

DECISION



118397 Hunter
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205263

DATE: May 17, 1982

MATTER OF: Hydro Power Equipment Co., Inc.

DIGEST:

1. Specifications in step-one request for technical proposals of two-step, formally advertised procurement for hydroelectric equipment were deficient because of failure to specify the upstream water level that would be used to rate the installed capacity of any offered equipment.
2. The mere existence of a specification deficiency does not, absent a showing of prejudice, provide a compelling reason to cancel a solicitation and readvertise after bid opening. Because record is not clear that there was prejudice caused by specification deficiency, GAO recommends that agency determine, with a view toward possible reinstatement of canceled procurement, whether offerors were in fact competing on a common basis.

Hydro Power Equipment Co., Inc. (Hydro), protests the cancellation of invitation for bids (IFB) No. DACW69-81-B-0092 by the United States Army Corps of Engineers, Huntington District, Huntington, West Virginia. The IFB was part of a two-step, formally advertised procurement for the "development of details and the installation of hydro-electric power generating equipment and appurtenances at the Bluestone Dam in Summers County, West Virginia."

For the reasons set forth below, we are recommending that the Corps reconsider its decision to cancel.

Request for technical proposals (RFTP) No. DACW69-81-R-0048, step one of this two-step, formally advertised procurement, advised offerors in the "Description of Services Required" section that the installed capacity of the hydroelectric power generating equipment "shall

be no less than 28 kilowatts nor more than 40 kilowatts at a power factor of 0.8."

The capacity of the equipment was primarily dependent on the elevation of the water in the pool above the dam. The level of the water in the upstream pool above the dam fluctuated with the amount of rainfall, and the typical fluctuations were shown in exhibit No. 6 to the RFTP. Potential offerors were further informed in the "Description of Services Required" section that the "minimum range of operation for any proposed power generating unit would be between upstream pool elevations of 1404' and 1412'." If this operating range was exceeded, controls were to be provided so that automatic shutdown of the unit would occur. Startup of the unit was to be automatic when upstream pool conditions returned to normal.

Three companies submitted technical proposals in response to the RFTP. After completing evaluation of the technical proposals, the Corps determined that only the protester and one other company, Allis-Chalmers Corporation, had submitted technically acceptable proposals. The step-two IFB was then issued and, following the opening of bids, Hydro was found to be the apparent low bidder.

However, Allis-Chalmers submitted a protest to the contracting officer challenging any award to Hydro on the grounds that Hydro's bid was nonresponsive to the technical specifications. Allis-Chalmers alleged that the power generating unit offered by Hydro could not produce the installed capacity of 28 to 40 kilowatts allegedly required by the RFTP at the minimum and maximum elevations of 1,404 and 1,412, respectively. Specifically, Allis-Chalmers alleged that the installed capacity of Hydro's equipment was only 23 to 33 kilowatts at these pool elevations.

In analyzing the protest, the Corps noted that it had wanted a power generating unit of sufficient size to produce between 28 to 40 kilowatts of electricity at the normal winter upstream pool elevation of 1,406 rather than at the minimum and maximum elevations. However, because the RFTP's specifications did not specify a single elevation at which an offeror's equipment was to be rated for capacity, the

Corps concluded that Allis-Chalmers' interpretation of installed capacity using the minimum and maximum upstream pool elevations was reasonable. Nevertheless, the Corps found Hydro's interpretation of the specifications--that the equipment was to be rated only at elevation 1,406--also to be reasonable. Therefore, the Corps determined that the technical specification for the equipment's installed capacity was ambiguous since it was subject to more than one reasonable interpretation. As a result, the procurement was canceled, and the two bidders under the IFB were notified of the cancellation.

Allis-Chalmers argues that because the RFTP did not expressly specify a single value upon which water pressure flowing into the power generating unit could be measured, the "only reasonable interpretation" was that the power generating unit had to generate at least 28 kilowatts at the minimum upstream pool elevation and no more than 40 kilowatts at the maximum upstream elevation. According to Allis-Chalmers, this interpretation can be confirmed by the alleged fact that a power generating unit sized to pass a sufficient flow of water to generate 40 kilowatts when the upstream pool elevation is at the maximum as specified in the RFTP will also have the capability of passing enough waterflow under the RFTP's minimum upstream elevation to generate approximately 28 kilowatts. As noted above, the Corps agrees with the reasonableness of Allis-Chalmers' interpretation of installed capacity under the RFTP.

Hydro contends that Allis-Chalmers' interpretation of installed capacity is not reasonable under industry standards and under standards of professional engineers with experience in hydroelectric development. According to Hydro, extreme upstream pool elevations are not used to define installed capacity of generating equipment. Rather, Hydro argues that a hydroelectric project with a specific installed capacity requirement has that requirement determined from the "normal" pool elevation. Hydro alleges that the "winter pool level" of 1,406 would be the normal elevation from which the installed capacity power generating equipment would be measured. Hydro notes that exhibit No. 6 of the RFTP showed this winter pool level. Consequently, Hydro takes the position that the procurement should not have been canceled

because Allis-Chalmers should have known that this elevation would be used to rate the installed capacity of the equipment.

The Corps states that the contracting officer has broad discretion in deciding whether to cancel a solicitation and that this discretion may only be challenged where the contracting officer has abused his discretion. See Rivera General Contracting, B-199514, February 11, 1981, 81-1 CPD 146. Specifically, the Corps argues that the specification in the RFTP did not expressly specify that a hydroelectric power generating unit with an installed capacity of 28-40 kilowatts should have that capacity determined using an upstream pool elevation of 1,406. According to the Corps, it is obvious that the protester and Allis-Chalmers were not bidding on the same product under step two of the formally advertised procurement because of the above-described ambiguity in the RFTP. Thus, the Corps of Engineers takes the position that cancellation of the procurement was proper.

Regardless of whether Allis-Chalmers' interpretation of the RFTP's installed capacity requirement is reasonable, it is clear from the record that no upstream pool elevation was clearly specified in the RFTP at which the installed capacity was to be measured. Hydro emphasizes that it used the winter pool elevation (1,406) to arrive at what the company believed was an installed capacity of 28.2 kilowatts for its power generating unit. However, we note that exhibit No. 6 to the RFTP not only stated the winter pool elevation was 1,406, but also stated that the summer or seasonal pool elevation was 1,410. The record also shows that in a letter to the contracting officer sent immediately after the cancellation of the procurement, Hydro indicated that using the winter pool elevation was the most conservative way to arrive at an installed capacity value and that "many" would define the installed capacity value using the higher seasonal pool elevation figure of 1,410.

Since the RFTP did not clearly specify an exact elevation at which installed capacity was to be measured, we conclude that the RFTP was deficient.

Nevertheless, the mere existence of a specification deficiency does not, absent a showing of prejudice, provide a compelling reason to cancel a solicitation and readvertise after bid opening. See Cummings Marine Systems, Inc., B-197506, August 21, 1980, 80-2 CPD 136. It is not clear from the record whether there was any prejudice caused by the above-described deficiency in the RFTP. The Corps makes only the general statement that Hydro and Allis-Chalmers were not bidding on the same product. Hydro, however, alleges that both it and Allis-Chalmers proposed "bladed propeller turbines" which had the same overall design and efficiency. Hydro further alleges that Allis-Chalmers' proposal calculated the installed capacity of its power generating unit using the same pool elevation and the same rate of waterflow as Hydro did.

In light of the specificity of Hydro's allegation that both it and Allis-Chalmers were offering essentially the same equipment and the lack of any response from Allis-Chalmers, we recommend that the Corps determine, with a view toward possible reinstatement of the canceled IFB, whether, in fact, the two companies were competing on a common basis. This determination should be based on a review of Hydro's allegation and the submitted proposals. In this regard, we specifically request that the agency take into account the economics of the products offered by Hydro and Allis-Chalmers. This is because, in addition to alleging that Allis-Chalmers' equipment had the same design and efficiency, Hydro suggests that it offered an "off-the-shelf" unit and that Allis-Chalmers offered a custom-designed unit. We are concerned that the possible custom-designing of Allis-Chalmers' unit may be related to the failure of the RFTP to state expressly a pool elevation at which installed capacity would be rated.

Since Hydro was the apparent low bidder on the step-two IFB and would have been awarded the contract but for the cancellation of the procurement by the agency, we find it unnecessary to address Hydro's

contentions that Allis-Chalmers' step-one proposal should have been found unresponsive to the RFP requirements.

for Milton J. Arowan
Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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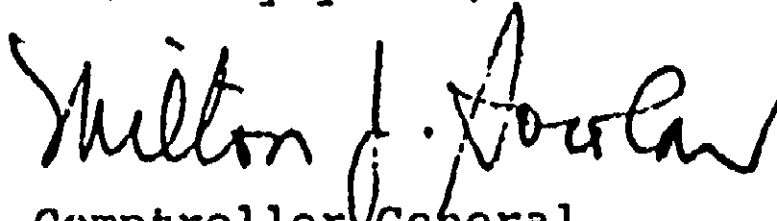
The Honorable John O. Marsh
The Secretary of the Army

Dear Mr. Secretary:

Enclosed is a copy of our decision of today in the protest of Hydro Power Equipment Co., Inc., under invitation for bids No. DACW69-81-B-0092, which was canceled by the Corps of Engineers. The protest was the subject of a report (89559), dated February 5, 1982, from the Chief Counsel of the Corps.

We recommend that you take the corrective action described in our decision. We would appreciate advice of the action taken on the recommendation.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosure