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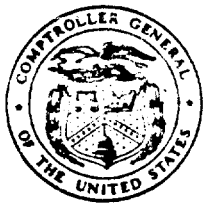
DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208445 **DATE:** February 1, 1983

MATTER OF: N.D. Lea & Associates, Inc.

DIGEST:

Firm that would be ineligible to compete for award of a contract due to an organizational conflict of interest is not an interested party to protest the proposed sole-source award of that contract, except for allegation that proposed awardee also has conflict of interest. We find that proposed awardee does not have conflict of interest.

N.D. Lea & Associates, Inc. (N.D. Lea), protests the proposed sole-source award of a contract by the Department of Transportation, Urban Mass Transit Authority (UMTA), to Louis T. Klauder and Associates (Klauder) for the evaluation of UMTA's Rail Standardization Program.

UMTA proposes the sole-source award on the grounds that only Klauder has the unique technical experience and expertise to perform the contract in a timely manner. N.D. Lea contends that the experience and expertise standards set by UMTA are overly restrictive when compared to the statement of work, that other firms are capable of performing the contract, that Klauder is not qualified to perform the contract, and that Klauder has a conflict of interest.

We deny the protest in part and dismiss the protest in part.

The contract is for a technically oriented assessment of UMTA's Rail Standardization Program. The study resulting from the contract will be used by UMTA to assess rail standardization to determine the future direction and funding of the program.

UMTA reports that, in the past, N.D. Lea has been awarded contracts for UMTA rail standardization work with a total dollar amount of approximately $500,000. The total dollar amount for the program thus far has been approximately $2,910,000. If N.D. Lea were awarded this contract,

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it would be evaluating its own work in a study which could affect the future of the rail standardization program, in which it has been significantly involved. UMTA contends N.D. Lea is not an interested party to protest the proposed sole-source award to Klauder due to this inherent organizational conflict of interest which would preclude N.D. Lea from being considered for award even if the procurement was competitive. UMTA also rebuts the protester on the merits.

N.D. Lea states that it is interested in competing for the contract and points out that there is no mention in the statement of work, the sole-source justification, or the Commerce Business Daily (CBD) announcement of the contract award of a conflict of interest limitation. N.D. Lea admits that it has a conflict of interest.

While we agree with UMTA that N.D. Lea is not an interested party to pursue a significant portion of the protest, for the reasons discussed below, we will consider the protest against Klauder's alleged conflict of interest. This is because if N.D. Lea is correct that Klauder has a conflict of interest and is being considered for award notwithstanding that conflict, then N.D. Lea would likewise be eligible for award.

UMTA reports that Klauder has not participated in UMTA contracts which it would be evaluating. Klauder does write railcar specifications for various transit systems, which amounts to approximately 10 percent of its business. N.D. Lea implies that Klauder might be biased against rail standardization because one goal of standardization is common railcar specifications. UMTA finds this to be a speculative and remote potential conflict of interest. We agree and deny this portion of the protest.

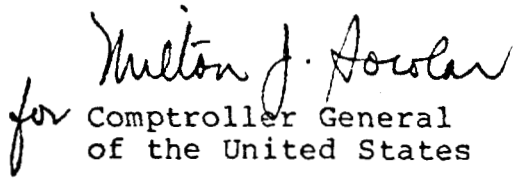
Concerning the other protest grounds, as mentioned above, we find that N.D. Lea is not an interested party for the following reasons.

The responsibility for determining whether a firm has a conflict of interest and to what extent the firm should be excluded from competition rests with the procuring agency and we will overturn such a determination only when it is shown to be unreasonable. Tymshare, Inc., B-198020, October 10, 1980, 80-2 CPD 267. In Columbia Research Corporation, B-185843, July 1, 1976, 76-2 CPD 2, we upheld the

contracting agency's decision to exclude from competition for a contract that included evaluation of a reliability standard the firm that had developed the standard. Essentially, we found that it was reasonable for a contracting agency to refuse to permit a firm to assess its previous work. That is the situation in this case, and we find it is not unreasonable for UMTA to exclude N.D. Lea from competing for this contract based on conflict of interest. N.D. Lea's correct assertion that a conflict of interest limitation was not mentioned in the procurement documents and CBD announcement is irrelevant since the sole-source justification was not based on other firms' conflicts of interest, but rather on Klauder's unique qualifications.

We require a party to be "interested" in order to have its bid protest considered by our Office. 4 C.F.R. § 21.1(a) (1982). Determining whether a party is sufficiently interested involves consideration of the party's prospective status in relation to the procurement and the nature of the issues raised. Die Mesh Corporation, B-192668, November 29, 1978, 78-2 CPD 374. We have held that a party is not sufficiently interested to protest a sole-source award if that party would not be eligible to compete for the contract if the sole-source award was found to be improper. Interscience Systems, Inc.; Amperif Corporation, B-201943; B-202021, August 31, 1982, 82-2 CPD 187. Since we have found that N.D. Lea would not be able to compete for this contract because of its conflict of interest, we find that it is not sufficiently interested to protest the proposed sole-source award to Klauder on the remaining grounds of protest.

Protest is dismissed in part and denied in part.



for Comptroller General
of the United States