

**Matter of:** Nautica International, Inc.

**File:** B-254428

**Date:** December 15, 1993

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Joseph A. Camardo, Jr., Esq., and Nancy M. Camardo, Esq., for the protester.

Robert A. Klimek, Jr., Esq., Klimek, Kolodney & Casale, for Zodiac of North America, Inc., an interested party.

Karen L. Gearreald, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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**DIGEST**

Protest of agency's rejection of quote for rigid hull inflatable boat is sustained where agency's description of its minimum needs misled protester into offering more expensive model where boat which agency intended to purchase off schedule was less than 25 feet long not including engines and protester reasonably assumed that the required 25-foot length did not include length of motors.

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**DECISION**

Nautica International, Inc. protests the issuance of delivery order No. V0031A-93-F-1235 under General Services Administration (GSA) Federal Supply Schedule (FSS) Contract No. GS-07F-3385A, to Zodiac of North America, Inc. The protester essentially argues that the boat purchased by the agency did not satisfy the agency's requirement for a boat that was 25 feet in length.

We sustain the protest.

On June 30, 1993, the Navy purchasing office received a request for purchase of two rigid-hull inflatable (RHI) boats, options, and miscellaneous items for use by Naval special warfare units; the request identified the Zodiac Hurricane Model 733 O/B, available under FSS Contract No. GS-07F-3385A, as satisfying the requirement. The FSS contract described the Model 733 O/B as 25 feet, 3 inches in length, with a 9-foot beam, 300 horsepower maximum, and a capacity of 90 US gallons. The agency purchasing office

contacted Zodiac and verified its GSA schedule price. The total price for the purchase with options was \$84,219.89.

The purchasing office identified and contacted two other potential sources for 18-passenger RHI boats, one of which was the protester. On July 6, the Navy requested the protester's "GSA pricing on 18 person inflatable boat," providing by facsimile transmission the same limited description of features provided in the FSS, including the minimum of 25 feet in length. There was no reference to the Zodiac Hurricane Model 733 O/B in the description. The protester had no 25-foot boat on its GSA schedule, but provided an open market quote for a 25-foot long model, as well as a discounted price for its 27-foot model (RIB 27), which was on the GSA schedule.

Nautica offered a price of \$45,975 per boat, including options; since Zodiac's total price was lower, \$84,219.89 for the two boats and options,<sup>1</sup> the agency issued a delivery order to Zodiac, and this protest followed.

The protester points out that it was not aware when it furnished a quote that the Navy had based its description on the Zodiac Model 733. It notes that the Zodiac Model 733 is not 25 feet in length, unless the engine is included in the measurement; excluding the engine, the Model 733 measures 23 feet, 9 inches. According to the protester, if the agency had correctly described its needs--that is, had it made clear that it intended to purchase a boat measuring 25 feet including the engine--Nautica would have offered a model from its GSA schedule at a price lower than that at which the contract was awarded.

The Navy responds that the determination of its minimum needs is the responsibility of the contracting agency and that it properly concluded that the Model 733 on the schedule met its requirements. The Navy argues that it is the responsibility of GSA to determine the proper method of measuring boat length; in this instance, the Navy communicated its needs to Nautica based on GSA's schedule description of the Model 733, which GSA determined to be 25 feet in length. Thus, when the Navy requested Nautica to quote a 25-foot boat, the description of its needs was based on the GSA schedule description of the Zodiac Model 733.

It is true that a contracting agency has the primary responsibility for defining its minimum needs and determining whether an offered item will satisfy those

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<sup>1</sup>Zodiac's total price consists of \$82,963.89 for the two boats, plus \$1,256 for two option items (rub strakes and lift slings).

needs, since it is the agency that is most familiar with the conditions under which the supplies or services will be used. Integrated Sys. Group, Inc., B-246447; B-246448, Mar. 9, 1992, 92-1 CPD ¶ 268. Vendors must, however, be given sufficient detail to allow them to compete intelligently and on a relatively equal basis; the agency's description of its needs must be free from ambiguity and describe the agency's minimum needs accurately. Interface Flooring Sys., Inc., B-225439, Mar. 4, 1987, 87-1 CPD ¶ 247.

Here, we think the Navy's description of its minimum needs was misleading, if not incorrect. The protester reasonably interpreted the agency's request to preclude the offer of a boat that was less than 25 feet in length, excluding the engine. In this regard, the protester does not challenge the agency's need for a boat similar in length to the Model 733; rather, the protester asserts that although it offers a model under its GSA schedule contract that would have met the agency's needs--i.e., a boat measuring 25 feet including the engine--the Navy incorrectly described its needs, leading the protester to conclude that the agency was seeking a boat 25 feet in length without the engine. It thus was misled, the protester argues, into offering a higher-priced model.

The protester contends that industry standards call for measurement of a boat minus the engine. The record supports the protester's argument that measuring the length of boats including the engine could create considerable confusion, as there are certain methods of attaching an engine by a device known as a gil bracket, by which the engine is extended beyond the hull of the boat, adding several feet to length and frustrating efforts to standardize any attempt to measure boat length including the engine.

Although Zodiac asserts that it has followed the industry standard in calculating boat length including the engine, it identifies no person or organization to support its assertion. Officials of both the Coast Guard and the National Marine Manufacturers' Association, which represents the boating industry, have stated that they are not aware of any practice of including the length of engines in the measurement of RHI craft, at least where, as here, the engines are mounted on brackets extending beyond the stern of the boat. Moreover, the record shows that Zodiac's commercial literature current at the time of award of the FSS contract lists the length of the boat as 23 feet, 9 inches. Zodiac states that this listing was an error which later was corrected in its commercial literature published in September 1992. Even that literature, while showing the "overall length" as 25 feet, 3 inches, describes the boat as a "24' (7.20 m.) 18 person capacity" boat.

The protester's interpretation of boat length is consistent with 33 C.F.R. § 183.3(d) (1992), which defines boat length as "the straight line horizontal measurement of the overall length from the foremost part of the boat to the aftermost part of the boat . . . "; the regulation specifically states that outboard motor brackets and "other similar fittings, attachments, and extensions are not included in the measurement." These regulations are issued under the authority of 46 U.S.C. §§ 4301 et seq. (1988), which grants the Coast Guard authority to prescribe regulations for recreational vessels; the agency argues that these regulations are irrelevant here, because the model 733 O/B, described in Zodiac's commercial brochure as used for "airport rescue-dive and salvage-pilot" operations, is not a recreational boat. Nevertheless, the agency points to no other regulation governing the measurement of boat length, and we think that the regulation fairly indicates that the protester's interpretation of the agency's request for quotations was therefore reasonable, if not the only possible interpretation.

To the extent the Navy suggests that GSA itself calculated the length of the boat in connection with award of the FSS contract, there is no support in the record for this position. On the contrary, the FSS contract specifically states that "accuracy of information and computation of prices is the responsibility of the contractor"; it is thus evident that the FSS description relied upon the information supplied by Zodiac.

In short, the record shows that the Navy did not independently develop the requirement for a 25-foot length, but that it adopted the description contained in GSA's FSS, which was based on including the engine in the measurement. In so doing, it led the protester to offer a more expensive model--based upon its reasonable interpretation of the Navy's description of its needs as calling for a boat 25 feet in length excluding the engine--when it could have offered a lower-priced model available on its GSA contract.

The Navy argues, however, that it was not obligated to consider Nautica's offer in any event, since an agency placing an order under the FSS is not required to seek further competition, synopsise the solicitation or award, or determine fair and reasonable pricing, since the planning, solicitation, and award phases of the FSS comply with Federal Acquisition Regulation (FAR) requirements. Comspec Corp., B-245561, Jan. 15, 1992, 92-1 CPD ¶ 74. Quotations solicited from FSS contractors are informational responses, indicating the products the vendors would propose to meet the government's needs and the prices of those products and related services, which the government may use as the basis

for issuing a purchase order to an FSS contractor. Herman Miller, Inc., B-232839, Jan 26, 1989, 89-1 CPD ¶ 79. Here, the agency argues, even if it had identified the product on the protester's FSS contract meeting its needs, Nautica's RIB 23, it could have justified the issuance of an order to Zodiac based on the awardee's lower FSS price--\$22,050.99 for the model 733 O/B, versus Nautica's FSS price of \$29,750.00 for its RIB 23.

We disagree. First, while an agency is not obligated to seek competition where it may issue an order under the FSS, we think that once it invites firms to submit quotes, it has an obligation to describe its needs accurately, so that all vendors may compete on a common basis. Armour of Am., B-237690, Mar. 19, 1990, 90-1 CPD ¶ 304; Spacesaver, B-224339, Aug. 22, 1986, 86-2 CPD ¶ 219. Having invited competition, albeit on an informal basis, the agency must treat vendors consistent with the concern for a fair and equitable competition that is inherent in any procurement. See Brennan Assocs., Inc., B-231859, Sept. 28, 1988, 88-2 CPD ¶ 295. We think the agency's failure to state its needs unambiguously prevented Nautica from submitting a competitive quote and that Nautica was prejudiced by the agency actions.

With regard to Nautica's pricing, Nautica evidenced its willingness to offer a significant reduction from its FSS prices. The protester's quotation for the 27-foot model represented a significant discount from its FSS price for the RIB 27--\$28,000 versus the FSS price of \$37,520. Further, while as the agency argues, an FSS contractor may not offer a price reduction under its FSS contract without offering a similar reduction to all FSS customers, an FSS contractor may offer to reduce its listed price at any time and by any method, without prior notice to or approval from GSA. We see no basis to question the protester's assertion that it would have offered a lower price for its 23-foot model had it known the agency's actual needs. See Omnitek Inc., B-214445, July 9, 1984, 84-2 CPD ¶ 27.

The agency also argues that the protester was not prejudiced because its price quotation of \$42,170 for a 23-foot boat with options, furnished with its protest, totals \$84,340 for two boats, slightly higher than the awardee's price of \$82,963. As the protester points out, its total price of \$42,170 includes a gray spare tube set at a price of \$5,300; since the agency ordered only one spare tube set from Zodiac, Nautica's total price would be \$5,300 less for the second boat, or a total of \$79,040, more than \$3,900 lower than the awardee's price.

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<sup>2</sup>For the boats alone, exclusive of options.

Since the boats have already been delivered, termination of the contract is impractical. We therefore find that the agency should reimburse Nautica the costs of preparing its proposal; we also find that the protester is entitled to recover its costs of filing and pursuing these protests, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d) (1993). Nautica should submit its detailed and certified claim for such costs to the agency within 60 days of this decision. 4 C.F.R. § 21.6(f).

The protest is sustained.

Comptroller General  
of the United States