



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Recon Optical, Inc.; Lockheed-Martin Corporation, Fairchild Systems

File: B-272239; B-272239.2

Date: July 17, 1996

Jed L. Babbin, Esq., Thomas Earl Patton, Esq., and Lisa E. Stern, Esq., Tighe, Patton, Tabackman & Babbin, for Recon Optical, Inc., and Ronald K. Henry, Esq., and Mark A. Riordan, Esq., Kaye, Scholer, Fierman, Hays & Handler, for Lockheed-Martin Corporation, Fairchild Systems, the protesters.

Harriet J. Halper, Esq., Gregory L. Edlefsen, Esq., and Andrew C. Saunders, Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Multiple awardees, each receiving a research and development contract for the development and testing of its proposed innovative design for an airborne reconnaissance camera, are not interested parties to protest the awards to each other where the solicitation permits multiple awards and neither awardee's contract is affected by the award or failure to award a contract to the other.

DECISION

Recon Optical, Inc. and Lockheed-Martin Corporation, Fairchild Systems protest awards to each other under request for proposals (RFP) No. N00014-95-R-DB04, issued by the Department of the Navy, Naval Research Laboratory, for the development and testing of an electro-optical (EO) camera for airborne reconnaissance.

We dismiss the protests because the protesters are not interested parties.

The RFP, as initially issued, contemplated award of a cost-plus-fixed-fee contract. Section M of the RFP established a best value evaluation basis with technical factors being more important than cost, and stated that:

“Award will be made to that offeror whose proposal is most advantageous to the Government, proposed cost and other factors considered.”

The RFP schedule requested proposed costs for four contract line items (two of which were for documentation and data which were not to be specifically priced) covering the development and testing of the camera in accordance with an attached statement of work (SOW). The SOW stated:

“This [SOW] addresses the development and testing of an Ultra-High Resolution Digital Framing [EO] camera with on-chip image motion compensation or on focal-plane equivalent. . . . This effort shall include an analysis of the camera specifications based on performance requirements, the development of a preliminary camera design, the development of a detailed camera design, the fabrication of the camera, the testing and delivery of the camera, and support for data collection and analysis.”

The SOW stated performance specifications for the camera, and also stated the requirements and time schedule for the development and testing of a prototype camera. The RFP did not provide for future production of the camera beyond the prototype.

Only Recon Optical and Fairchild submitted proposals. The Navy conducted discussions with these offerors. Prior to requesting best and final offers (BAFO), the Navy issued amendment 0009 to the RFP on March 21, 1996, which provided for the possibility of an award of a cost reimbursement contract without fee and for a cost sharing contract. The amendment also provided for multiple awards as follows:

“The [g]overnment reserves the right to make more than one (1) award at different contract values for the same [SOW] as a result of this Solicitation.”

The amendment provided offerors with an opportunity to revise their proposals as a result of this amendment.

The Navy requested and received BAFOs from both offerors. Recon Optical proposed a cost reimbursement contract for \$3,258,123 and Fairchild proposed a cost sharing contract with a cost to the government of \$2,500,000. After determining that both offerors' technical approaches, although different, were consistent with the RFP, the Navy awarded separate contracts to Recon Optical and Fairchild on May 21 and 22, respectively. Both offerors requested and received debriefings, and these protests followed.

Both protesters essentially allege that the Navy's evaluation of proposals was defective or unreasonable, and that the other protester's BAFO is technically

unacceptable under the stated evaluation scheme.¹ Recon Optical also alleges that the agency did not properly determine in accordance with the RFP whether two awards or a single award represented the best value to the government.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1994), only an “interested party” may protest a federal procurement. That is, a protester must be 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) (1996). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party’s status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151.

Here, both protesters received awards based on the complete acceptance of their respective BAFOs. Neither protester has credibly alleged that its contract would be reduced, increased, or otherwise affected by the other protester receiving or not receiving an award. Nor has either protester credibly alleged that it otherwise suffered direct economic harm resulting from the agency’s decision to award a contract to the other (e.g., an alternate proposal passed over in favor of the award to the other protester).² The purpose of this RFP, as stated in the SOW, is to

¹To the extent that Recon Optical alleges that Fairchild’s proposed approach infringes on Recon Optical’s patents, the issue is not for consideration by our Office. See Diversified Technologies; Almon A. Johnson, Inc., B-236035, Nov. 6, 1989, 89-2 CPD ¶ 427.

²While Recon Optical speculates, upon information and belief, that Lockheed must have proposed a new technology not encompassed by the RFP, such that the award to Lockheed actually constitutes an improper sole source award pursuant to unannounced agency requirements, Recon Optical offers only the agency’s debriefing statement that Fairchild proposed a “clearly different technical approach” than that proposed by Recon Optical, and a press release which describes Fairchild’s approach as using a “unique on-chip image motion compensation technology” to support this allegation. However, the RFP specifically solicited proposals for the design of an EO camera “with on-chip motion compensation or on-focal-plane equivalent” and stated only performance specifications. Since the information upon which the protester relies does not suggest that Fairchild proposed to use other than on-chip image motion compensation technology, Recon Optical’s unsupported allegation of an improper sole source award is not sufficient

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address the Navy's need for improved airborne reconnaissance through the research and development of an EO camera in accordance with the stated performance requirements. Since amendment 0009 stated that the agency could "make more than one award at different contract values for the same [SOW,]" offerors were reasonably apprised that the Navy would consider funding parallel development contracts which would result in the research and development of multiple camera designs.³ Each offeror submitted only one proposal for camera development and design under the SOW, and each offeror was awarded a contract to proceed with the development and design exactly as each had proposed to do in its respective BAFO. Since each protester here is a fully successful offeror under the RFP each would be unable to obtain any additional stake in this procurement even if its protest of the other award were sustained. We therefore see no basis to conclude that either protester possesses the requisite direct economic interest necessary to maintain its protest.

While both protesters allege that they do have a direct economic interest in the protest because the contract awarded to the other protester essentially obligates funds which the agency would otherwise be able to apply to their own contract should the proposed costs of their respective proposal not be sufficient to cover the development and testing of the prototype camera, this type of speculative economic interest is not sufficiently direct to render the protesters interested parties. See Travenol Laboratories, Inc., B-215739; B-216961, Jan. 29, 1985, 85-1 CPD ¶ 114.

The protests are dismissed.

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²(...continued)

to constitute a cognizable protest under our Bid Protest Regulations. 4 C.F.R. §§ 21.1(c)(4), 21.1(i) and 21.5(f); see Science Applications Int'l Corp., B-265607, Sept. 1, 1995, 95-2 CPD ¶ 99.

³To the extent these protests challenge the propriety of multiple awards here, they are untimely protests of an alleged impropriety apparent on the face of the amended solicitation which, in this case, should have been raised prior to the next closing date after amendment 0009 was issued. 4 C.F.R. § 21.2(a)(1); see Constructive Playthings; Lakeshore Curriculum Materials Co., B-216190.2; B-216190.3, Apr. 8, 1985, 85-1 CPD ¶ 398.