



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tidewater Marine, Inc.

File: B-271999

Date: July 25, 1996

William J. Spriggs, Esq., Spriggs & Hollingsworth, for the protester.
Robert M. Elwell, Esq., Department of the Navy, for the agency.
Mary Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest against solicitation goal of awarding contracts for tugs with an aggregate of 300,000 pounds of towing capacity is denied where goal was a reasonable statement of agency's minimum need for towing capacity sufficient to assure safe and swift maneuver of an aircraft carrier in a congested port during adverse weather.

DECISION

Tidewater Marine, Inc. protests alleged improprieties in request for proposals (RFP) No. N62387-96-R-1314, issued by the Department of the Navy, Military Sealift Command, for the procurement of U.S. Flag Tugboat Services, including towing.

We deny the protest.

The solicitation was issued on March 25, 1996, for one or more tugboats meeting the minimum specifications provided in RFP section C. Tidewater asserts that although the solicitation does not specify the number of tugs that must be provided, it essentially mandates the use of three tugs by virtue of the section M requirement for a 300,000-pound bollard pull; Tidewater maintains that no more than two will be necessary to meet the work requirements, and that the bollard pull requirement renders the solicitation ambiguous as to how many tugs are required. Tidewater further protests that the 300,000-pound bollard pull requirement is restrictive of competition in that it favors one offeror who intends to submit a proposal to use tractor tugs.¹

¹Tidewater also argues that amendment 1 to the solicitation, reducing the amount of harbor work under the contract and changing the contract start date, is inconsistent with the agency's needs and was issued solely to accommodate one offeror who

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Tidewater's arguments are based on the flawed premise that section M requires offerors to supply tugboats that meet a 300,000-pound bollard pull requirement. In fact, section C3.2 sets out as requirements in this area a minimum 55,000-pound forward bollard pull, 45,000-pound astern bollard pull, and 35,000-pound athwartship bollard pull. The 300,000-pound figure on which Tidewater's argument is based is found in section M2, which simply states that the Navy's goal is to award contracts for a total aggregate bollard pull of 300,000 pounds, a goal it may meet, if at all, by awarding one contract or multiple contracts that in the aggregate total 300,000 pounds of bollard pull. We fail to see how this goal improperly could limit competition; it in no way requires offerors to propose tugs beyond those necessary to perform the work requirements.

Tidewater also argues that the 300,000-pound bollard pull goal exceeds the minimum needs of the Navy. The Navy responds that it will require the tugs to pull 97,000-ton NIMITZ class aircraft carriers in the Norfolk port. The Navy explains that it based its bollard pull goal on Mil-Std 2040, which recommends a total bollard pull of 175,000 to 300,000 pounds to pull a 90,000-ton vessel; the Navy set the bollard pull goal at 300,000 pounds to ensure that vessels could be pulled in a manner that was safe to personnel and vessels due to congested port conditions in Norfolk, the large sail area of aircraft carriers, the likelihood of hurricanes and other severe weather conditions, and the possibility of emergency situations requiring the need for swift and accurate vessel movements.

Tidewater asserts that the Navy has based its goal on the worst case scenario, and thus improperly has stated its maximum, rather than its minimum need. The Navy's minimum need, however, is for tugs that can perform the work required, in this case, potentially pulling a NIMITZ class carrier in a crowded port during adverse weather. Thus, the Navy has stated minimum, not maximum needs.

Tidewater argues that, rather than requiring a specific number of pounds of bollard pull, the Navy should either state that it requires enough tugs to pull a NIMITZ aircraft carrier or should state the number of tugs it needs to pull the carrier. This argument is no more than an attempt by the protester to dictate the manner in which the Navy should define its needs; it does not demonstrate that the agency's description overstates its needs. Moreover, as the Navy has explained, its needs are for a certain number of pounds of bollard pull, not a certain number of tugs. Since

¹(...continued)

would not have its proposed tractor tugs available until that date. However, Tidewater has presented no evidence that amendment 1 compromises the agency's needs, and there is nothing improper in amending a solicitation to permit a certain firm to compete. See A-Com, Inc., B-245246.2, Feb. 13, 1992, 92-1 CPD ¶ 183; Sea Containers Am., Inc., B-243228, July 11, 1991, 91-2 CPD ¶ 45.

the Navy has reasonably explained that 300,000 pounds of bollard pull is necessary to pull a NIMITZ class carrier in the Norfolk port safely and Tidewater has not demonstrated otherwise, there is no basis for questioning it. See Harry Feuerberg & Steven Steinbaum, B-261333, Sept. 12, 1995, 95-2 CPD ¶ 109.

Tidewater argues that the solicitation is ambiguous because it states that the contract will be awarded on the basis of best value to the government, but also discusses minimum technical acceptability. Tidewater concludes that it is unclear whether the Navy intends to award the contract on the basis of the best value to the government, or to the lowest-cost, technically acceptable offeror.² We disagree. While section M.1.2(a) discusses minimal technical acceptability, it also explains that those proposals that meet the minimum specifications of section C will be evaluated against listed criteria, and that the contract then will be awarded to the offeror(s) whose proposal(s) are found to provide the best value to the government. The solicitation clearly indicates, therefore, that award is to be based on the best value among the proposals meeting the stated minimum requirements. We find nothing unclear or objectionable in this evaluation scheme.

The protest is denied.

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²In addition, Tidewater argues that section M does not specify the minimum requirements against which bollard pull will be evaluated. These minimum requirements are specified in section C which, as indicated, requires 55,000-pound forward bollard pull, 45,000-pound astern bollard pull, and 35,000-pound athwartship bollard pull.