



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Airport Systems International, Inc.

**File:** B-252007

**Date:** March 19, 1993

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McKenna & Cuneo, for the protester.  
Carl J. Peckinpaugh, Esq., Akin, Gump, Strauss, Hauer &  
Feld, L.L.P., for Wilcox Electric, Inc., and Donald B.  
Jackson for NavAids, Inc., interested parties.  
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for the agency.

### DIGEST

Protester which does not protest its proposal's exclusion from the competitive range is not an interested party to challenge whether the awardee's proposal should have been accepted where other acceptable proposal would be in line for award if the protest were sustained on that issue.

### DECISION

Airport Systems International, Inc. (ASI) protests the award of a contract to Wilcox Electric, Inc. under request for proposals (RFP) No. DTFA01-91-R-06388R, issued by the Federal Aviation Administration (FAA) for portable instrument landing systems signal analyzers (PISA).<sup>1</sup>

We dismiss the protest.

The RFP was issued on February 3, 1992, (a previous solicitation for the PISA was canceled) and, as amended, required that initial proposals be submitted by March 17, 1992. The RFP contemplated the award of a fixed-price contract and required each offeror to meet all of the PISA salient characteristics/mandatory requirements contained in the RFP. The RFP stated that award would be made based on the "best value to the government."

<sup>1</sup>The PISA is a safety device which allows aircraft approaching airports to measure the distance to the runway and to estimate the angle of approach.

Three offerors, ASI, Wilcox, and NavAids, Inc., responded to the RFP. The technical evaluation team reviewed the initial offers and, while finding that none of the offerors complied with all PISA salient characteristics, included all three in the competitive range. Subsequently, each offeror was given discussion questions and asked to respond with a best and final offer (BAFO). After the BAFOs were evaluated, ASI was found to be technically unacceptable and was excluded from the competitive range on December 16, 1992.<sup>2</sup> The agency reviewed the BAFOs of the two remaining offerors and determined that Wilcox's proposal represented the best value for the government based on technical and price considerations. Award was made to Wilcox on January 5, 1993.

ASI initially protested the award to our Office on January 14. In its protest, ASI did not specifically challenge its own exclusion from the competitive range. Rather, ASI's entire basis of protest was as follows:

"If . . . certain critical requirements (including all salient characteristics) had to be met, protester believes and asserts that the awardee's proposed system did not meet all of the critical requirements (including the salient characteristics) and that the FAA, by awarding the contract to Wilcox, unevenly and arbitrarily applied the evaluation criteria to reach a result to the protester's prejudice and to the prejudice of the competitive bidding statutes. Protester also asserts that the award to Wilcox does not . . . result in the 'best value' to the government [considering the protester's significantly lower price]."

In subsequent filings, ASI states that it "has not protested its purported exclusion from the competitive range," but that its protest is based on the "set of facts" flowing from award to Wilcox. ASI explains that the "gravamen" of its protest is that the agency failed to apply the evaluation criteria evenly and that the agency essentially relaxed its solicitation requirements to award the PISA contract to Wilcox. However, despite its subsequent explanations, ASI,

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<sup>2</sup>The agency, in its December 16, 1992, letter, advised the protester that its BAFO did "not meet the minimum needs of the government [and would] no longer be considered for award." The letter also offered the protester an opportunity for a debriefing after award but failed to include the specific reasons for the exclusion of the proposal.

in its initial protest, failed to identify any unevenly applied evaluation criteria and failed to identify or specify any alleged relaxation of requirements by the agency in awarding the contract to Wilcox.

During the course of the protest, a protective order was issued. The agency then filed its agency report. ASI was furnished with copies of Wilcox's proposal, all evaluation documents, including the raw evaluation worksheets of the individual evaluators, all relevant discussion questions, and an extensive narrative explaining in detail the agency's procedures and actions in identifying discussion questions and in selecting Wilcox for award. The agency stated in its report that, contrary to the protester's assertions, it did evenly apply the evaluation criteria to all three proposals and further stated that "the [g]overnment is at a loss in addressing [the protester's] allegation that Wilcox failed to meet all of the critical requirements [because the protester] has failed to identify with any specificity the basis for such allegation."

In its comments on the agency report, timely filed within 10 working days of its receipt of the report, the protester characterized its initial protest as follows:

"ASI alleged in its protest that: (1) the agency violated the stated evaluation criteria by making award to Wilcox, whose proposed system as tested did not meet the salient characteristics; and (2) award to Wilcox did not result in the best value to the government [because of ASI's significantly lower price]."

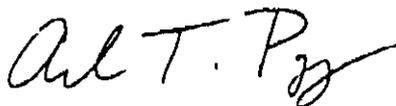
In its comments, ASI for the first time also raised new "supplemental protest grounds." Specifically, ASI contends that the agency improperly allowed Wilcox to implement major design changes to its system (consisting of certain software upgrades) while prohibiting ASI from doing the same. ASI also alleges for the first time that the agency failed to conduct meaningful discussions because it misled ASI by advising it that its proposal would be eligible for award even if it did not meet the salient characteristics. We have treated these supplemental protest grounds in ASI's comments as new protests, and we have requested the agency to respond in a separate report. Our decision here concerns only the initial protest filed by ASI on January 14.

To the extent that the protester in its initial protest is contending, independent of the evaluation of its own proposal, that Wilcox's proposed system did not meet the mandatory requirements of the solicitation and that therefore Wilcox should not have received the award or that the selection decision was otherwise flawed, it is not an

interested party to advance these arguments. 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) and 21.1(a) (1992). Here, given ASI's exclusion from the competitive range as technically unacceptable, if we were to sustain ASI's protest challenging Wilcox's selection, NavAids, the other offeror in the competitive range, would be in line for award. Since ASI thus would not be in line for award even if we sustained its protest, ASI is not an interested party to maintain the protest against the award to Wilcox independent of a challenge to the evaluation of its own proposal. See PB Inc., B-239010, July 24, 1990, 90-2 CPD ¶ 69.

As stated above, ASI, for the first time in its comments, does specifically allege that the agency permitted Wilcox to implement major design changes while prohibiting ASI from doing the same and that the agency failed to conduct meaningful discussions with the firm. In our view, these allegations challenge the propriety of the agency's evaluation of the protester's own proposal, and to the extent that they are timely raised, are based on the direct economic interest of the protester. However, as stated, these allegations were raised in the protester's comments and were not specifically or fairly raised in the protester's initial protest. See 4 C.F.R. § 21.1(c)(4). Since ASI's initial protest simply referred summarily to an allegedly uneven evaluation without any specificity, we think the protest grounds relating to alleged relaxation and uneven evaluation were perfected by ASI only in its comments after it had the opportunity to review the agency report.

Accordingly, we dismiss the initial protest.



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