

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

FILE: B-182899

DATE: July 3, 1975

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95433

MATTER OF: Harding Pollution Controls Corporation

**DIGEST:**

Record supports procuring activity's acceptance of low bid submitted under second step of two-step formally advertised procurement as proper exercise of discretion, notwithstanding protester's claim that awardee's bid was nonresponsive, since evaluation and overall determination of technical adequacy of bid is primarily function of procuring activity, which will not be disturbed in absence of clear showing of unreasonableness or abuse of discretion; judgment of agency's technical personnel will not be questioned where such judgment has reasonable basis merely because there are divergent technical opinions as to proposal acceptability.

On April 18, 1974, request for technical proposals (RFTP) No. N00024-74-R-7455(Q) was issued by the Department of the Navy, Naval Sea Systems Command (NAVSEA), as the first step of a two-step formally advertised procurement. The RFTP solicited technical proposals for a self-propelled, open-sea oil skimmer with flexible containment boom attachment assembly. Item 0001 of the solicitation required the successful offeror to furnish a quantity of 18 self-propelled oil skimmers. Item 0003 required the conducting of a training course. Items 0002, 0004, 0005 and 0006, respectively, called for data regarding the oil skimmers, data for the training course, repair kits and a spare parts option. Item 0007 required an additional quantity of six oil skimmer craft.

Under step 1, technical proposals were requested from 28 potential sources. Technical proposals were received from only four of the firms solicited. Of these, three technical proposals, received from Harding Pollution Controls Corporation (Harding), JFB Scientific Corporation and Marco Pollution Control (Marco), were found to be acceptable.

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Step 2 of the solicitation, No. N00024-75-B-4208, was issued to the three firms on October 7, 1974, and bids were received as follows:

	<u>Item</u> <u>0001</u>	<u>Item</u> <u>0003</u>	<u>Total Price Bid</u> <u>Exclusive of Item</u> <u>0006</u>
Harding	\$198,330	\$25,000	\$4,784,920
JBF	295,200	25,400	6,999,800
Marco	126,000	28,000	3,100,000

On December 12, 1974, Marco, as lowest responsive bidder, was visited by a Government preaward survey team to determine whether or not it was responsible within the meaning of Armed Services Procurement Regulation (ASPR) § 1-902 (1974 ed.) The survey report dated December 18, 1974, stated that while Marco had no previous Government contracts on related items, it had built a 58-foot self-propelled oil skimmer. In addition, the team found that Marco had an existing order for a 40-foot oil skimmer to be built for a corporation in Long Beach, California. Therefore, the preaward survey recommended that Marco should be awarded the contract. The NAVSEA contracting officer consequently determined that Marco was responsible. Pursuant to ASPR § 2-407.8b(2) and (3) (1974 ed.), an urgency award was made to Marco on February 4, 1975, notwithstanding the pendency of the protest.

Harding, by letter dated December 20, 1974, protested to our Office the procuring activity's acceptance of Marco's bid. Harding contends that Marco's bid was nonresponsive because it did not meet the contract specifications regarding the weight of the proposed craft and that the Navy's acceptance of the Marco bid indicates that NAVSEA had relaxed its specifications without notice to the other bidders and without an opportunity for competitive bidding.

Enclosure (1) of the RFTP, entitled "Requirements and Criteria for Technical Proposals," provides in part:

"b. Design Data. The contractor shall furnish calculations, model or open-sea test results and engineering sketches as necessary to demonstrate the sea keeping and oil recovery efficiency of the

skimmer craft as reflected in the selection of Dimensions as per 3.3.1, Structural Strength as per 3.3.2, Propulsion and Prime Mover as per 3.3.3 and Containment Boom Connector Assembly as per 3.3.4. Calculations shall be submitted to describe the design criteria for Hull Construction as per 3.3.5, and Weight as per 3.3.10 \* \* \*

Attachment "B" of the RFTP, entitled "Technical Requirements," describes the weight requirement of the skimmers as follows:

"3.3.10 Weight. Overall skimmer dry weight shall be minimized consistent with the performance requirements of 3.4, but shall not exceed 38,000 lbs, including shipping cradle as per 3.3.9."

The specification does not include a minimum weight but only a maximum weight of 38,000 pounds. Moreover, the specification tends to encourage a lower weight. Harding has implied that because the Marco craft weighs considerably less than the maximum weight, it does not contain all the equipment required by the specifications. The performance requirements of 3.4 include specifications for towing mode; oil recovery modes, to include oil collection performance, onboard storage and transfer pump; and station keeping mode. The weight difference has been attributed to the complexity of the design of the Harding skimmer and its methods of complying with the requirements of the Government specifications. The Navy has stated that its evaluation of the Marco proposal clearly shows that all the requirements of solicitation No. N00024-75-B-4208 have been met.

We have consistently held that it is not the function of our Office to resolve technical disputes of this nature. See 52 Comp. Gen. 382, 385 (1972). The overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency and, in this regard, we have recognized that the contracting officer enjoys a reasonable range of discretion in the evaluation of proposals and in the determination of which offer or proposal is to be accepted for award as in the Government's best interest. Kirschner Associates, Inc., B-178887(2), April 10, 1974; B-176077(6), January 26, 1973. Since determinations as to the needs of the Government are the responsibility of the procuring activity concerned, the judgment of such

activity's specialists and technicians as to the technical adequacy of proposals submitted in response to the agency's statement of its needs ordinarily will be accepted by our Office. Metis Corporation, 54 Comp. Gen. 612 (1975); B-175331, May 10, 1972. Such determinations will be questioned by our Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations. Ohio State University; California State University, B-179603, April 4, 1974; B-176077(6), supra. This is particularly the case where, as here, the procurement involves equipment of a highly technical or scientific nature and the determination must be based on expert technical opinion. 54 Comp. Gen., supra.

Although Harding has provided technical arguments in support of its protest, we are unable to conclude that the procuring activity's acceptance of Marco's bid was arbitrary or unreasonable. It appears from the record that the proposal was evaluated in accordance with the specifications and the stated evaluation criteria and was found to be technically acceptable. We see nothing in the record which indicates that this evaluation was improper or unfair or that the contracting agency abused its discretion in finding the Marco craft acceptable. There is nothing in the record to indicate that the acceptance of the Marco craft was the result of anything other than the reasonable judgment of NAVSEA's technical experts. We do not believe it is appropriate for this Office to question NAVSEA's technical judgment when the judgment has a reasonable basis merely because there may be divergent technical opinions as to the acceptability of a proposal. Thus, we are unable to agree with Harding's claim that Marco submitted a nonresponsive bid which did not meet the contract specifications. See Honeywell, Inc., B-181170, August 8, 1974.

Harding further alleges that the Marco craft which is being built for the Navy is substantially the same craft which failed a series of preliminary tests conducted at the Battelle Pacific Northwest facility of the Naval Facilities Engineering Command in 1973. Harding also failed to meet the Navy's requirements during these preliminary tests and subsequently redesigned and tested an improved skimmer. Further, it is our understanding that Marco has redesigned its craft and it is this improved model which has been offered to the Navy.

Concerning Harding's further allegation that the Navy did not conduct the required first article test, neither the RFTP nor the IFB required that first article testing be conducted.

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Harding has alleged that Marco will not be able to meet the performance standards under the contract. However, as evidenced by the award of the contract, the Navy is prepared to provide Marco with an opportunity to achieve the desired results. Whether Marco will succeed and whether the Navy was correct in placing its confidence in Marco remain to be demonstrated by the performance achieved under the contract. On the record before us we have no basis to conclude that Marco cannot perform as it has promised. See B-170528, May 18, 1971.

In view of the foregoing, the protest is denied.

  
Deputy Comptroller General  
of the United States