



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Schat Watercraft, Inc.

**File:** B-244175

**Date:** June 17, 1991

Paul G. Dembling, Esq., and Dennis A. Adelson, Esq., Schnader, Harrison, Segal & Lewis, for the protester.  
John J. Blanchard, Esq., Department of the Navy, for the agency.  
David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where protester argues that awardee's proposal of foreign-manufactured lifeboat system is unacceptable because it violates statutory restriction on use of appropriated funds for foreign-manufactured vessels or major components of vessels, but protester likewise proposed foreign-manufactured lifeboats, and there is no basis for concluding that awardee's system will not satisfy agency's minimum needs, contracting officials have treated both offerors equally and there is no basis to sustain protest against award.
2. Where protester would not be in line for award if its protest were sustained, it is not an interested party eligible to protest the rejection of its proposal.

### DECISION

Schat Watercraft, Inc. protests the award of a contract to Marine Equipment, Inc., under request for proposals No. N00033-91-R-3003, issued by the Department of the Navy, Military Sealift Command (MSC), for lifeboats. Schat contends that award to Marine Equipment, which offered foreign-manufactured lifeboats, violated statutory restrictions on the use of appropriated funds for foreign-manufactured vessels or major components of vessels.

We dismiss the protest.

The solicitation requested proposals for the supply of lifeboats, davits, winches, motor controllers, other equipment, and spare parts, for naval vessels currently under construction. In written questions and answers furnished to

potential offerors by means of an amendment to the solicitation, MSC responded "yes" to the question: "Is foreign manufacturing permissible?" Marine Equipment subsequently proposed foreign-manufactured lifeboat systems--the lifeboats plus the associated equipment--while Schat proposed foreign-manufactured lifeboats.<sup>1/</sup>

In its protest, however, Schat now argues that acceptance of Marine Equipment's offer of foreign lifeboats violates continuing prohibitions in appropriations acts for the Department of Defense, which provide that:

"None of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel; Provided further, that none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards."

See, e.g., Pub. L. No. 100-463, 102 Stat. 2270 (1988). In addition, Schat questions the agency's determination that its best and final offer (BAFO) was submitted after the closing date for receipt of proposals and that Schat was subject to being found nonresponsive.

Schat concedes that under its interpretation of the applicable statutory requirements, its own proposal was ineligible for award because of its offer of a foreign-manufactured lifeboat. Further, there is no dispute that Marine Equipment's lifeboat systems will satisfy the agency's minimum needs. Under these circumstances, as both offerors were treated equally with respect to their proposal of foreign-manufactured lifeboats, there is no basis for sustaining Schat's protest. Integral Sys., Inc., B-240511, Nov. 23, 1990, 70 Comp. Gen. 90-2 CPD ¶ 419; O.V. Campbell & Sons Indus., Inc., B-236799 et al., Jan. 4, 1990, 90-1 CPD ¶ 13.

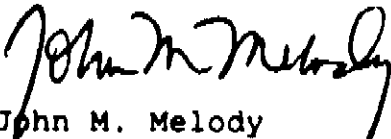
As for Schat's remaining allegations, we note that the solicitation provided for award to be made to the low-priced, technically acceptable offeror. Marine Equipment submitted the low offer; accordingly, even if Schat's BAFO had been considered for award and the firm had been deemed responsible, Marine Equipment, not Schat, would have been in line for the

---

<sup>1/</sup> We note that in its initial protest submission, Schat failed to advise our Office that it had also proposed foreign-manufactured lifeboats. This fact only became known when the agency moved to dismiss the protest.

award. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551 and 3552 (1988), only an "interested party" may protest a federal procurement, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1991). A protester is not an interested party where, as here, it would not receive the contract award even if its protest were sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

The protest is dismissed.

  
John M. Melody  
Assistant General Counsel