



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Tri Tool, Inc.

File: B-231940

Date: October 18, 1988

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### DIGEST

Allegation that proposed awardee's offered equipment does not satisfy certain specification requirements is without merit where firm's proposal included information showing compliance, and proposal does not take exception to any requirements.

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### DECISION

Tri Tool Inc., protests the proposed award of a firm, fixed-price contract to Mactech Inc., under request for proposals (RFP) No. NOO406-88-R-0456, issued by the Department of the Navy for one set of clamshell lathes and beveling tools for pipe cutting. Tri Tool contends that Mactech's offered equipment does not comply with the specifications.

We deny the protest.

The solicitation contained a detailed description of the equipment sought, and provided for an award to the responsible offeror whose total offer is most advantageous to the government. Four proposals were received, including those from Mactech and Tri Tool. All four proposals included brochures on the offered products, and the data was evaluated by the Navy for technical acceptability. The technical activity found Tri Tool's offer technically acceptable, and found that Mactech's offer was acceptable but for three areas that needed clarification. The Navy requested best and final offers (BAFOs) from all offerors, in response to which Mactech satisfied the Navy that its equipment met the specifications. Following a second BAFO request (due to a wide disparity in pricing and an administrative oversight), the contracting officer selected Mactech for award based on its low price of \$26,105.

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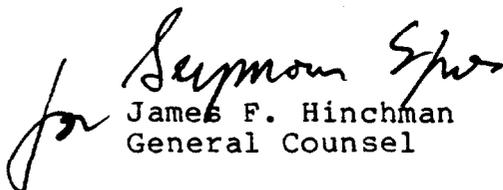
The protester primarily argues that Mactech's beveling tools do not comply with the specification requirement that the pipe feed control be at a right angle to the cutting axis. Tri Tool's position is based on the fact that it holds five patents for beveling tool right angle feed controls, and its belief that, therefore, no other firm can meet the requirement. Tri Tool concludes that Mactech will deliver other than standard production tools, the design, manufacturing, and testing of which will cause Mactech to exceed the contract delivery requirements.

Although the Navy has not released to Tri Tool any of Mactech's proposal on the ground that it contains proprietary commercial and business information, we have reviewed this information in camera. Included in Mactech's proposal was a drawing of its proposed equipment. The evaluator of the proposal has furnished us an affidavit explaining precisely how Mactech's equipment operates, and pointing out and explaining the right angle feed on the drawing. We have reviewed this information and conclude that the Mactech drawing does show a right angle feed in that the cutting tool is positioned at a right angle to the pipe. We thus find no basis for questioning the Navy's conclusion that Mactech's offered equipment meets this requirement.

Tri Tool also argues that Mactech cannot meet the specifications for radial and axial clearance. Mactech's proposal included dimensional information, however, that clearly indicates that the Mactech equipment satisfies both requirements, and Mactech's proposal did not take exception to these or any other RFP requirements. Thus, this argument too is without merit.

To the extent Tri Tool argues Mactech will be unable to satisfy any specification or delivery requirements, the protest concerns Mactech's responsibility, that is, its ability to perform as required. Before making an award to Mactech, the contracting officer necessarily determined that Mactech is responsible, and our Office will not review such an affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith, or that definitive responsibility criteria have not been met. See 4 C.F.R. § 21.3(m)(5) (1988); Electronetics Corp., B-229934, Jan. 19, 1988, 88-1 CPD ¶ 52. Neither exception applies here.

The protest is denied.

  
James F. Hinchman  
General Counsel