

DECISION

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

FILE: B-218427

DATE: June 17, 1985

MATTER OF: Stabbert and Associates Inc.

DIGEST:

Protest that solicitation requirement that offered tugboats be "classed" (approved) by a recognized classification society is unduly restrictive of competition is denied where the society's standards are necessary to fulfill the government's minimum needs, and the protester offers no other approach that would ensure these needs will be met.

Stabbert and Associates Inc. (Stabbert) protests a provision in request for proposals (RFP) No. N00033-85-R-2002, issued by the Military Sealift Command, Department of the Navy, for the charter of harbor tugs, as unreasonable, unnecessary and restrictive of competition.

We deny the protest.

The RFP requires that the tugs, which are needed to provide harbor services for Navy vessels in the San Diego Bay area, "be classed by a recognized classification society and . . . have a minimum of 2,000 continuous Shaft Horsepower as verified by that classification society." Classification societies, the largest of which is the American Bureau of Shipping, establish and administer structural and mechanical standards for vessel design, construction and periodic survey; classification certifies that the vessel meets those standards.

Stabbert argues that it is unnecessary to require classification to verify shaft horsepower, since shaft horsepower can be verified by the manufacturer's continuous horsepower ratings or by independent testing. Furthermore, Stabbert contends that the classification requirement would eliminate 80 percent of the companies whose tugs, while not classed, clearly could meet the Navy's needs, and therefore is restrictive of competition. Stabbert points out that Navy tugs are not classed, and that unclassed tugs are used at other Navy bases.

In response to Stabbert's protest, the Navy concedes that because there are means other than classification to

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verify shaft horsepower it would not be fair to use that reason alone to require classification. The agency asserts, however, that classification is not required only to assure shaft horsepower. The Navy states that this is the first time it is chartering commercial tug service for an entire Navy port, and asserts that the chartered tugs must be on call 24 hours a day in all weather conditions and will have contact with nuclear and conventional ships and submarines. In the Navy's view, classification represents the only means by which the Navy can assure that its minimum needs for the mechanical, structural and operational integrity of tugs are met.

The Navy further contends that classification is not burdensome since there are three classification societies in the San Diego Bay area; initial classification costs are only approximately \$3,000 (although Stabbert notes that it may be expensive for the contractor to prepare the tug for inspection), and interim classification, acceptable under this solicitation, is available within 2 weeks of the tug operator's request for classification. Finally, the Navy argues that since Navy tugs are built to its specifications, classification is not needed, and in any event, Stabbert's argument on this point and the fact that other Navy bases use unclassified tugs is irrelevant to these particular contract requirements.

While agencies should formulate their needs so as to maximize competition, requirements that may limit competition are not unreasonable so long as they reflect the government's legitimate minimum needs. See Hydro-Dredge Corp., B-215873, Feb. 4, 1985, 85-1 C.P.D. ¶ 132. Because the contracting agency, which is most familiar with the conditions under which supplies or services have been or will be used, has the responsibility for determining its minimum needs and for drafting requirements which reflect those needs, the protester who objects to the solicitation requirements as unduly restrictive of competition bears a heavy burden. See Duroyd Manufacturing Co., B-213046, Dec. 27, 1983, 84-1 C.P.D. ¶ 28. Once the agency establishes prima facie support for the solicitation restriction as necessary to achieve its minimum needs, the protester must show that the requirement clearly is unreasonable. See Software City, B-217542, Apr. 26, 1985, 85-1 C.P.D. ¶ 475.

In this regard, we generally have not objected to a requirement that an item conform to a set of standards adopted by a nationally-recognized organization in the

field or to a requirement for independent laboratory certification that such standards are met. We have held, however, that a requirement that the item bear a specific label demonstrating approval by a particular testing laboratory may well be unduly restrictive and improper. See Worcester Electrical Associates, B-193064, Apr. 5, 1979, 79-1 C.P.D. ¶ 236. Such a token of approval, under proper circumstances, certainly may serve as evidence of conformity. The absence of such approval, however, should not automatically exclude products that may conform equally to the solicitation, since the government, not the testing laboratory, is primarily charged with the determination of actual conformance. Arctic Marine, Inc., B-182321, May 14, 1975, 75-1 C.P.D. ¶ 311. In essence, prospective contractors should be permitted to show that their products conform to the standards established by recognized classification organizations through independently-produced evidence. Id.; 33 Comp. Gen. 573 (1954).

The fact that it may be expensive for a firm to prepare its tugs to be inspected for classification does not make classification unwarranted, since the issue is not whether a burdensome requirement is restrictive, but whether it is unduly so. Here, while Stabbert, and the Navy's own review, have demonstrated that classification is not the only reasonable means by which the Navy can achieve verification of shaft horsepower, Stabbert has not suggested any alternative means by which it could establish that its tugs generally conform to the standards of any classification society. Instead, Stabbert merely asserts that the majority of commercial tugs are not classed, and non-classed tugs have performed in conditions more severe than at this Navy port. In light of the Navy's need for ever-ready, reliable tugs to assist sophisticated ships, and absent evidence of the reliability of the tugs offered, we cannot find unreasonable the Navy's position that classification is necessary. Stabbert's disagreement with the agency's judgment does not invalidate that position. See Pierce Coal Sales International, B-217051, Mar. 1, 1985, 85-1 C.P.D. ¶ 258.

The protest is denied.


Harry R. Van Cleve
General Counsel