

Cunningham



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: NAK Engineering & Consultants, Inc.
File: B-223719
Date: November 25, 1986

DIGEST

Where to compete for contract to manufacture exact replacement for existing diesel generator crankshaft installed in Philippines offerors must obtain access to existing proprietary drawing which contracting agency did not possess, protester's proposal, although containing low price, was properly rejected since protester was ultimately unable to obtain drawing and therefore did not accurately propose to satisfy certain technical requirements. Alternatively, protester's proposal to travel to Philippines before crankshaft manufacture to verify existing crankshaft's dimensions would not have assured contracting agency, prior to contractor selection, that protester could precisely manufacture crankshaft; moreover, protester might have erroneously measured crankshaft thereby rendering its replacement crankshaft unusable.

DECISION

NAK Engineering and Consultants, Inc. has protested the Department of the Navy's award of a fixed-price contract to a higher-priced offeror, Hatch & Kirk, Inc., under request for proposals (RFP) No. N62922-86-R-6270, for a crankshaft to replace a defective crankshaft, more than 40 feet in length and having an approximate weight of 44,000 pounds, in an existing 12-cylinder "Nordberg Diesel Generator" currently in use at the Public Works Center, Subic Bay, Philippines.

We deny the protest.

The Commerce Business Daily Synopsis of the RFP listed the Nordberg part number for the existing, defective crankshaft and stated that the new crankshaft was to be "manufactured in accordance with Cooper Industries latest revised drawing," a proprietary drawing which the Navy does not possess. The RFP also stated that the crankshaft was to be "designed and built

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in accordance with Nordberg Engine specifications." The only other description of the Navy's requirements were found in general statements in the RFP that quality, workmanship, and materials of construction were to be based on "Nordberg standards."

Of the eight evaluation criteria for determining the successful offeror, only one ("technical specification") is pertinent to this protest. This "technical specification" criterion required that an offeror either have "on hand" (that is, submitted with the offeror's proposal or otherwise made immediately available to the Navy) all technical data and drawings, obviously including the specified Cooper drawing, or certify that the offeror had access to all the required technical data and the Cooper drawing and that the offeror would furnish them or make them available to the government within a reasonable period of time.

The Navy reports that NAK and two other concerns responded to the RFP. The two other concerns, according to the Navy, submitted with their proposals the Cooper drawing "that satisfied the Nordberg Engine specifications."

NAK did not submit a Cooper drawing with its proposal; instead, it submitted its own drawing which the Navy found incomplete. In addition, NAK stated in its initial proposal that it would send a representative to the Philippines to "verify dimensions from the existing crankshaft, prior to manufacturing." NAK subsequently submitted a second and third set of revised drawings to the Navy, but the Navy found that these NAK drawings still did not comply with the Cooper drawing as to the accurate "size of [the] oil hole, [the] tensile strength of [the] material and [the] metallurgy of [the] material." Consequently, the Navy ultimately did not accept NAK's proposal for the requirement.

NAK protested the rejection of its proposal on the basis that its price was the lowest received and that it had not been shown to its "satisfaction" that its technical proposal was lacking in any critical areas. NAK asserts that its proposal must have been considered to be "competitive" by the Navy, or discussions would not have been conducted with it. NAK further argues that the Navy improperly permitted a representative of Cooper, which is also the original equipment manufacturer of the crankshaft, to "physically verify" dimensions and material characteristics of the crankshaft in the Philippines, although NAK's offer to travel to the Philippines--"prior to manufacturing"--to verify dimensions and characteristics for NAK's own drawing allegedly was not accepted. Moreover, NAK alleges that the Cooper employee who did the verification work in the Philippines was subsequently hired by Hatch & Kirk, which thereby allegedly gained an

unfair competitive advantage through means of the new employee's knowledge of the crankshaft drawing. In any event, NAK alleges that contrary to statements made in the Navy's notice of award, its drawings did in fact show "fully detailed oil holes, number, size, and depth of bolt holes, manufacturing tolerances, metallurgy and content."

In reply, the Navy affirms that NAK simply did not accurately satisfy the above technical requirements concerning "oil holes, metallurgy, and content" and that since NAK obviously never obtained access to the proprietary Cooper Industries drawing, the Navy was precluded from informing NAK of the actual dimensions appearing on that drawing which came into the Navy's possession during proposal evaluation only through consideration of the other proposals. The Navy argues that NAK's protest should be denied because the dimensions of the crankshaft were critically material, and NAK's proposed dimensions did not precisely repeat the drawing's dimensions.

In its protest, NAK admits that the drawing accompanying its initial proposal was a:

"basic drawing . . . submitted . . . to illustrate the size, weight, and complexity of this crankshaft. This does not mean that a 'production drawing' was initially submitted. We do not date and approve a drawing for production until we verify physical material and dimensional specifications. In our proposal we stated that we would perform this verification prior to production at our cost."

Although NAK was provided with two subsequent opportunities to refine its drawings, it does not appear that it was able to accurately convey all the information contained in the Cooper drawing necessary for fabrication of the crankshaft. Under these circumstances, the Navy's ultimate rejection of NAK's proposal does not appear unreasonable, since without an offeror's knowledge of the critical dimensions on that drawing, an offeror could not propose the exact replacement for the crankshaft.

NAK's offer to go to the Philippines before manufacturing the crankshaft--that is, some time after the contract had been awarded to NAK--would not have assured the Navy, prior to contractor selection (when that assurance was critically necessary), that NAK was proposing in fact, to manufacture a crankshaft exactly to the dimensions found on the proprietary drawing. Further, it seems clear that NAK's offer to travel to the Philippines to measure the crankshaft would not necessarily have excluded the possibility that NAK might inadvertently measure the crankshaft inaccurately--even by a


minimal amount--when exactly precise measurements were needed.

Finally, NAK asserts that it was at an unfair competitive disadvantage because a former employee of Cooper, as the original equipment manufacturer, had the opportunity to verify certain dimensional and material specifications of the crankshaft while in the Philippines for the purpose of "advising the Navy to make budgetary considerations for this purchase." NAK argues that this unfair advantage extended to Hatch & Kirk because that person subsequently was employed by that firm.

We do not understand NAK to allege that it requested, and was denied, permission to inspect the crankshaft prior to submission of its proposal. Its approach, contained in its proposal, was to perform these verifications only after award of the contract but before actual manufacture of the crankshaft had begun.

In addition, the person's inspection of the crankshaft could be seen as reasonably incident to Cooper's status as the original equipment manufacturer and as owner of the proprietary drawing in question and not as the granting of an unfair advantage to Cooper. Further, any advantage gained by Hatch & Kirk caused by the Cooper employee's subsequent decision to become an employee of Hatch & Kirk was not created by the Navy but rather by the employee's own decision to change employers.

Since NAK's final proposal could not have been accepted given its technical inaccuracies, and because there was no way that the Navy could have remedied those inaccuracies given the Cooper drawing's proprietary character, we deny the protest.


for
Harry R. Van Cleve
General Counsel