



**The Comptroller General
of the United States**

Washington, D.C. 20548

3/2/89

Decision

Matter of: Data Spectrum, Inc.

File: B-233460

Date: February 16, 1989

DIGEST

1. Contracting agency reasonably excluded protester's proposal from the competitive range where the solicitation stated that offerors' costs would be considered secondary in importance in relation to technical factors, and the protester's proposal was ranked sixth of six technically.
2. A party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. Once an offeror is properly found to be outside of the competitive range, it cannot be in line for award.

DECISION

Data Spectrum, Inc. (DSI), protests the exclusion of its proposal from the competitive range and the award of a contract to Coopers & Lybrand, under request for proposals (RFP) No. 88-1-1, issued by the Government National Mortgage Association (GNMA), United States Department of Housing and Urban Development, for accounting and administrative analysis and review of mortgage-backed securities issuers and pools. DSI alleges that its proposal was substantially similar to the awardee's proposal and that the procurement was improperly conducted.

We deny the protest in part and dismiss it in part.

The RFP was issued on March 10, 1988, and proposals were due by April 15, 1988. By amendment dated April 21, 1988, the agency extended the date for receipt of proposals to May 13. Section M of the RFP, Factors for Award, provided that proposals would be evaluated in accordance with the following criteria, listed in descending order of importance: technical understanding and approach, project organization, and corporate capability. The RFP provided further that offerors' costs would be considered secondary in importance in relation to the technical factors and that

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the government may award a contract to other than the lowest priced offeror, based on the best value to the government.

Six proposals were received and evaluated by a five member source evaluation board (SEB) appointed by the president of GNMA. The SEB found three of the proposals, including the protester's, to be technically unacceptable. DSI's proposal was rated lowest of the six proposals received. By letter dated June 24, 1988, the agency advised DSI that its proposal did not fall within the competitive range based on an evaluation of its proposal in accordance with the factors for award contained in the solicitation. The contract was awarded to Coopers & Lybrand on October 15. This protest followed.

In its comments to the agency report, DSI states that the agency's decision to exclude its proposal from the competitive range violated statutes governing federal acquisition of services. DSI, however, does not identify any statute or regulation, but merely asserts generally, without substantiation, that its proposal is substantially similar to the awardee's.

With respect to the protester's assertion that its allegedly similar proposal was improperly excluded, the record shows, as stated above, that DSI's proposal was ranked sixth of six in overall points, receiving substantially fewer points than the awardee. The record further shows that the SEB concluded that DSI's proposal was technically unacceptable because: (1) little understanding of the requirements of the RFP was demonstrated; (2) the proposed work plan was not justified; (3) the transition to the new contractor was not discussed in adequate detail; (4) the staffing plan was inadequate to the tasks required for all phases, including systems development; (5) the proposed staff did not appear to have adequate experience to perform satisfactorily; and (6) the proposal appeared to rely on the acquisition of incumbent contract staff but provided no reasonable basis for the SEB to conclude that such staff was available to DSI.

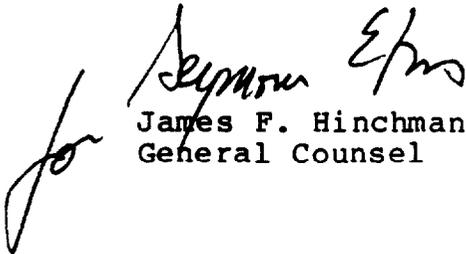
Except for general unsubstantiated allegations, the protester has presented no evidence to rebut the findings of the agency evaluators. In view of these findings, which the record shows were reasonable, DSI's proposal was not in fact determined to be substantially equal to the awardee's proposal as the protester alleges. See Hoffman Research Assocs., B-225357, Feb. 25, 1987, 87-1 CPD ¶ 217. Since DSI's proposal was unacceptable, its lower estimated cost did not require that it be included within the competitive

range. Id. We therefore find that DSI's proposal was properly determined to be outside the competitive range.

In its protest submissions, DSI points to a series of events which it considers improprieties in the evaluation process. First, it alleges that the extension of the deadline for receipt of initial proposals was improper. Second, DSI complains that the incumbent contractor did not participate in the procurement. Third, DSI states that GNMA contacted DSI informally by phone during the procurement and that GNMA failed to quickly to respond to DSI's inquiries concerning "matters related to affirmative action." We merely note that the record shows, and the protester does not allege otherwise, that none of these protest grounds affected the validity of the agency's decision to exclude the firm from the competitive range. Accordingly, we will not discuss these matters as they are not relevant.

Finally, the protester objects to the sufficiency of the awardee's minority subcontracting plan contained in its proposal. We do not think that DSI is an interested party under our regulations to protest the award to Coopers & Lybrand. See 4 C.F.R. §§ 21.0(a), 21.1(a) (1988). A party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. State Technical Institute at Memphis, B-229695; B-229695.2, Feb. 10, 1988, 67 Comp. Gen. _____ (1988), 88-1 CPD ¶ 135. Once an offeror is properly found to be outside of the competitive range, it cannot be in line for award. DeCamp-Brown & Assocs., B-231397, June 10, 1988, 88-1 CPD ¶ 559. Since DSI was properly found to be outside of the competitive range, it is not an interested party to challenge the award to Coopers & Lybrand. Id.

Accordingly, the protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel