



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Tampa Shipyards, Inc.

File: B-231802

Date: September 30, 1988

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### DIGEST

1. Where the request for proposals stated that the contract would be awarded to the offeror that submitted "an acceptable proposal with the lowest adjusted price," the contracting agency properly selected the proposal that: (1) was evaluated as meeting all mandatory requirements; (2) offered more of the requested enhancements than any other competitor; and (3) offered a total fixed-price that was almost \$7 million below the protester's and an evaluated total price that was approximately \$9.7 million below the protester's.

2. Protest that the awardee's proposal did not meet the solicitation's electrical requirement is denied, where: (1) the contracting agency reports that the protester has misinterpreted the specification and that the awardee's proposal does meet it; (2) the awardee's proposal fulfills the agency's actual needs; and (3) the protester has not been competitively prejudiced, because it would not have been able to lower its \$7 million higher price sufficiently to supplant the awardee as the lower-priced offeror even if the agency had clarified the requirement for the protester in a solicitation amendment.

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### DECISION

Tampa Shipyards, Inc., protests award of a firm, fixed-price contract for design and construction of an oceanographic research ship (designated as AGOR 23) to Halter Marine, Inc., by the Department of the Navy pursuant to request for proposals (RFP) No. N00024-87-R-2024. Tampa contends that the Navy did not follow the evaluation criteria set forth in the RFP when it awarded the contract to Halter on the basis of low price. Tampa also contends that Halter's proposal should have been rejected as technically unacceptable

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because it did not meet the RFP's minimum electrical requirement. We deny the protest.

The RFP for the AGOR 23 was issued on May 27, 1987. The ship will provide general purpose oceanographic research capabilities in coastal and deep water areas. At the time the solicitation was issued, the Navy did not believe that it could acquire a fully equipped ship with the amount of funding it had available for the purchase. Therefore, the RFP set out certain minimum design and performance requirements that all offers had to meet in order be considered acceptable for award and a list of desired features, termed "enhancements." Offerors were encouraged to provide a ship with as many enhancements as possible, but were advised that there was a \$27.7 million price cap that could not be exceeded by the Navy due to the limited availability of funds.

The RFP stated what the Navy had determined the dollar value of each of the enhancements to be and indicated that an offeror's evaluated price would be calculated by subtracting part or all of the assigned dollar value of any proposed enhancements from the offeror's total proposed price.<sup>1/</sup> Thus, an offeror was to receive credit for adding enhancements to the ship's capabilities in the form of a lower adjusted price.

Seven proposals were received by the closing date. One proposal was rejected immediately because its price was more than the \$27.7 million price cap set forth in the RFP. The remaining six proposals were evaluated by the source selection evaluation board, which found that only the proposals of Halter and Tampa were acceptable.

While both Tampa's and Halter's proposals included all of the enhancements listed and described in the RFP, neither offer received full credit for all of the enhancements. Tampa's proposed price was \$27,700,000 (at the price cap) and its adjusted price--after credit was given for enhancements--was \$12,580,000. Halter's proposed price was \$20,879,116 and its adjusted price was \$2,907,116. The Navy determined that Halter's proposal met all of the RFP's

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<sup>1/</sup> An offeror had to substantiate that the offered enhancements could be incorporated into its proposed ship, and the Navy would give a proposal credit for all or part of an enhancement's assigned value depending upon the extent the enhancement could be incorporated.

minimum requirements and that Halter had successfully demonstrated that it could incorporate more of the enhancements than could Tampa. Since Halter's price, both as proposed and as evaluated, was significantly lower than Tampa's, the Navy determined that Halter's proposal was more advantageous to the government and awarded Halter the contract on June 10, 1988. Tampa protested to our Office on June 24.

Tampa argues that the Navy improperly awarded the contract on the basis of Halter's lower price without informing Tampa and other offerors that price would be the determinant factor. According to Tampa, the RFP stressed that the Navy wanted to obtain the most capable, most fully equipped ship that could be built for \$27.7 million. To this end, Tampa states, the RFP unambiguously directed offerors to incorporate enhancements into their proposals until no more could be added within the price cap. Tampa further states:

"Halter's price which was \$6.9 million (or nearly 25 percent) less than the target price, demonstrates that Halter's offer was not responsive to the requirement that the vessel include the maximum enhancements possible within the \$27.7 million ceiling."

In reviewing a protest of the propriety of a technical evaluation, we will not evaluate the proposals anew and make our own determination of their acceptability or relative merits, as the evaluation of proposals is the function of the contracting agency. Proprietary Software Systems, B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. We will, however, examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. T.H. Taylor, Inc., B-227143, Sept. 15, 1987, 87-2 CPD ¶ 252. The protester has the burden of showing that the evaluation was unreasonable or inconsistent with the evaluation scheme; mere disagreement with the agency's evaluation does not meet this burden. Proprietary Software Systems, B-228395, supra.

We find no merit to the protest. Reading the RFP as a whole, several things should have been clear to all offerors. First, the Navy was not going to spend more than \$27.7 million to obtain an oceanographic research ship and, therefore, the Navy would be willing to accept a ship that was not fully equipped, if necessary to keep the price below this limit. Second, an offeror was to incorporate as many of the features on the list of enhancements as possible into its proposal without exceeding the \$27.7

million ceiling, with the dollar value of each enhancement as set forth in the RFP to be used as a credit to lower the evaluated price of a proposal. Finally, the RFP put offerors on notice that price was a significant factor:

"Award will be made to that responsible offeror whose proposal, conforming to the solicitation requirements, will be most advantageous to the Government, price and other factors considered. In general, this shall be interpreted to mean that Offeror having an acceptable proposal with the lowest adjusted price score."

In our opinion, the Navy conducted this procurement in accord with the above evaluation scheme. The proposals of Tampa and Halter were evaluated by the Navy to make certain that they met or exceeded all of the mandatory requirements.<sup>2/</sup> The evaluators next used the values set forth in the list of enhancements to adjust each offeror's proposed price. While both firms proposed to include all the enhancements, the evaluation revealed that Halter had substantiated that it would be able to incorporate more of the desired enhancements into its ship than would Tampa. The evaluators therefore credited Halter's offer for \$17,972,000, so that Halter's evaluated price was only \$2,907,116, while Tampa's offer, credited for \$15,120,000, was evaluated as \$12,580,000. We note that Tampa has not objected to either the evaluation format or the price adjustments made thereunder by the Navy.

In sum, both Tampa's and Halter's proposals were found to be technically acceptable regarding the mandatory requirements; Halter's proposed price (the fixed-price the Navy would actually pay) was \$6,820,884 less than Tampa's; Halter's proposed ship would include more desired features than Tampa's; and Halter's evaluated price was \$9,672,884 less than Tampa's. In these circumstances, we have no basis to question the reasonableness of the Navy's decision to award the contract to Halter, the offeror having an acceptable proposal with the lowest adjusted price, which clearly was consistent with the stated evaluation formula.

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<sup>2/</sup> Tampa also argues that Halter's proposal did not meet a mandatory requirement concerning the type of electrical power system to be provided. This issue will be discussed later in this decision.

Tampa also charges that Halter's proposal should have been rejected because it did not meet the mandatory electrical system requirement set forth in the RFP. According to the protester, because Halter's proposal does not use "Type 1" power<sup>3/</sup> for the entire integrated power plant, the Halter ship will not operate quietly, and therefore will not suit certain research purposes.

The Navy responds that only Tampa has interpreted the specification to require Type 1 power for the entire integrated electric power plant; the Navy states that Tampa's interpretation is more stringent than actually intended. According to the Navy and Halter, Type 1 power is only required for ships service, and not for propulsion power generation and distribution. Furthermore, the Navy points out that there is no RFP requirement for quiet operation. Finally, the Navy notes that Halter took no exception to any of the RFP requirements and was not, as Tampa suggests, required to have its power plant supplier warrant that the power plant design would meet the Type 1 power requirement.

We need not decide whether the Navy's or the protester's interpretation of the Type 1 power (and related quiet operation) requirement is correct as we find that Tampa has not been prejudiced by this alleged procurement deficiency. Competitive prejudice is an essential element that must be shown by a protester if it is to prevail in its bid protest. See Levine Associates, Inc., B-228543, Feb. 5, 1988, 88-1 CPD ¶ 117; KET, Inc., B-190983, Dec. 21, 1979, 79-2 CPD ¶ 429. The fact is that Halter's adjusted price is \$9,672,884 lower than Tampa's, and it is clear that the Halter ship will meet the Navy's actual research needs and will cost the Navy almost \$7 million less than Tampa's proposed ship. Tampa has not shown, and we have no reason to believe, that Tampa would have been able to lower its price sufficiently to supplant Halter as the lower-priced offeror even if the Navy had issued an amendment clarifying that Type 1 power was required only for ships service. Thus, even if Tampa's interpretation of the Type 1 power

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<sup>3/</sup> Type 1 power for AGOR 23 is alternating current, 480-volt, 60-hertz, 3-phase, ungrounded electrical power which has limits on voltage, frequency, wave form and continuity characteristics.

specification is correct, there was no competitive prejudice to Tampa in this regard by the acceptance of Halter's proposal. See KET, Inc., B-190983, supra.

The protest is denied.

*James F. Hinchman*

James F. Hinchman  
General Counsel

*JFH*