Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wyle Laboratories

File: B-239671

Date: September 19, 1990

John S. Pachter, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for the protester.
David D. Bach, Esq., Department of the Navy, for the agency.
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DIGEST

1. Protest that in evaluating protester's proposal agency deviated from the stated evaluation criteria is denied where the allegedly unstated criteria were reasonably related to the stated criteria.

2. Protest that agency denied protester the opportunity for meaningful discussions is denied where the agency's questions led the protester into the areas of its proposal with which the agency was concerned.

3. Protest challenging agency's exclusion of protester's proposal from the competitive range is denied where the record shows that the agency reasonably found the proposal technically unacceptable.

4. Protest that contractor with prior involvement in the program which is the subject of the current procurement gained a competitive advantage because it knew the Navy's cost estimate was erroneous is denied where protester did not rely on the estimate, and in any case, there is no evidence that, if it had known of the error, the protester could have improved its technical proposal sufficiently to be competitive with the awardee.

DECISION

Wyle Laboratories protests the award of a contract to Unisys Corporation under request for proposals (RFP) No. N00024-89-R-3308, issued by the Department of the Navy for the design and development of the EX-10 SEAL Delivery Vehicle (SDV).

We deny the protest.

The SDV is a self-propelled free-flooded submersible vehicle for short range, shallow depth coastal water missions. The EX-10 version is intended as a product improvement to replace the version currently in use. According to the RFP, the new version is expected to increase "reliability, maintainability, producibility, and availability and to expand the capabilities in speed, navigation, communications, rendezvous and docking, guidance and control" of the existing SDV.

The RFP contemplated the award of a cost-plus-incentive-fee contract for the testing, fabrication and development of one Advanced Development Model (ADM) and two Engineering Development Models (EDM) and a complete technical data package for the EX-10 SDV program. The initial phase of the advanced development effort includes an analysis of the Navy's Prime Item Development Specifications (PIDS) and evaluation of the overall system concept, feasibility, and adequacy of the contractor's recommended preliminary design to meet performance requirements and ability of the system documentation to support initiation of a detailed ADM design. The contractor also will be required to develop a Level II drawing package, and produce and deliver an ADM. The next phase, engineering development, requires the contractor to develop detailed design documentation and Level III drawings; the contractor also is to fabricate and deliver two EDMs during this phase. After approval of the design documentation by the government and completion of the fabrication phase, the contractor is to deliver two EDMs for development and operational testing.

The current solicitation is part of an ongoing agency effort to develop the EX-10 SDV. Under prior contracts, contractors conducted market surveys on available hardware and created design guides which documented component availability and applicability to the SDV. Unisys was one of the prior contractors for this effort and, among other things, was asked to review the existing material on the EX-10 collected by all the contractors and compile it into a Design History Notebook.

The RFP listed the evaluation factors as technical, management and cost, with subfactors for each, as follows:

"a. TECHNICAL. The subfactor of systems Design Approach is substantially more important than the subfactors: System Engineering, and Logistics, which are of equal importance. Under the System Design Approach, sub-subfactor ADM/EDM Design Approach is significantly more important than the other sub-subfactors. Software Development, and System Test and Evaluation are of equal importance.

"b. MANAGEMENT. The subfactor of Program Organization is substantially more important than Project Management and Project Management is substantially more important than Corporate Resources and Corporate Experience, which are of equal importance.

"c. COST. The Estimated Target Amount subfactor is substantially more important than the Cost Realism subfactor."

Section L of the RFP described in further detail those areas which offerors were to address under each evaluation factor and subfactor. The RFP also notified offerors that the technical approach and program management factors were of equal importance and substantially more important than cost.

The RFP was issued on May 23, 1989, and, as amended, required that initial proposals be submitted by October 16. Three offerors, including Unisys and Wyle, responded to the RFP. The technical evaluation review panel and the cost/price evaluation team reviewed the initial offers and included all three in the competitive range. Subsequently, each offeror was given written discussion questions and asked to respond with a best and final offer (BAFO). After the BAFOs were evaluated, Wyle received a technical score of 50.56 and a management score of 51.99, compared to Unisys's scores of 74.45 and 68.07, and the third offeror's scores of 70.15 and 63.65. Wyle was determined to be technically unacceptable and was excluded from the competitive range. The contract award review panel reviewed the scores of the remaining two offerors and determined that Unisys's proposal provided the best technical capability at the lowest evaluated cost and recommended award to Unisys. The source selection authority concurred and on May 7, 1990, Unisys was awarded a contract at a cost of $37,436,024.

FAILURE TO FOLLOW EVALUATION CRITERIA

Wyle first protests that the Navy used unannounced evaluation criteria in evaluating its proposal. Wyle specifically complains that even though the RFP encouraged the use of nondevelopmental items (NDIs), the Navy had already decided to reject proposals that proposed the use of NDIs. Wyle further complains that its proposal was downgraded because its lead team members lacked submersible design experience and as a corporation it lacked experience in the design and development of undersea vehicles, when the RFP did not identify such specific experience as factors to be evaluated.

The Navy responds that Wyle's proposal was evaluated in accordance with the criteria stated in the RFP and was ultimately rejected as technically unacceptable because it failed to meet the requirements of the RFP in many key areas. The Navy also asserts that Wyle's proposal was not downgraded for the use of NDIs per se, but only where such use downgraded the firm's compliance with operational and performance requirements of the SDV.

Solicitations must inform all offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the RFP. While agencies are required to identify the major evaluation factors, they are not required to identify the areas of each factor which might be taken into account, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 CPD ¶ 563.

Here, we find that the Navy's evaluation of Wyle's proposal was consistent with the stated evaluation criteria. The specific submersible design experience of the lead team members was clearly encompassed by the broad evaluation factor "project management," under which offerors were instructed to provide the qualifications of the lead team members. In addition, corporate experience in the design and development of undersea vehicles was clearly encompassed by the corporate experience evaluation factor; under a general experience criterion agencies may consider an offeror's experience in the specific area that is the subject of the procurement. See id.

With regard to use of NDIs, the RFP provided as follows:

> "Use of NDI is the preferred method of satisfying operational requirements of the Navy where such

use does not significantly degrade the operational or performance requirements.

. . . . .

"Offerors are encouraged to propose NDI or partial NDI alternatives to conventional R&D or MIL-SPEC production hardware or software requirements of this solicitation at all levels of the work breakdown structure (i.e. end-item, sub-system, component, piece part, etc.). All proposed NDI alternatives shall be clearly identified in the proposal. The intent of the NDI alternative is to provide the Navy with effective and economical solutions to its essential operational requirements. Less than full compliance with all performance, technical or operational objectives does not preclude the use of NDI, and offerors should propose such NDI in order for the Navy to consider technical and performance trade-offs. However, NDI alternatives that significantly degrade the performance characteristics of the contract product(s), will not be considered. Offerors are requested to present the cost/benefit analysis that supports the intelligent employment of NDI alternatives." (Emphasis added.)

Contrary to Wyle's contention, there is no indication that its proposal was downgraded solely because Wyle proposed the use of NDIs or that the Navy changed its preference for NDIs. Rather, consistent with the NDI clause in the RFP, the Navy reduced Wyle's score where the NDIs it proposed, in the Navy's view, significantly degraded compliance with the operational and performance requirements. To the extent that Wyle disagrees with the Navy's assessment of the impact of its proposed NDIs, Wyle is in effect challenging the technical evaluation of its proposal. We have reviewed the record in light of Wyle's challenge and see no basis on which to conclude that the evaluation was improper. The Navy reasonably found, for example, that Wyle's proposed ballast pump--an NDI--represented a significant deficiency in Wyle's proposal. Our findings on this point, and on the technical evaluation generally, are discussed in detail below.

DISCUSSIONS

Wyle next protests that the Navy failed to hold meaningful discussions with the firm. Wyle asserts that even though the Navy asked Wyle questions concerning its proposal, the

questions were not specific enough to alert Wyle to the Navy's real concerns.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (1988), as implemented by Federal Acquisition Regulation § 15.610(b), requires that written or oral discussions be held with all responsible offerors whose proposals are in the competitive range. For discussions to be meaningful, agencies must point out deficiencies in proposals unless doing so would result in technical leveling or technical transfusion. The requirement for meaningful discussions, however, does not mean that agencies are obligated to afford offerors all-encompassing discussions or to discuss every element of a proposal that received less than the maximum possible score. Rather, they must lead offerors into the areas of their proposals which require amplification. Digital Equip. Corp., 68 Comp. Gen. 708 (1989), 89-2 CPD ¶ 260.

Here, following the initial evaluation of proposals, the Navy asked Wyle to respond to 39 questions. Wyle did so and in some cases, the Navy was satisfied with Wyle's response; in a number of cases, however, the Navy found that Wyle's responses did not adequately address its concerns. While Wyle argues that overall the Navy's questions were too general, Wyle points to four specific areas in which it allegedly was denied the opportunity for meaningful discussions.

The first area concerns the navigation sensors and the data bus. The Navy asked Wyle to explain the following statement in its proposal: "Perhaps the major factor in high navigation system performance is the use of the standard data bus." The Navy was concerned that this statement indicated that Wyle did not understand that navigation system performance is a function of navigation sensor performance. In its response to the question Wyle did not discuss the sensors, and the Navy concluded that Wyle did not understand their importance. Wyle complains that the question was insufficient because the Navy did not ask Wyle specifically about the sensors. We disagree. The Navy's concern was not with the sensors Wyle offered but with whether Wyle correctly understood the major factor of the navigation system's performance; the Navy's question was adequate to put Wyle on notice of that concern and to give Wyle the opportunity to address it.

The Navy also asked Wyle to clarify the statement in its proposal that "[t]he power input for the SDV System Computer will be 28.5 Vdc and will meet [the] requirements of MIL-STD 704D." The question was prompted by the Navy's concern that

the SDV voltage output listed by Wyle did not meet the requirements of the PIDS; specifically, it was unclear to the Navy whether Wyle understood that the operating range for all systems was not 28.5 Vdc, but that in fact the PIDS required an extended operating range of 22 to 35.5 Vdc. While Wyle contends that the question was not specific enough because it did not refer to the PIDS requirement explicitly, we find that the question was sufficient to direct Wyle to the area of its proposal that concerned the Navy, i.e., the meaning of Wyle's reference to a voltage which did not meet the PIDS requirement.

The Navy also asked Wyle to explain the basis for its categorization of the signal distribution system components because it found Wyle's description indicated a lack of understanding of the requirements of the PIDS. According to the Navy, Wyle listed seven components of the signal distribution system, when in fact only two of those components were germane to the system. Wyle complains that this question was not sufficient to put Wyle on notice of the Navy's concerns. The question, however, must be read in the context of the solicitation. The PIDS clearly indicated that the SDV included two distinct systems, a signal distribution system and a power distribution system. In its proposal, however, Wyle classified all components of the signal and electronics distribution systems, as well as the emergency system navigation system, under the signal distribution system. Given this obvious difference between the system categorization in the PIDS and in Wyle's proposal, Wyle should have been aware of the Navy's concerns from the question asked.

Finally, Wyle proposed to mount VME compatible circuit boards for the Obstacle Avoidance Sonar (OAS) system on the SRL computer bus, which is not VME compatible. The Navy asked Wyle to describe the interface between the VME compatible OAS and the bus. The Navy found that Wyle's response did not explain how the significant incompatibility would be resolved in the design approach. Wyle argues that if the Navy had further questions in this area, it should have contacted Wyle for clarification. Agencies, however, are not required to notify offerors of deficiencies remaining in their proposals or to conduct successive rounds of discussions until omissions are corrected. Violet Dock Port, B-231857.2, Mar. 22, 1989, 89-1 CPD ¶ 292.

TECHNICAL EVALUATION

Wyle also argues that the Navy improperly evaluated the firm's technical proposal. The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties arising from a defective evaluation. Accordingly, our Office will not make an independent determination of the technical merits. Rather, we examine the agency's evaluation to ensure it was reasonable and consistent with the stated evaluation criteria. See Damon Corp., B-232721, Feb. 3, 1989, 89-1 CPD ¶ 113.

Here, the Navy found 39 deficiencies in Wyle's initial proposal. Following discussions and the submission of BAFOs, 13 deficiencies remained. While Wyle disagrees with the Navy's evaluation in each area, in our view, Wyle has not shown that the Navy acted unreasonably in eliminating Wyle from the competitive range.

As a preliminary matter, the Navy asserts that a deficiency in any one of the 13 areas it identified would be sufficient to support a finding that Wyle's proposal was technically unacceptable. While Wyle's protest focuses on its disagreement with the Navy's technical evaluation, arguing that its proposal in fact met the requirements of the RFP, Wyle also generally challenges the Navy's additional contention that any one of the technical deficiencies would be sufficient to support a finding of technical unacceptability. Although we have reviewed the evaluation and Wyle's comments in all 13 areas, we need not discuss each deficiency in detail; rather, we find that the five deficiencies discussed below involve significant areas of the proposal and, at a minimum when taken together, clearly provide a sufficient basis to support the Navy's decision to exclude Wyle from the competitive range.

Underwater Connectors

In its initial proposal Wyle stated it would design and certify underwater connectors per MIL-STD-1399. The Navy found that this was a significant weakness in the proposal because connectors designed and certified in accordance with MIL STD-1399 are not suitable for deep submergence use. The Navy therefore asked Wyle, during discussions, to describe the application of MIL-STD-1399. In its BAFO, Wyle stated that MIL-STD-1399 does not cover certification of underwater connectors and proposed to use a tailored version of another military standard, MIL-C-24217A, to certify the connectors.

The Navy still found Wyle's proposal unacceptable in this regard, however, because MIL-C-24217A precludes the use of two features--aluminum connector shells and removable inserts--that are required by the PIDS.

Wyle argues that the evaluation of its proposal on this point is unreasonable because it intended to use a tailored version of the military standard to meet the specifications and its proposal stated it would fully comply with the applicable specifications. Wyle did not explain how it would tailor MIL-C-24217A to meet the requirements of the specification, however, and a blanket offer to comply with specifications is not sufficient to establish the acceptability of a proposal. McManus Sec. Sys., 67 Comp. Gen. 534 (1988), 88-2 CPD ¶ 68. Consequently, we have no basis on which to question the Navy's evaluation of Wyle's proposal concerning the connectors, especially in light of the fact that Wyle initially proposed a totally inapplicable standard. In reaching this conclusion, we note that in Tab A of the comments Wyle submitted in response to the Navy's report on the protest, Wyle explained how it intended to tailor MIL-C-24217A to meet the specifications. Since this information was not included in Wyle's proposal or its BAFO, however, it was not available to the agency for evaluation purposes and cannot be used to now find the agency's evaluation unreasonable.

Power Input

When evaluating Wyle's initial proposal the Navy also was concerned with the statement that the power input for the SDV System computer would be 28.5 Vdc and meet the requirements of MIL-STD-704D. The Navy questioned whether Wyle understood that the PIDS created an exception to the requirements of MIL-STD-704D and specified an extended operating range of 22 to 35.5 Vdc. The Navy therefore asked Wyle to clarify the statement. In response, Wyle explained the requirement of MIL-STD-704D for voltage output in the 22.0 to 29.0 Vdc range and that its system would be fully compliant with this requirement. Wyle further asserted that the power supply subsystem performance would support full functionality of the system computer as long as the steady-state input voltage is within the allowable 22.0 to 29.0 range specified. Based on this answer the Navy concluded that Wyle would not supply a system that met the requirements of the PIDS for an upper range of 35.5 Vdc. While Wyle has asserted in its comments on the agency report that its system will meet the 35.5 Vdc requirement, the fact is that Wyle's response to the Navy's question clearly provided only that it would comply with MIL-STD-704D's allowable range of 22.0 to 29.0 Vdc. Thus, we have no basis on which

to question the Navy's conclusion that Wyle's proposal on this point was technically unacceptable.

Signal Distribution System

The Navy also found that Wyle's categorization of seven components of the signal distribution system when only two of those components were germane to the system indicated that Wyle did not understand the PIDS concerning the power and signal distribution systems. The Navy asked Wyle to explain the basis for the categorization. Wyle responded that the intent of the categorization was to identify the major pieces of equipment evaluated in the construction and design of the 28.5 Vac bus and the electronics signal system, which Wyle collectively referred to as the signal distribution system. From this response the Navy concluded that Wyle's proposal was technically unacceptable because Wyle did not indicate that Wyle understood that the power and signal distribution systems were functionally distinct. Wyle argues that the Navy's evaluation here was unreasonable because Wyle did in fact understand that the power and signal distribution systems were distinct from each other, and its categorization of the systems, while different from the Navy's, is consistent with industry practice and standards. We are not convinced by Wyle's argument that the Navy's evaluation of Wyle's proposal was unreasonable. First, the PIDS clearly broke the systems into the power distribution system--which was comprised of the propulsion distribution system and the electronics distribution system--and the signal distribution system, yet Wyle chose to classify the signal and electronics distribution system as well as the emergency navigation system under the signal distribution system. Further, Wyle's proposal does not otherwise demonstrate that Wyle knew the two systems were separate.

Ballast Pump

The Navy also found that Wyle's proposed ballast pump did not represent a viable approach for development of the ballast system. More specifically, the Navy found that Wyle's proposed pump was grossly overdesigned for its intended use and resulted in significant space and weight penalties. These space and weight problems were further exacerbated by the acoustic isolation enclosure which surrounded the motor that powered the pump. In addition, the Navy was concerned that a reduction of the acoustic signature of the ballast pump would require a significant effort during the system design and fabrication process. Finally, the Navy found that the pump's discharge pressure

capability was far in excess of the ballast system requirements.

Wyle complains that its proposed pump is the only NDI pump which complies with the PIDS. Wyle agrees that the pump is large, heavy, noisy, and produces a high outlet pressure so that it is less than an ideal design. Wyle reasons, however, that its proposal should not have been found technically unacceptable because the pump choice is subject to change through the design process that will ultimately determine the best pump available. In this regard, Wyle notes that it agreed to perform tradeoff studies to evaluate alternate design pumps.

Wyle's analysis does not demonstrate that the Navy's evaluation of its proposal on this point is unreasonable. Wyle admits that the pump it selected is cumbersome, and that the Navy could consider the pump unacceptable. While Wyle argues it would consider using an alternative pump, the Navy was not required to accept the risk that some later-proposed design or pump would be acceptable.

Circuit Board-Bus Interface

Finally, because the Navy was concerned that Wyle proposed to mount VME compatible circuit boards for the OAS system in the SRL computer bus, which is not VME compatible, the Navy asked Wyle to describe the interface between the circuit boards and the bus. In response, Wyle stated that the SRL system computer configuration includes a board which contains peripherals necessary to provide a VME similar bus connection and therefore that the OAS circuit design will be controlled to assure that the OAS communications interface connection is fully compatible with the VME similar bus. The Navy concluded that Wyle's response did not indicate how the significant incompatibility between the VME compatible OAS circuit boards and the SRL computer bus would be resolved in the design approach. More specifically, the SRL design and VME design have significant mechanical differences that include different connectors and different sized cards.

Wyle asserts that it knew that standard VME circuit boards could not be used in the SRL computer bus without modification and that such modifications are not difficult to complete. In its comments on the agency report Wyle now fully explains how it intended to overcome the incompatibility problems. Wyle's answer to the Navy's question during discussions, however, simply asserts that the OAS communications interface connection will be compatible with the VME bus, and does not indicate how the overall

incompatibility will be corrected. Accordingly, the Navy had no basis from Wyle's proposal on which to conclude that Wyle would successfully address the problem, or that Wyle understood the issues involved.

COST ESTIMATE AND COMPETITIVE ADVANTAGE

According to Wyle, once the government received the proposals and saw the dramatic difference between the government estimate ($18 million) and the costs proposed by Unisys ($37,442,034) and by Wyle ($26,948,242), the Navy should have known that its estimate was inaccurate and revised it. Wyle asserts that it was prejudiced by the Navy's failure to revise the estimate because based on the solicitation's stated preference for NDIs and the $18 million cost estimate, it believed that cost savings would be a significant factor in the Navy's evaluation and therefore structured its cost proposal to take advantage of all possible cost savings, including in some cases, deviating from the PIDS to provide effective alternatives.

Wyle also argues that based on its prior involvement in the SDV program, Unisys knew of undisclosed shortcomings in the government design effort and, consequently, knew that the $18 million government estimate in the RFP was significantly understated. Wyle contends that Unisys therefore had a competitive advantage, since it could structure its proposal to respond to the allegedly undisclosed design shortcomings, and therefore could have been rewarded improperly in the technical evaluation for any extra effort it proposed in that regard.

The Navy responds that the $18 million cost estimate in the initial RFP was based on information available at the time the RFP was issued. The Navy agrees that the initial estimate was too low and was revised during the procurement based on added work requirements. The Navy reports, however, that it did not inform any of the offerors of the revised estimate. The Navy argues that since Wyle's proposed cost is 40 percent greater than the $18 million estimate, Wyle did not rely on the estimate and thus was not prejudiced because the estimate was erroneous.

In our view, the fact that the estimate in the solicitation was erroneous does not provide a basis to sustain the protest. To the extent that Wyle contends that it relied on the government estimate as an indication that cost savings were important, any such conclusion is reasonable only if taken in the context of the RFP as a whole. Given that the RFP specified that technical and management factors were paramount to cost, no offeror could reasonably conclude

that cost savings were of such importance as to require sacrificing significant technical or management capabilities. At most, the low estimate could have led offerors to believe that the government was conscious of costs, a reasonable conclusion even where, as here, the RFP states that technical considerations are more important than cost, since it is reasonable to assume that the government always is interested in maximizing the technical benefits it receives for the cost it incurs.

In any event, there is no indication that Wyle unduly relied on the estimate since its proposed cost is almost $9 million greater than the estimate. Nor does Wyle point to any specific changes that it could or would have made if it had known that the estimate was wrong that would have increased its technical score sufficiently to overcome Unisys's considerable technical advantage. In this regard, since any changes to Wyle's proposal would also increase its costs closer to Unisys's, Wyle would have a substantial burden to meet to become competitive with Unisys. Finally, with regard to Unisys's alleged competitive advantage, there is no indication that Unisys knew that the estimate was not based on the Navy's best review of its requirements, nor that the Navy improperly based Unisys's technical score on factors not set out in the RFP.

The protest is denied.

James F. Hinchman
General Counsel