

Spring 1986  
PLI

**DECISION**



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

**FILE:**

B-222152

**DATE:** June 19, 1986

**MATTER OF:**

Hughes Aircraft Company

**DIGEST:**

1. Where RFP solicits two alternative technical approaches, an amendment to the RFP, issued after proposal submission and evaluation that eliminates one of the alternatives from selection consideration, is proper since offerors had the opportunity and did in fact submit offers on both approaches.
2. Offeror is an interested party to protest an amendment to an RFP which eliminates one of two alternative approaches, even though protester would not be successful offeror for remaining alternative, since if the protest is sustained the protester would either have the opportunity to compete under a resolicitation or be considered for award under the unamended RFP.

Hughes Aircraft Company (Hughes) protests certain actions of the National Aeronautics and Space Administration (NASA) with respect to a request for proposals (RFP) for the Mars Observer spacecraft and propulsion system, issued by the Jet Propulsion Laboratory (JPL), California Institute of Technology, a prime contractor of NASA responsible for assigned projects at the laboratory. We deny the protest.

The Mars Observer is designed for an overflight of Mars. Launch is scheduled in 1990 and the flight will last 3 years. The Mars Observer flight system has two main elements: (1) the spacecraft bus containing the scientific instruments and (2) an upper stage for providing the necessary trans-Mars trajectory injection/propulsion capability. Under the RFP, there were two alternative configurations to the Mars Observer flight system on which proposals were submitted. One configuration was a separate spacecraft and a separate upper stage to be procured from two sources. The

035772

other configuration was a single integral flight system in which the spacecraft has an integral upper stage for propulsion.

To accomplish these configurations, the RFP was divided into three work packages: (1) spacecraft only (work package No. 1); (2) upper stage only (work package No. 2); and (3) integral flight system (work package No. 3). The RFP invited offerors to submit stand-alone proposals for any one or all of these work packages. However, any offeror submitting a proposal for work package No. 3 was also required to submit a proposal for work package No. 1.

The RFP was issued on June 12 and proposals were submitted on August 29, 1985. Hughes, RCA Corporation (RCA) and Ford Aerospace Corporation (Ford) submitted technical and cost proposals for work packages Nos. 1 and 3. Orbital Sciences Corp. (OSC) submitted the only proposal for work package No. 2. The proposals were evaluated, discussions conducted and best and final offers submitted by December 27, 1985. After JPL evaluated the best and final proposals and prepared a source evaluation board report, JPL issued an amendment to the RFP on February 20, 1986, which limited source selection to work packages Nos. 1 and 2 and excluded work package No. 3 from selection consideration. The amendment was issued pursuant to NASA's advice and direction and allowed new best and final offers to be submitted by February 27, 1986. The record indicates that NASA's expressed preference for a separable upper stage (work package No. 1) instead of an integral flight system (work package No. 3) was based upon its belief that a separable upper stage provides more options and flexibility for its current and future launch requirements.

By letter received February 27, 1986, Hughes protested that this amendment required JPL to make a source selection on grounds inconsistent and incompatible with the original RFP and other assurances given by NASA and JPL to potential offerors that work package No. 3 would be given equal consideration to an award based on work packages Nos. 1 and 2. Hughes alleges that but for the amendment, work package No. 3 would have been selected. Hughes maintains that the change made by the amendment was so substantial that the RFP was required to be canceled and proposals resolicited. Hughes requests three alternative forms of relief: (1) selection under the RFP as it existed before the protested amendment; (2) cancellation of the RFP and resolicitation; and (3) award of Hughes' proposal preparation costs of

approximately \$3.7 million and its costs of pursuing the protest.

On March 24, JPL announced that RCA was the successful spacecraft proposer for either work package No. 1 or for work package No. 3, if, for some reason, award could not be made for work packages Nos. 1 and 2. OSC was the successful proposer on work package No. 2.

These selections were based upon the evaluation results set out in JPL's Source Evaluation Board's final report dated January 30, 1986, several weeks prior to the NASA-inspired amendment excluding work package No. 3. RCA's technical scores on both work packages Nos. 1 and 3 were rated higher than Hughes' technical scores. Ford also received slightly higher technical scores than Hughes on these work packages. In addition, Hughes' prices for both these work packages were higher than RCA's or Ford's.

The RFP provided for an evaluation matrix to compare the alternative approaches. As Hughes states, award to RCA of work package No. 3 would have been required under the original RFP. Since Hughes was not the apparent successful proposer for work package No. 3 based on the evaluation results, NASA contends that Hughes is not prejudiced by NASA's February 20 amendment, and is not an interested party under our Bid Protest Regulations.

We disagree with NASA. We have held that a protester is not an interested party to protest an award where the protester would not be in line for the award even if its protest were upheld. C.A. Parshall Inc, B-220650, B-220555.2, Jan. 14, 1986, 86-1 C.P.D. ¶ 38. In that case, a protester was objecting to awards under solicitations where the protester's offers were not in line for any award, even if its protests were sustained. Here, Hughes is challenging the issuance of an amendment to an RFP. If Hughes' protest were sustained, the contracting agency would then have to decide whether to conduct a new competition or to cancel the disputed amendment and make an award under the RFP. In the event of a resolicitation, Hughes would have the opportunity to compete again. If the agency chose instead to award a contract under the RFP without the amendment, the question of whether Hughes or another offeror would be in line for award would then be at issue. Thus, we conclude that Hughes is an interested party to challenge the propriety of the amendment.

Hughes protests that the issuance of the February 20 amendment was such a substantial change that resolicitation of the RFP was required. It cites FAR 15.606(b)(4), which provides:

"If a change is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition. The new solicitation shall be issued to all firms originally solicited and to any firms added to the original list."

According to Hughes, it spent most of its proposal efforts on work package No. 3, in the expectation that both work packages would be given equal consideration for the award and because it believes No. 3 is the better approach. If, however, NASA wishes to exclude award on work package No. 3, Hughes argues that a resolicitation of proposals is required under the quoted regulation.

In its report on the protests, NASA has advanced a number of reasons as to why it prefers the separable upper stage approach, and Hughes has not responded to this aspect of NASA's report. NASA explains that its decision to amend the RFP to exclude award for work package No. 3 was dictated by technical reasons, including flexibility in its current and future launch requirements. It suggests that since RCA was the apparent successful offeror under work package No. 3, the determination to eliminate that approach from award consideration was not motivated by any desire to exclude Hughes from the competition.

In our view, the February 20 amendment did not require resolicitation. While the original RFP provided that both work packages would be evaluated for possible award, the RFP also required a proposer for work package No. 3 to submit a proposal for work package No. 1 as well. Thus, Hughes had the opportunity to and did submit a proposal for work package No. 1. Hughes' election to concentrate its efforts on work package No. 3 rather than work package No. 1 was an exercise of its own business judgment and proposal preparation strategy. See Aerial Image Corporation, Comp Corps, B-219174, Sept. 23, 1985, 85-2 C.P.D. ¶ 319; Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 C.P.D. ¶ 607. Hughes has not explained how its proposal on work package No. 1 would have been different or better if work package No. 3 had not been solicited.

Hughes speculates that additional sources may propose on a spacecraft only procurement. However, this speculation seems unsupported and there is no indication that the spacecraft only proposals would be significantly changed if the integral flight system were not part of the procurement. Therefore, Hughes' protest that the amendment was of such significance as to compel resolicitation of spaceship only proposals is denied.

Since Hughes' protest is denied, Hughes' claims for proposal preparation costs and the costs of pursuing the protest are denied.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel