



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Halter Marine, Inc.

File: B-289303

Date: December 12, 2001

David S. Bland, Esq., James W. Noe, Esq., and Julie M. Araujo, Esq., King, LeBlanc & Bland, for the protester.

Robert A. Mangrum, Esq., and Paul S. Ebert, Esq., Winston & Strawn, for Marinette Marine Corporation, an intervenor.

Keith A. Moore-Erickson, Esq., United States Coast Guard, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee fails to meet past performance standards, because it does not possess certificates from industry classification society, is denied where solicitation called only for demonstrated experience and responsibility for society's requirements and did not require offerors to possess or obtain certificates.

DECISION

Halter Marine, Inc. protests the award of a contract to Marinette Marine Corporation under request for proposals (RFP) No. DTCG23-01-R-AGL001, issued by the U. S. Coast Guard for design and construction of a Great Lakes Ice Breaker (GLIB) ship. Halter asserts that the awardee's proposal does not meet the past performance requirements of the RFP.

We deny the protest.

The RFP set forth performance specifications for the GLIB, including the integrated ship control system (ISCS) for automatic and manual control of the GLIB and its machinery systems. RFP § 3.5.7. The ISCS includes an integrated bridge system (IBS) and is required to comply with DNV W1, an industry design and construction

standard.¹ RFP § 3.5.7.1. Offerors were required to select and propose a single system integrator (the SSI-B) for the IBS, which would be responsible for ensuring that integration and interface requirements were met. RFP § 3.2.15. The proposed SSI-B was also required to possess past performance related to the requirements of DNV W1. Id.

Award was to be made to the offeror whose proposal complied with the RFP requirements and was considered most advantageous to the government. RFP § M.2. Proposals were to be evaluated on the basis of technical/management and past performance which, combined, were more important than price. RFP § M.3. The past performance evaluation was to be based on a past performance questionnaire and information obtained from previous or current customers. RFP § M.5. Based on its evaluation of Halter's and Marinette's proposals, the source selection authority concluded that Marinette's proposal, which was lower in price, represented the best value to the government. After receiving notice of the award and a debriefing, Halter filed this protest.

Halter asserts that Marinette does not meet the DNV W1 past performance requirements set forth in RFP section 3.2.15. According to Halter, DNV W1 is "governed by three DNV certificates," and Marinette's proposed SSI-B has only one of the three certificates. Protest at 3. Halter asserts that only its proposal was acceptable because it proposed an SSI-B that meets the DNV W1 past performance requirements.²

In reviewing a protest against a procuring agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. National Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3.

The Coast Guard's evaluation here was reasonable. Halter's protest is based on an erroneous interpretation of the RFP's requirements; nothing in the RFP required that an SSI-B possess DNV certificates to establish its past performance. In this regard, under the RFP, the SSI-B was to be the vendor of the major bridge system components to be installed on the GLIB and had to be

an organization that has demonstrated successful past performance in the same capacity on design and construction projects utilizing an

¹ The DNV W1 or "Watch 1" standard is promulgated by Det Norske Veritas (DNV), an industry classification society.

² Halter states that only one firm possesses all three certificates. Halter proposed one of this firm's authorized factory representatives as its SSI-B and will have the "certified" firm act as a subcontractor. Protest at 4.

[IBS] of equal or greater complexity. Specifically, past performance must demonstrate single system integration experience and responsibilities for the Integrated Bridge requirements of DNV W1.

RFP § 3.2.15. While this provision clearly required relevant experience under the requirements of DNV W1, it did not require that the vendor possess certificates from DNV to establish that experience, and nothing else in the RFP set forth such a requirement. In fact, the RFP's design and construction standards (DCS) specifically stated that certificates were not required.³ According to the DCS, where "classification society rules" are cited, "the GLIB shall be designed and constructed to comply with the cited rule or regulation [but] the Contractor is not required to obtain Classification Certificates or Certificates of inspection" in meeting the DCS. RFP § J. We conclude that there was no requirement that the proposed SSI-B be certified by DNV.⁴

In its response to the agency's motion to dismiss its protest, Halter for the first time asserts that the equipment itself, not the SSI-B, must possess the certificates. Response at 3. According to Halter, the equipment must be "type approved" in order to comply with DNV W1 Rules and, absent these approvals, an SSI-B cannot demonstrate the required past performance. Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 12-13. This includes the identification of more specific information concerning flaws in the evaluation generally alleged in the initial protest. Id. Such information must be filed within 10 calendar days after the protester knew or should have known the basis for its protest. 4 C.F.R. § 21.2(a)(2) (2001). Since Halter did not assert that type approval was required until it filed its comments on the dismissal request, more than 10 days after its protest was filed, this argument is untimely.⁵

³ The DCS are defined as "standards, policies, criteria and margins . . . to be applied as applicable throughout the design and construction of the GLIB . . . and are identified to permit the assessment of the ship, systems and equipment as the design develops." RFP § J.

⁴ Moreover, even where a solicitation requires a product to conform to the standards of a particular testing or classification organization, the absence of a certification does not automatically exclude a noncertified product that in fact conforms to such standards. Haz-Stor Co., B-251248, Mar. 18, 1993, 93-1 CPD ¶ 242 at 2.

⁵ In any case, the argument is without merit. Contrary to Halter's reading of the DNV rules, we find nothing requiring that type approval be obtained. The provision cited by Halter simply states that, because "reliable figures for all aspects of equipment performance/accuracy cannot be established" by on-board testing, "shipowners are advised to choose equipment that is type approved by [DNV]." Rules for Ships--July 1991, pt. 6, ch. 8, § 10, ¶ 102. While this provision seems to recommend that

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Halter also asserts that Marinette's SSI-B cannot properly have been found to meet the past performance requirement because it has never previously met the DNV W1 requirements. However, Halter has provided nothing in support of this assertion. Marinette's proposal does not take exception to any of the DNV W1 requirements and, in fact, indicates that the proposed SSI-B system is "DNV Watch 1 Certified." Agency Motion to Dismiss, Encl. 8. In addition, the agency had ample information from which it could reasonably conclude that Marinette's SSI-B has the requisite demonstrated experience "of equal or greater complexity." RFP § 3.2.15. For example, Marinette's proposal included spreadsheets of its SSI-B's prior IBS experience with some 200 ships, at least 38 of which were classed to DNV W1 and 3 of which were icebreakers. Agency Motion to Dismiss, Encl. 7. Its proposal also provided detailed descriptions of its SSI-B's past projects, four of which identified the classing/certification as "DNV Watch 1." Id. Based on this information, and in the absence of any evidence to the contrary, we conclude that Halter's allegation is purely speculative, see Hornet Joint Venture, B-258430.3, B-258430.4, Feb. 22, 1995, 95-1 CPD ¶ 110 at 4, and that the agency reasonably found that Marinette's SSI-B met the RFP's past performance requirements.

Finally, Halter asserts that Marinette proposed to perform some of the tasks reserved to the SSI-B, in violation of the RFP's requirements. However, the agency states that it is unaware of any proposal by Marinette to undertake SSI-B tasks in violation of the RFP, and Halter has not explained the basis for its unsupported assertion in this regard. As with its challenges to the SSI-B's past performance, Halter's assertions here amount to mere speculation, and provide no basis for questioning the award. Hornet Joint Venture, supra.

The protest is denied.

Anthony H. Gamboa
General Counsel

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shipowners select equipment that is type approved, it contains no language that would make equipment type approval a precondition to an SSI-B's performing a contract in accordance with DNV W1 standards; thus, IBS type approval was not necessary for the SSI-B to meet the DNV W1 past performance requirement.