94-2 CPD ¶ 41; LB & M Assocs., Inc.--Entitlement to Costs, B-256053.4, Oct. 12, 1994, 94-2 CPD ¶ 135 at 4-5.

Chant's protest of the award to AAI was clearly meritorious. From the initial protest filing, Chant challenged AAI's compliance with the specification that eventually caused the agency to conclude that AAI's proposal did not comply with the clear language of the specification, and that the specification should have been amended to more clearly define the agency's needs. AAI's failure to comply with the specification was evident from the plain language of its proposal. Accordingly, the unacceptability of that proposal and the merit of the protester's argument that award to AAI was improper should have been readily apparent to the agency. Possible prejudice to Chant should also have been readily apparent to the agency under the circumstances since the protester's price was only \$8,882 more than the awardee's price. Chant's December 23 submission of cost differentials merely confirmed prejudice. In short, neither legally nor factually was this a close case.

The agency's failure to take prompt corrective action frustrated the intent of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (West Supp. 1997), impeding the economic and expeditious resolution of this protest. LB & M Assocs., Inc.--Entitlement to Costs, *supra*, at 5. Accordingly, we recommend that the Air Force reimburse Chant for its protest costs. Chant should submit its claim for

²The Air Force argues that our decision in Tidewater Marine, Inc.--Request for Costs, B-270602.3, Aug. 21, 1996, 96-2 CPD ¶ 81, where we denied costs because we found that the agency took prompt action, is especially relevant here. We disagree. In Tidewater, the agency submitted its report, the protester commented on the report, and our Office conducted a telephone conference after receipt of these submissions. The decision is predicated on the fact that the agency took corrective action 8 days after the "key issue was squarely put in dispute" during the telephone conference. Moreover, 1 day after Tidewater's protest was filed with our Office, the agency immediately contacted the protester requesting clarification. Later, the agency requested suggested remedies from Tidewater and readily agreed to engage in negotiations to resolve the protest. Here, in contrast, the protest issue was clear from the initial filing; however, the Air Force repeatedly requested dismissal of the protest and delayed significantly in submitting its report. Moreover, as noted above, even when the agency admitted in its response to Chant's comments that its specification did not state what the agency intended, the agency continued to defend its actions.

costs, detailing and certifying the time expended and costs incurred directly to the agency within 60 working days of receipt of this decision. Bid Protest Regulations, 4 C.F.R. § 21.8(f)(1) (1997).

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