



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wyle Laboratories
File: B-239671.4
Date: October 10, 1990

John S. Pachter, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for the protester.
William A. Wotherspoon, Esq., for Unisys Corporation, an interested party.
David D. Bach, Esq., and Stephen J. Wenderoth, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester whose proposal was properly eliminated from the competitive range is not an interested party to challenge whether the proposed awardee's proposal may be accepted where other acceptable proposal would be in line for award if the protest were sustained.

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 dismiss the protest.

The RFP was issued on May 23, 1989, and, as amended, required that initial proposals be submitted by October 16. The RFP contemplated the award of a cost-plus-incentive-fee contract for the test, fabrication, and development of one Advanced Development Model (ADM) and two Engineering Development Models (EDM) for the SDV program.

The current solicitation is part of an 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

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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.

Three offerors, Unisys, Wyle, and Honeywell Incorporated, 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 was found to be technically unacceptable and was excluded from 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.

Wyle initially protested to our Office on May 19, alleging that: (1) the Navy failed to follow the stated evaluation criteria; (2) the Navy did not hold meaningful discussions with the firm; (3) the Navy improperly found the firm technically unacceptable and eliminated it from the competitive range; and (4) Unisys had a competitive advantage.

On September 19, we denied Wyle's initial protest, finding, among other things, that Wyle properly was found technically unacceptable and excluded from the competitive range. Wyle Laboratories, B-239671, Sept. 19, 1990, 90-2 CPD ¶ ____.

On July 9, while the first protest was pending, Wyle submitted the present protest to our Office where it alleges that Unisys was improperly awarded the contract because Unisys has an organizational conflict of interest due to the work it performed during its prior involvement with the SDV program. Specifically, Wyle asserts that Unisys prepared statements of work, specifications and other reports that formed the basis for the EX-10 specifications.

A party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. Bid Protest Regulations, 4 C.F.R. §§ 21.0(a), 21.1(a) (1990). Here, given our prior finding that Wyle was properly excluded from the competitive range, if we were to sustain Wyle's protest challenging Unisys' participation in the procurement, Honeywell, the other offeror in the competitive range, would

be in line for award. Since Wyle thus would not be in line for award even if we sustained its protest, Wyle is not an interested party to maintain the protest. PB Inc., B-239010, July 23, 1990, 90-2 CPD ¶ ____.

The protest is dismissed.

James A. Spangenberg
for Robert M. Strong
Associate General Counsel