



Comptroller General  
of the United States

Washington, D.C. 20548

*Vau Schail*

## Decision

**Matter of:** Landis & Gyr Powers, Inc.

**File:** B-270310

**Date:** November 28, 1995

### DECISION

Landis & Gyr Powers, Inc. protests the award of a contract to Johnson Controls, Inc. under request for proposals (RFP) No. DACA87-95-D-0045, issued by the Department of the Army for utility monitoring and control systems.

We dismiss the protest because Landis is not an interested party to challenge the award to Johnson Controls.

Offerors were to insert unit and extended prices for individual line items in section B of the RFP, although section B specified that prices should not be included for some line items (in the base year, line items 0015 through 0026). Rather, for these line items, which concerned services and equipment specific to individual delivery orders, such as miscellaneous installation materials, equipment rental, travel, shipping charges, testing and installation, prices are to be negotiated on individual delivery orders issued under the contract. In addition to the prices in section B, the RFP required offerors to prepare technical, management and price proposals for delivery order 1, based on the scope of work for that delivery order in the RFP. Delivery order 1 was to be based on the specifications and drawings in the solicitation, and was to include unit prices provided by the offeror for the base year in section B, and prices for unpriced lines items 0015 through 0026 where necessary to provide a complete price for that delivery order.

The RFP indicated that award would be made to the responsible offeror whose acceptable offer was most advantageous to the government, based on quality and other factors specified in the RFP. The RFP established that the agency would evaluate proposals on the basis of technical, management and price factors. For the technical and management factors, the RFP specified that each proposal was to be assigned ratings of exceptional, good, acceptable, marginal, or unacceptable. The RFP also specified that "[f]or evaluation purposes, the offered price will be the cumulative total of all equipment and installation prices in Section B for the base year and four option years." Thus, the price evaluation and the selection decision were not to include consideration of offerors' prices for delivery order 1.

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Four proposals were submitted and evaluated. The proposals were priced and rated as follows:

	Technical	Management	Price
Johnson	exceptional	good	\$1,762,193
HSQ Tech.	marginal	acceptable	\$1,930,146
Williams	acceptable	acceptable	\$2,275,717
Landis	marginal	marginal	\$3,007,708

Johnson Controls was selected for award based on its lowest priced and highest technically rated offer.

Landis protests that Johnson submitted, and the agency accepted, an unbalanced, and therefore unacceptable offer. Landis notes that, while Johnson's evaluated price was \$1,762,193 and its own evaluated price was \$3,007,708, line items 0015 through 0026 were not priced, even though these line items concern deliverables under the contract. Landis alleges that Johnson "low balled" its prices for line items 0001 through 0015, which were priced for evaluation purposes, and has, or will "jack up" the prices on line items 0015 through 0026. Landis states that the basis for this allegation is the prices submitted by Johnson, compared to its own prices, for delivery order 1, which Johnson priced at \$1,126,704, and Landis priced at \$582,780. According to Landis, "on what the [a]gency will actually pay for items ordered (as opposed to what it evaluated) Landis' proposal is clearly more advantageous to the [g]overnment. This is the nature of unbalanced bidding." Landis argues that Johnson Controls's proposal should be rejected.

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 bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Section 21.0(a), 60 Fed. Reg. 40,737, 40,739 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.0(a)). A protester is not an interested party if it would not be next in line for award if its protest were sustained. Systems Dynamics, Inc., B-245666.2, Mar. 11, 1992, 92-1 CPD ¶ 276.

Here, given Landis's technical and price ranking, and the issue it raises in its protest, the two other offerors, HSQ and Williams, have a greater stake in the outcome of the procurement than does Landis. The proposals of both of those offerors have higher technical/management ratings than Landis's proposal and both are lower priced. As a result, even if, as Landis argues, Johnson Controls's proposal

was considered unacceptable and was rejected, the two other proposals would be in line for award before Landis. Since nothing in Landis's protest would alter either the ratings or the prices of the other two offerors, or of Landis, Landis would not be in line for award even if its protest allegations were sustained. Accordingly, Landis lacks the direct economic interest to be an interested party to protest.<sup>1</sup> U.S. Defense Sys., Inc., B-248928, Sept. 30, 1992, 92-2 CPD ¶ 219.

The protest is dismissed.

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<sup>1</sup>To the extent that Landis argues that prices for delivery order 1 should have been considered in the evaluation and selection, this allegation is untimely. Our Bid Protest Regulations provide that protests based upon alleged improprieties which are apparent prior to the time set for receipt of initial proposals must be filed prior to that closing time. Section 21.2(a)(1), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(1)). Here, the RFP specified that "[f]or evaluation purposes, the offered price will be the cumulative total of all equipment and installation prices in Section B for the base year and 4 option years." If Landis believes that the evaluation should have considered the prices for deliver order 1, it was required to protest this issue prior to the closing date.