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Decision

Matter of: General Dynamics C4 Systems, Inc.

File: B-407069; B-407069.2

Date: November 1, 2012

Gregory H. Petkoff, Esq., Larkin Reynolds, Esq., Edwin O. Childs, Esq., Heather Renwick, Esq., Leslie Harrelson, Esq., and Carla J. Weiss, Esq., Wilmer Cutler Pickering Hale and Dorr LLP, for the protester.

Jacob W. Scott, Esq., Kelly E. Buroker, Esq., and Kevin P. Connelly, Esq., Vedder Price P.C., for Serco, Inc., the intervenor.

Capt. Scott J. Hoffman and Marian Ciborski, Esq., Department of the Navy, Space and Naval Warfare Systems Command, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting officer's determination that there was no organizational conflict of interest that would preclude an award to the awardee was reasonable where the contracting officer reasonably investigated to see if an award would present an organizational conflict of interest and reasonably determined that it would not.

2. Agency conducted meaningful discussions with the protester and was not required to advise the protester during discussions of proposal weaknesses that were reasonably considered by the agency not to be significant.

DECISION

General Dynamics C4 Systems, Inc. of Taunton, Massachusetts, protests the award of a contract to Serco, Inc., of Reston, Virginia, under request for proposals (RFP) No. N00039-11-R-0055, issued by the Department of the Navy, Space and Naval Warfare Systems Command (SPAWAR), for the production of automated digital network system (ADNS) Increment (INC) III, to be used ashore and on certain Navy ships.¹ The protester argues that the Navy failed to meaningfully review whether

¹ The agency explains that the "ADNS is an incremental acquisition program wherein new capabilities are added in follow-on increments." Agency Report (AR) (continued...)

Serco may have an unequal access to information organizational conflict of interest (OCI), and that the agency failed to conduct meaningful discussions with General Dynamics.

We deny the protest.

BACKGROUND

The RFP provided for the award of a fixed-price contract, with certain cost-plus-fixed-fee items, for a base period of 1 year with four 1-year option periods, for the production, testing, and delivery of ADNS INC III and associated hardware. RFP at 141-42, 148, 189; Statement of Work at 6; AR at 6-7. As explained by the agency, the “ADNS is made up of commercial network components, such as routers and cables, set into metal shelves for reinforcement, which are cut and bent from sheet metal to specifications” included in the RFP. Agency Supp. Report at 11 n.7. The solicitation includes, by way of technical data packages (TDP), “step-by-step instructions” for the production of the ADNS INC III, and provides “all the information that the contractor needs to make or buy the components that are then assembled into the end item,” that is, the ADNS INC III.² Id.; see AR, Tab 53, Decl. of Former NIEF Project Manager/ADNS System Engineer, at 3. As such, the production effort here “is [the] equivalent of assembly.” Agency Supp. Report at 11 n.7; see AR, Tab 53, Decl. of Former NIEF Project Manager/ADNS System Engineer, at 3.

The solicitation stated that award would be made to the offeror submitting the proposal determined to represent the best value to the government, with cost/price being less important than the combined weight of the following non-cost/price evaluation factors that are listed in descending order of importance: (1) technical approach; (2) corporate experience; (3) past performance; (4) small business utilization and commitment; and (5) brand name or equal.³ RFP at 247.

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at 4. The agency states that the ADNS INC I and the ADNC INC II systems were developed and produced by SPAWAR’s Engineering Facility (NIEF), are currently operational, “and consist primarily of Government-off-the-Shelf (GOTS) configurations and software overlaid on Commercial-off-the-Shelf (COTS) hardware.” Id. The ADNS INC III will replace the ADNS INC I and ADNS INC II. Id.

² The agency explains that a “TDP contains all the system information to allow a contractor to build a production unit without any redesign or reconfiguration, including detailed product drawings and diagrams and a complete component parts list.” AR at 5 n.1.

³ The TDPs included in the solicitation listed the “brand name components” to be used in the production of the ADNS INC III, and specified that the “brand name or equal” section of the proposal preparation instructions and evaluation factor were

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The agency received proposals from three offerors, including General Dynamics and Serco. AR, Tab 22, Source Selection Advisory Council (SSAC) Report, at 6. The agency conducted discussions with the three offerors, and the RFP was subsequently updated with new TDPs. Id. at 5. Final revised proposals were requested, received, and evaluated as follows: ⁴

	Serco	General Dynamics
Technical Approach	Outstanding	Satisfactory
Corporate Experience	Outstanding	Good
Past Performance	Good	Outstanding
Small Business Utilization and Commitment	Good	Good
Brand Name or Equal	Not Applicable	Not Applicable
Evaluated Cost/Price	\$36,483,412	\$33,187,744

AR, Tab 22, SSAC Report at 6, 16.

The agency determined that Serco's proposal represented the best value to the government, and awarded a contract to that firm. After requesting and receiving a debriefing, General Dynamics filed this protest.

DISCUSSION

Unequal Access to Information OCI

The protester argues that the Navy failed to meaningfully review whether Serco has an unequal access to information OCI. The protester asserts that Serco's OCI arises out of Serco's current employment, as a production engineer, of a former Science Applications International Corporation (SAIC) employee. The protester asserts that this former SAIC employee/current Serco production engineer had supported NIEF while employed at SAIC, and had been exposed during the course of that support work to certain information proprietary to General Dynamics—including two site visits to General Dynamics—that provided Serco with an unfair advantage in this competition.

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"not applicable" if "the Offeror propose[d] to produce and deliver ADNS using other than the brand name components listed in the ADNS TDP." RFP at 201, 253.

⁴ The solicitation informed offerors that proposals would be rated under the technical approach, corporate experience, past performance, and small business utilization and commitment factors, as "outstanding," "good," "satisfactory," "marginal," or "unsatisfactory." RFP at 251. The RFP provided here that proposals could also be rated as "neutral" under the past performance and small business utilization and commitment factors, and would receive ratings of "pass," "fail," or "not applicable" under the brand name or equal factor. Id. at 251-53.

The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. See TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17. A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. TeleCommunication Sys. Inc., supra, at 3; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). The identification of conflicts of interest are fact-specific inquiries that require the exercise of considerable discretion. Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009). Here, we have no basis to object to the adequacy of the agency's inquiry into whether Serco has an OCI, or the reasonableness of the agency's conclusion that no unequal access to information OCI existed.

According to the record, the Navy acquired the ADNS INC III "system design, development and demonstration efforts" from General Dynamics, through a task order that was competitively issued in August 2006 under the Department of the Air Force's Network-Centric Solutions contract vehicle. AR at 4-5. In August 2007, another task order was issued to General Dynamics, on a sole-source basis, for the initial baseline production refinement of two variants (surface afloat and surface ashore) of ADNS INC III, followed by the issuance in November 2008 of another task order to General Dynamics for the low rate initial production (LRIP) of those ADNS INC III variants. Id. at 5. The record also reflects that in July 2009, the agency issued another task order on a sole-source basis to General Dynamics for "the system design" of "two submarine variants" of ADNS INC III. Id. at 5.

The agency notes that General Dynamics' performance of the LRIP task order resulted in the delivery of initial ADNS INC III TDPs, updates to the TDPs, final drawings, and the delivery of "fully integrated end-items for installation." Id. According to the Navy, SPAWAR's NIEF "provided technical oversight to ensure the quality of contractor deliverables, and also conducted system performance verification, oversaw change management, performed acceptance and system integration testing, pre-installation testing and check-out and final (ship-specific)

software configuration.” Id. The agency further reports that subsequent “to [General Dynamics] delivery of the LRIP TDP in October 2009, while [General Dynamics] was producing and delivering the nine afloat surface and four surface shore systems,” the agency made “two sets of significant changes to the initial hardware design for afloat surface and shore systems.” Id. These later changes were made by SPAWAR’s NIEF without the involvement of General Dynamics. Id. at 6.

In evaluating Serco’s proposal submitted in response to the RFP here, members of the cognizant source selection evaluation board (SSEB) found that Serco’s proposal cited the former SAIC employee/current Serco production engineer “as significant to [Serco’s] ability to meet ADNS requirements.” AR, Tab 26, Memorandum of Evaluation of Potential OCI, at 1. The record reflects that “[b]ecause SSEB members had knowledge that as an SAIC employee [the former SAIC employee/current Serco production engineer] recently had supported the Government, specifically [SPAWAR’s NIEF], the SSEB was concerned that his current employment at Serco, and possible involvement in Serco’s proposal, might create or [had] created a personal and/or organizational conflict of interest.” Id. Specifically, the record reflects that the former SAIC employee/current Serco production engineer had been employed by SAIC from 2007 to August 2010, and during that time, had supported SPAWAR’s NIEF as a “production engineer.”⁵ Id.

In order to determine whether Serco’s employment of the former SAIC employee/current Serco production engineer, and use of that individual in the drafting of its proposal in response to the RFP, created a significant conflict of interest, the record reflects that the contracting officer first advised the SSEB members “that more information was needed detailing [the former SAIC employee/current Serco production engineer’s] role in the NIEF over the past two years, specifically, a description of any tasking related to ADNS and overall involvement with the ADNS program.” AR, Tab 26, Memorandum of Evaluation of Potential OCI, at 1. The contracting officer requested that this information be accompanied by “a timeline of his support efforts.” Id. This timeline and a description of the former SAIC employee/current Serco production engineer’s ADNS-related work was provided by a SSEB member to the contracting officer for his review. Id.

The record reflects that the contracting officer also met with certain members of the SSEB, who the contracting officer determined had “actual, relevant, and personal

⁵ The record further reflects that although the former SAIC employee/current Serco production engineer remained employed by SAIC from August 2010 to February 2011, he was reassigned by SAIC to support another entity. AR, Tab 26, Memorandum of Evaluation of Potential OCI, at 1.

knowledge of [the former SAIC employee/current Serco production engineer's] responsibilities" while that individual was employed by SAIC, and were "most likely to provide accurate, expert advice." Agency Supp. Report at 7.

Specifically, the contracting officer met with the current ADNS Production Assistant Program Manager, who had served as the ADNS In-Service Engineering Agent Manager and the Contracting Officer's Technical Representative for the task order performed by General Dynamics for the "submarine design and development." Id. The agency reports that as a result, this individual "had first-hand knowledge relevant to the OCI evaluation," including his attendance at the same visits to General Dynamics' site as the former SAIC employee/current Serco production engineer, the requirements of the task orders issued to General Dynamics regarding the ADNS, and the current ADNS INC III RFP and TDPs. Id. at 8.

The contracting officer also spoke with the current NIEF Project Manager, who had served as the NIEF Deputy Project Manager and was the NIEF ADNS Project Lead. Id.; AR, Tab 52, Decl. of Former NIEF Deputy Project Manager/NIEF ADNS Project Lead, at 1. The record reflects that this individual was the Technical Authority "for individual NIEF task orders issued to SAIC," and as such "was responsible for [the former SAIC employee/current Serco production engineer's] specific tasking in support of the NIEF" during the former SAIC employee/current Serco production engineer's employment with SAIC. Agency Supp. Report at 8; AR, Tab 52, Decl. of Former NIEF Deputy Project Manager /NIEF ADNS Project Lead, at 1. The former NIEF Deputy Project Manager/NIEF ADNS Project Lead had "daily contact" with the former SAIC employee/current Serco production engineer, and had held a weekly "NIEF ADNS status meeting" during which each person, including the former SAIC employee/current Serco production engineer, "briefed their specific tasking with respect to cost, schedule, performance and risk." Agency Supp. Report at 8.

In conducting his review, the contracting officer also met with the current National Competency Lead for SPAWAR's Systems Center Pacific, who had served as the NIEF Project Manager and NIEF ADNS Systems Engineer. Agency Supp. Report at 8; AR, Tab 53, Decl. of Former NIEF Project Manager/NIEF ADNS Systems Engineer. The agency represents that this individual was also responsible for the former SAIC employee/current Serco production engineer's "specific tasking in support of the NIEF," had "daily contact" with former SAIC employee/current Serco production engineer, and had attended a site visit to General Dynamics' facility with the former SAIC employee/current Serco production engineer. Agency Supp. Report at 8-9; AR, Tab 53, Decl. of Former NIEF Project Manager/NIEF ADNS Systems Engineer, at 1, 3-4. The agency further reports here that the former SAIC employee/current Serco production engineer's "activities with respect [to General Dynamics'] ADNS INC III TDP development and change process under the [initial baseline production refinement] and LRIP task orders were provided in direct support of" the former NIEF Project Manager/NIEF ADNS Systems Engineer. Agency Supp. Report at 8-9.

With regard to the work being performed by General Dynamics, the contracting officer determined from his discussions with the government employees noted above--and from the written information received regarding the work of the agency, General Dynamics, and the former SAIC employee/current Serco production engineer--that from 2007 to late 2009, ADNS INC III was "in the end of its design phase." AR, Tab 26, Memorandum of Evaluation of Potential OCI, at 2. The contracting officer found, as mentioned previously, that during this time General Dynamics performed a task order relating to the ADNS INC III engineering development model, and a subsequent task order for the LRIP of the ADNS INC III.

With regard to this 2007 to late 2009 time period, the contracting officer found that during the engineering development model phase of the ADNS INC III program, the former SAIC employee/current Serco production engineer had been the "principal point of contact" between the General Dynamics "design team and the NIEF engineering team." Id. at 1-2. In this capacity, the former SAIC employee/current Serco production engineer had attended engineering meetings and General Dynamics site visits, "assisted the Government in the review of technical documentation created by [General Dynamics] in support of their LRIP design," and had "led the efforts by the NIEF" to review the TDP delivered by General Dynamics for a certain aspect of the ADNS INC III. Id. at 2. The contracting officer further found that the former SAIC employee/current Serco production engineer had "supported efforts by the Government to conduct Physical Configuration Audits of the LRIP system and review proposed design changes in the form of Engineering Change Proposals" submitted by General Dynamics. Id.

The contracting officer further determined that from late 2009 until August 2010, the design phase of ADNS INC III had been completed and General Dynamics had begun the LRIP of ADNC INC III. Id. at 3. The contracting officer found that, during this time, NIEF "received all" ADNS INC III LRIP systems for pre-installation, checkout and environmental quality testing. Id. at 3-4. Here, the contracting officer found that the former SAIC employee/current Serco production engineer had "continued support as the NIEF ADNS production engineer." Id. at 3. In performing these duties, the former SAIC employee/current Serco production engineer "assisted NIEF" by helping to resolve certain ADNS INC III hardware issues, and had "worked with other SAIC personnel to coordinate and oversee environmental qualification testing" of certain aspects of the LRIP ADNS INC III. Id. at 4. The contracting officer also found that the former SAIC employee/current Serco production engineer had assisted with converting the TDPs provided by General Dynamics into SPAWAR's format, and had processed "various program engineering change requests." Id.

The record reflects that the contracting officer analyzed the information received regarding the former SAIC employee/current Serco production engineer, in order to determine whether that individual's participation in the preparation of Serco's

proposal here resulted in an OCI. In this regard, the contracting officer concluded that the former SAIC employee/current Serco production engineer had not had access to information proprietary to General Dynamics that provided Serco with a competitive advantage. The contracting officer explains that the information to which the former SAIC employee/current Serco production engineer was exposed was either information that was subsequently released to all offerors in the TDPs included with the RFP as attachments, or was information, such as engineering and production information, which the contracting officer determined was “too remote in both substance and time from the actual full rate production requirements to be of competitive advantage.” AR at 52; see AR, Tab 26, Memorandum of Evaluation of Potential OCI, at 2-3; Tab 27, Supp. Memorandum of Evaluation of Potential OCI, at 4-6.

Specifically, with regard to the TDPs, the contracting officer notes that much of General Dynamics’ effort under the task orders related to and resulted in the development of the TDPs included with the RFP here as attachments. AR, Tab 27, Supp. Memorandum of Evaluation of Potential OCI, at 4. The contracting officer explains that under the RFP here the TDPs are provided in final form, and the successful contractor “does not control the TDPs and is not responsible for updating them.” Id. at 4-5. The contracting officer thus concludes that any knowledge gained by the former SAIC employee/current Serco production engineer regarding either the agency’s or General Dynamics’ TDP process as the result of his NIEF support work while at SAIC “is irrelevant to the requirements” of this RFP. Id. at 5. The contracting officer further concludes that the former SAIC employee/current Serco production engineer’s “access to TDPs or the information contained in the TDPs would not provide a competitive advantage, as these documents were provided to the offerors in final form as attachments to the . . . RFP.” Id. at 4.

The contracting officer notes, with regard to the former SAIC employee/current Serco production engineer’s participation in visits to General Dynamics’ site as the result of his NIEF support work while at SAIC, that the first visit in October 2008 took place before General Dynamics had produced an LRIP ADNS INC III, and that the site visit related to “system engineering and integration testing, which have no relevance to the current contract requirements.” Id. at 5. The contracting officer also concludes based upon “the considerable government support in engineering and baseline refinement that was needed before [General Dynamics] could produce [a] compliant system,” that any production “processes discussed at that time” would be unlike the full production processes required by the RFP here. Id.

With regard to the second visit of the former SAIC employee/current Serco production engineer to General Dynamics’ site, the contracting officer notes that “the NIEF team” spent the majority of its time “providing troubleshooting information” to General Dynamics, and “helping them learn how to fix the various problems with the system design and production.” Id. The contracting officer concludes that the former SAIC employee/current Serco production engineer’s participation in this site

visit could not have provided a competitive advantage with regard to the RFP here. In this regard, the contracting officer explains that “[p]rocesses for troubleshooting and fixing design issues during testing were not evaluated” under the RFP here, and, given “the immaturity of the accessed information,” and fact that the site visit occurred in March 2009, any information obtained by the former SAIC employee/current Serco production engineer was “too remote in both substance and time from the actual full rate production requirements to be of any competitive advantage.” Id. at 6.

As indicated above, the record reflects that the agency performed a comprehensive OCI analysis, and gave meaningful consideration to whether an OCI exists. Although General Dynamics is correct that the agency did not contact the former SAIC employee/current Serco production engineer or any General Dynamics representatives in the performance of the OCI analysis, we cannot find, given the extent of the information considered by the agency in performing its analysis and the apparent first-hand and unbiased knowledge of the individuals contacted as reflected above, that the agency’s analysis was inadequate as argued by the protester. Additionally, the record demonstrates that the agency meaningfully considered all of the information gathered and circumstances attendant to the procurement here in reaching the conclusion that Serco’s employment of the former SAIC employee/current Serco production engineer, and his participation in the drafting of Serco’s proposal, did not create an OCI or provide Serco with an unfair competitive advantage. In this regard, and as explained above, the contracting officer determined that the information to which the former SAIC employee/current production engineer was exposed was either provided to offerors through the RFP’s TDPs, or was “too remote in both substance and time” to the full rate production requirement here to have resulted in a competitive advantage. AR at 2; See Raytheon Tech. Servs. Co., LLC, B-404655.4 et al., Oct. 11, 2011, 2011 CPD ¶ 236 at 6 (individual’s access to information that was “out-of-date and largely within the public domain” would not create an OCI). Although the protester clearly disagrees with the agency’s determination, and makes a number of arguments in support of its position, we cannot find, based upon our review of the record here, that the agency unreasonably concluded that an OCI did not exist.

Discussions

The protester also argues that the Navy failed to conduct meaningful discussions or that the discussions were misleading. Specifically, General Dynamics complains that the agency failed to notify it during discussions that it had identified three “minor

weaknesses” under the sample production task subfactor to the technical approach evaluation factor.⁶

The Federal Acquisition Regulation (FAR) requires agencies to conduct discussions with offerors in the competitive range concerning, “at a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR § 15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award. FAR § 15.306(d); TriCenturion, Inc.; Safeguard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 21. As our Office has consistently held, agencies are not required to afford offerors all-encompassing discussions or to discuss every aspect of a proposal that receives less than the maximum score, and are not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. Vizada, Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 11. In determining whether a concern identified by an agency was a weakness, significant weakness, or deficiency, our Office does not rely solely on the label or term used by the agency, but instead looks also to the context of the evaluation. TriCenturion, Inc.; Safeguard Servs., LLC, supra.

The record demonstrates that the agency raised a number of issues with General Dynamics during discussions regarding the sample production task subfactor under the technical approach factor. See AR, Tab 5, Discussions Letter to General Dynamics, at 1-6. The agency explains that it chose to raise during discussions those areas of the offerors’ proposals where the weaknesses identified “related to material aspects of the ADNS INC III requirements.” AR at 37. With regard to the evaluation of General Dynamics’ proposal under the sample production task subfactor, the record reflects that the agency advised General Dynamics of three “minor weakness[es].” AR, Tab 5, Discussions Letter to General Dynamics, at 1-6. Two of these three weaknesses concerned the first article testing element of the sample production task subfactor, and the third weakness concerned General Dynamics’ strategy for performing the full rate production of the ADNS INC III. AR at 37; AR, Tab 5, Discussions Letter to General Dynamics, at 1.

The record also shows that the agency did not raise during discussions a total of four minor weaknesses that it identified in General Dynamics’ proposal, and that three of them concerned General Dynamics’ proposal as evaluated under the

⁶ The technical approach factor was comprised of the following three subfactors, listed in descending order of importance: sample production task; production capability and processes; and facility capacity. RFP at 248.

sample production task subfactor under the technical approach factor. AR at 37; AR, Tab 5, Discussions Letter to General Dynamics, at 1. The agency explains that it chose not to raise these weaknesses because of its view that they “were not directly related to the RFP or [statement of work] that would have a substantive impact on the overall evaluation.” AR at 37. The agency maintains in this regard that even if General Dynamics had been afforded an opportunity to address the unidentified weaknesses in its approach as evaluated under the sample production task subfactor, the relative merits of General Dynamics’ proposal would not have changed.

Based on our review and given the agency’s explanation, we cannot find unreasonable the agency’s judgment that none of the evaluated weaknesses in General Dynamics’ proposal that the agency chose not identify during discussions can be reasonably be characterized as “significant.” The fact that they were referenced in source selection document does not in itself render them significant. See Vizada, Inc., supra. Given the relatively minor nature of the three evaluated weaknesses in General Dynamics’ proposal that were not identified during discussions, we cannot find the agency’s conduct of discussions here to be unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel