



United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** Wirt Inflatable Specialists, Inc.

**File:** B-282554; B-282554.2; B-282554.3

**Date:** July 28, 1999

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Sam Gdanski, Esq., for the protester.  
Daniel Barry, Esq., and Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.  
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protester's proposal was reasonably eliminated from competitive range where production demonstration models failed test to demonstrate conformance to solicitation requirements, and price was higher than awardee's.

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### DECISION

Wirt Inflatable Specialists, Inc. protests the elimination of its proposal from the competitive range, and the award of a contract to General Clothing Company, Inc., under request for proposals (RFP) No. SPO100-98-R-4063, issued by the Defense Logistics Agency (DLA) for a quantity of waterproof bags. Wirt maintains that DLA improperly rejected its proposal.

We deny the protest.

The RFP sought fixed-price offers for base and option quantities of waterproof bags that are used by military personnel in the field to keep their clothing and personal effects dry. Award was to be on a best value basis considering technical and price factors. RFP at 66. The RFP specified that technical considerations, when combined, were significantly more important than price. *Id.* The six technical factors, in descending order of importance, were: Production Demonstration Model (PDM), Past Performance, Manufacturing Plan, Socio-Economic Program Support, Mentoring Business Agreement, and Javitz Wagner-O'Day Act Business Support. RFP at 67.

With respect to the PDM, offerors were to submit five PDM samples that would be subjected to a series of tests to determine conformance to the solicitation's requirements. The solicitation provision relating to the testing requirements specifically warned as follows:

**FAILURE TO PASS ALL OF THE HYDROSTATIC TESTING REQUIREMENTS WILL RENDER AN UNACCEPTABLE PDM AND MAY RESULT IN REJECTION OF YOUR PROPOSAL.**

RFP at 67. The RFP further provided that the PDM samples would be evaluated only once (at initial closing), and that offerors would not be afforded an opportunity to resubmit their samples to correct any deficiencies identified. RFP at 68. The RFP also stated that, if the agency conducted discussions, offerors would be required to certify that any deficiencies in their PDM samples would not appear in the items produced under the contract. Id.

DLA received three offers. The lowest-priced offer, submitted by General Clothing, was rated acceptable under all of the evaluation factors and passed all of the PDM testing requirements. General Clothing Proposal Evaluation Summary at 1-2. Wirt's proposal was rated acceptable under all of the evaluation factors except the PDM testing factor, under which it was rated unacceptable because one of its units leaked during one of the hydrostatic tests. Wirt Proposal Evaluation Summary at 1-2. The agency eliminated Wirt's proposal from the competitive range based on this unacceptable PDM rating and Wirt's relatively high (compared to General's) price. Competitive Range Determination, Mar. 19, 1999, at 3. (The third proposal was similarly eliminated from the competitive range based on an unacceptable rating under the PDM factor and high price. Id.

Wirt maintains that the agency improperly rejected its proposal--rather than merely downgrading it--based on its failure of the hydrostatic testing. Wirt argues that it was unclear from the RFP that hydrostatic testing failures would result in such automatic rejection. Wirt directs our attention in this regard to the narrative notes of one evaluator, who initially wrote that the deficiencies in Wirt's PDM sample were minor in nature and easily correctable, but subsequently rated the firm's proposal unacceptable because of the failed hydrostatic test.

The agency reasonably eliminated Wirt's proposal from further consideration. We do not agree with Wirt that the RFP was unclear as to the effect of the hydrostatic testing failure. As quoted above, the solicitation warned that a failure of a firm's items to pass all of the hydrostatic tests would result in an unacceptable rating under the PDM factor. Although the provision went on to state that such a rating "may" (rather than "shall") lead to rejection of the proposal, the RFP also contained the following definition of the term "unacceptable":

**The technical proposal fails to meet the stated requirements of the specification/commercial product description. A rating of this magnitude**

indicates a product of unacceptable quality with no probability of successful performance. The technical proposal is unacceptable as submitted and cannot be made acceptable without substantial correction that would constitute a new proposal.

RFP at 69. This language, read together with the warning discussed above, was sufficient to put offerors on notice that their offers could be eliminated from consideration for award if their items received an unacceptable PDM rating for failing hydrostatic testing. This being our view, there was nothing improper in the agency's determination that Wirt's proposal's rating under the PDM factor, together with its high price, warranted eliminating it from the competitive range. In this regard, agencies properly may establish a limited competitive range, eliminating proposals having little probability of success. Federal Acquisition Regulation (FAR) § 15.306(c)(1); SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5.

The fact that an evaluator initially assigned a less severe rating to Wirt's proposal has no effect on the propriety of the agency's rejection of Wirt's proposal; the fact remains that, in our view, the RFP was clear and the agency's actions were consistent with the RFP. Moreover, the agency explains that the evaluator assigned the rating, not because she misinterpreted the provisions in question, but because she overlooked the provision warning of an unacceptable rating for failure of the hydrostatic testing. When the evaluator was apprised of the provision, she revised the rating to unacceptable.

Wirt argues that the agency should have held discussions with the firm to provide it an opportunity to certify that the deficiency reflected in the hydrostatic testing failure would not appear in the items furnished under the contract.<sup>1</sup> However, agencies need not conduct discussions with offerors whose proposals properly have been eliminated from the competitive range. Electronic Sys. USA, Inc., B-246110, Feb. 14, 1992, 92-1 CPD ¶ 190 at 8.

Wirt also argues that the agency improperly evaluated its experience and past performance. We need not consider this argument, since we have found that Wirt's

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<sup>1</sup>The record shows that, at some point in the acquisition, the contract specialist telephoned Wirt to ask how much time it might need to submit new PDMs. The agency abandoned this approach, but Wirt contends that this contact amounted to discussions that entitled it to make a certification. We disagree. Discussions are exchanges undertaken with the intent of allowing an offeror to revise its proposal, FAR § 15.306(d), and this telephone contact clearly did not reflect that intent. Report and Recommendation of the Contracting Officer (Initial Protest) at 5.

proposal was properly eliminated from the competitive range for reasons independent of its rating under this factor.

The protest is denied.

Comptroller General  
of the United States