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**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Addsko Industries, Inc.

**File:** B-233693

**Date:** March 28, 1989

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### DIGEST

1. Where agency advised protester to submit model test plan or more data to demonstrate that proposal for ship construction qualified for waiver of test plan requirement, and protester unilaterally chose to submit best and final offer premised on waiver of test plan requirement, agency conducted meaningful discussions since it properly alerted protester to perceived deficiency in its proposal.
2. Where initial proposal omitted data on ship stability, agency was not obligated to discuss technical deficiency that first became apparent after protester submitted such data with its best and final offer.
3. Agency, in procurement for ship construction, is not obligated to reopen discussions to allow protester to submit test plan and data to demonstrate compliance of proposed ships with seakeeping and stability requirements where, despite solicitation requirement and agency warnings, protester had failed to submit information on two prior occasions.
4. Agency determination that protester's proposal for ship construction was technically unacceptable is reasonable where protester did not submit model test plan as required by request for proposals and where data submitted by protester did not demonstrate that ship design could meet both seakeeping and stability requirements under all required conditions.

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### DECISION

Addsko Industries, Inc. protests the award of a contract to Halter Marine, Inc., under request for proposals (RFP) No. N00024-88-R-2087(Q), issued by the Naval Sea Systems Command for ship construction or conversion. The protester

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generally contends that it is entitled to award as the low, technically acceptable offeror, and that the agency failed to conduct meaningful discussions.

We deny the protest in part and dismiss it in part.

On January 5, 1988, the agency issued the RFP for the detailed design and construction or conversion of two coastal hydrographic survey ships capable of operating worldwide in coastal waters to produce surface and subsurface navigational charts, plus associated services and data. The solicitation included the clause at Federal Acquisition Regulation (FAR) § 52.215-16 (FAC 84-17), reserving the right of the government to make award on the basis of initial proposals and warning offerors to submit their best terms from a technical and price standpoint with initial offers. The RFP also provided for award of a firm, fixed-price contract to the offeror submitting an acceptable technical proposal with the lowest price.

The RFP instructed offerors to submit with their technical proposals a contract design that included complete and self-contained ship specifications, contract guidance drawings, contract data requirements reflecting the ship specifications, a model test plan and supporting technical data. The instructions for submitting technical proposals allowed offerors proposing to convert existing ships to furnish, in lieu of a model test plan, reports of previous model tests or full-scale trials data, provided that the anticipated draft of the proposed ships after conversion differed by no more than 1 foot from that used in such tests or trials. The supporting technical data was to include a stability and subdivision analysis of all load conditions; offerors also were to prepare a complete intact and damage stability and reserve buoyancy analysis report, providing the methods and assumptions (including the assumed load) upon which calculations were based.

Amendment No. 0002, dated January 27, modified the RFP, which had precluded offerors from proposing conversion of ships originally built in foreign shipyards, to allow use of such ships provided that the contractor perform conversion work in the United States. Later amendments, dated April 8 and May 25, extended the date for receipt of initial proposals from April 29 to May 27 and finally to June 1, 1988.

Three offerors responded by the date for receipt of initial proposals. On July 11, the agency's source selection evaluation board (SSEB) advised its source selection advisory council (SSAC) that none of these proposals was

technically acceptable; the SSAC concurred and directed the SSEB to provide discussion questions for the three offerors to permit them to cure perceived deficiencies.

On July 21, the agency issued amendment No. 0007 requesting best and final offers (BAFOs) by August 19 (later extended to August 26) and providing offerors with a list of requirements that their initial offers did not meet or for which information was lacking to determine the acceptability of their offers. Specifically, with respect to deficiencies in Addsko's proposal, the agency advised the protester that it should provide a model test plan<sup>1/</sup> with its proposal; not only did Addsko propose to construct a new ship, but the existing ship whose design Addsko proposed to follow had a draft differing from the protester's proposed configuration by more than 1 foot. Furthermore, the agency advised the protester that it needed to describe the methods and assumptions used in developing its intact and damage stability and reserve buoyancy analysis, addressing in particular the arrival condition with service life allowance.<sup>2/</sup> The agency did not advise the protester of any deficiencies related to seakeeping requirements since Addsko's proposed use of a flume (roll stabilization) tank allowed its design to meet these requirements.

On October 21, the SSEB completed its evaluation of BAFOs and reported to the SSAC that Halter Marine's proposal, while containing some weaknesses, was technically acceptable; the board considered the other two proposals still to be technically unacceptable. In the case of the protester, Addsko had not submitted a model test plan as requested; furthermore, in evaluating the data submitted with the protester's damage stability and reserve buoyancy analysis (in the BAFO), the agency concluded that the use of the flume tank in the arrival condition with service life allowance would give the ship a permanent angle of heel with

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1/ The purpose of the model test plan is to identify any deficiencies prior to ship construction and to place upon the contractor the responsibility for making any corrections if the ship's actual propeller performance, acoustic noise performance or hydrodynamic performance of the bilge keel prove different from the contractor's projections.

2/ In the arrival condition, a ship generally rides higher in the water because its fuel and stores have been expended on the voyage; "service life allowance" refers to increases in the weight of a vessel that might occur during the course of its service.

little reserve righting capacity, creating a severe danger of capsizing. The SSEB also did not believe that, without using the flume tank, the ship could meet seakeeping requirements.

On November 1, after reviewing the SSEB report, the SSAC recommended that since Halter Marine had submitted the only technically acceptable proposal and since its price appeared reasonable, an award be made to Halter Marine without further discussions. This was done on November 10.

Addsco filed this protest on November 25, objecting to the agency's determination that its proposal was technically unacceptable and arguing that as the low, technically acceptable offeror, it was entitled to award. Addsco also claimed that it had inadequate time to prepare an initial proposal in light of various amendments issued prior to the initial closing date. Having received a debriefing on November 22, Addsco supplemented its protest on December 6, and now essentially argues that the agency failed to conduct meaningful discussions with the firm and that the agency erroneously determined its proposal to be technically unacceptable. Specifically, the protester argues that the agency failed to conduct meaningful discussions with respect to the RFP requirements for the model test plan and vessel stability.

Initially, we note that agencies must generally conduct written and oral discussions with all offerors within a competitive range, advising offerors of deficiencies in their proposals and providing them the opportunity to satisfy the government's requirements. tg Bauer Assocs. Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our Office will review the agency's judgments only to determine if they are reasonable. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 CPD ¶ 563.

Concerning the model test plan, the record shows that the RFP required the submission of such a plan with specific exceptions, for which the protester's proposal did not strictly qualify. The agency nevertheless was willing to allow the protester to submit, "as a minimum," support for its contention that test data on the existing ship would provide assurance that the protester's design would perform as projected; the agency, however, explicitly advised Addsco that its initial proposal had not met the requirements for waiver of model testing and expressed its position that such a plan was needed. In our view, the Navy, therefore, pointed out the protester's deficiency and permitted it to

revise its offer to correct the deficiency, which is the essence of meaningful discussions. Metropolitan Federal Network, B-232096, Nov. 21, 1988, 88-2 CPD ¶ 495. Since the discussions on the model test plan directed the protester's attention to the precise area that caused the agency concern, we find the discussions concerning this matter to have been reasonable.

The protester also argues that the agency failed to advise it of its proposal deficiency concerning vessel stability. The record shows that the agency determined, after receipt of BAFOs, that the protester's design could not meet both seakeeping and stability requirements in the arrival condition with service life allowance. The record shows that, based on Addsko's initial proposal, the agency believed that the protester's design could meet seakeeping requirements through use of a flume tank. In reviewing the protester's initial proposal, however, the agency found that the protester had not indicated the methods and assumptions by which it had prepared its intact and damage stability and reserve buoyancy report; in the absence of this data, the agency had concern about a potential problem of flooding the main machinery space and determining whether the protester's design met the stability requirement in all load conditions, particularly in the arrival condition with service life allowance. The agency advised the protester of this deficiency. In reviewing the protester's BAFO, which included the data required on the arrival condition with service life allowance, the Navy first discovered that the increase in the ship's displacement resulting from use of the flume tank would dangerously decrease the ship's vertical center of gravity and its static stability. Using the protester's data, the agency ran calculations to determine whether this condition could be corrected by adding ballast or by reducing the roll stabilization tank, but, based on the data submitted by the protester, concluded that correction of this deficiency would require significant revision of the protester's design. Thus, it was only when the agency reviewed data submitted with Addsko's BAFO that the agency first became concerned that if the flume tank were in operation, the protester's design could not meet stability requirements.

We simply note that an agency is not required to reopen discussions or to allow an offeror further opportunity to revise its proposal when a deficiency first becomes apparent in a BAFO. International Imaging Systems, B-224401, Sept. 15, 1986, 86-2 CPD ¶ 302. Thus, we do not believe that the agency was obligated to discuss a deficiency that first became apparent when, in its BAFO, the protester

submitted information required by the RFP but omitted from its initial proposal.<sup>3/</sup>

The protester also argues that under the circumstances, the agency should have conducted further discussions to allow offerors to cure informational deficiencies and improperly engaged in "sudden death" treatment of offerors by making an award as soon as one offeror demonstrated technical acceptability.

We think that the possibility of "sudden death" was made plain to all offerors by the RFP reminder that the agency could make award at any stage (including the initial proposal stage) and by the warning to all offerors to submit their best terms with their initial proposals. Further, since we also think that the discussions held with the protester were meaningful, we do not believe that Addsko had a reasonable expectation that the agency would conduct further discussions or request again information that Addsko had withheld from its two prior proposals. We merely note that it is inherent in a request to submit a "best and final" offer that the offeror is responsible for insuring that it submits just such an offer and should not expect any further discussions once it has made a submission. Mount Pleasant Hospital, B-222364, June 13, 1986, 86-1 CPD ¶ 549.

Addsko also challenges as erroneous the agency's determination that its proposal was technical unacceptable. We note that a determination of the technical merit of proposals is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. S.T. Research Corp., B-232264, Nov. 3, 1988, 88-2 CPD ¶ 435. It is not therefore our position to question such a determination unless the protester demonstrates that it was clearly unreasonable. ESC Corp., B-232037, Nov. 23, 1988, 88-2 CPD ¶ 507.

The protester specifically asserts that by not using the flume tank in the arrival condition, its design can meet

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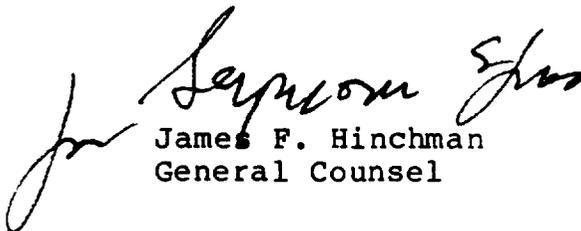
<sup>3/</sup> Addsko also generally objects to the agency's method of conducting discussions by submitting written discussion questions in the request for BAFOs, rather than by holding oral discussions. According to the protester, this practice encourages multiple BAFOs. This ground of protest is untimely when filed 3 months after the closing date for receipt of BAFOs. 4 C.F.R. § 21.2(a)(1) (1988). Furthermore, since there were in fact no multiple BAFOs in this case, a protest on this ground is academic.

both stability and seakeeping requirements; in support of this assertion, the protester has submitted its own seakeeping analysis to this Office.

While the agency contends that many of the protester's assumptions in this regard are unfounded, we do not find it necessary to resolve this dispute to decide this protest. It is the duty of an offeror to demonstrate the technical acceptability of its offered design and the issue of whether an offeror has provided sufficient information to convince the procuring activity that design meets the agency's minimum needs is essentially a technical judgment committed to the agency's discretion. Sony Corp. of America, 66 Comp. Gen. 286 (1987), 87-1 CPD ¶ 212. It is clear from the record that the data submitted with the protester's BAFO was insufficient for the agency to determine that Addsko's design could meet stability and seakeeping requirements of the RFP in all load conditions. The protester has not shown otherwise. It is fundamental that an offeror has an obligation to submit a proposal which fully complies with the terms and conditions of the solicitation and runs the risk of having its proposal rejected if it fails to do so. E & S Computer Sales, Inc., B-233608, Dec. 2, 1988, 88-2 CPD ¶ 556. Here, the record simply shows that the protester failed to demonstrate compliance and that its proposal was reasonably found to be technically unacceptable.

Next, Addsko protests amendment Nos. 0002 and 0004, generally alleging that the agency did not provide sufficient time to prepare proposals in response to these amendments. This ground of protest is clearly untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Accordingly, Addsko's protest, filed after award, is untimely.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel