

DOCUMENT RESUME

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[Protest against Granting of an Exclusive Right to Submit a Development Proposal]. B-187263. August 31, 1977. 3 pp.

Decision re: Associate Control, Research and Analysis, Inc.; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other General Government (806).

Organization Concerned: District of Columbia: Redevelopment Land Agency; Gerald D. Hines Interest.

Authority: D.C. Redevelopment Act of 1945, as amended; D.C. Code, sec. 5-701, 1974 Supp. Housing Act of 1949, title I, as amended (42 U.S.C. 1450 et seq.). Government Corporation Control Act, ch. 557, title I (59 Stat. 597, as amended; 31 U.S.C. 846 et seq.). (P.L. 90-19, sec. 5; 79 Stat. 669). D.C. Code, sec. 5-706(d).

The protester requested a review of the award by the Board of Directors of the District of Columbia Redevelopment Land Agency of an exclusive right to submit a development proposal for certain parcels of an urban renewal area. In view of the broad authority of the Secretary of Housing and Urban Development in conducting financial transactions pursuant to the Housing Act of 1949, no useful purpose would be served by reviewing the propriety of the proposed sale by a local public agency using funds provided pursuant to the Act. (Author/SC)

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DECISION



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

FILE: B-187263

DATE: August 31, 1977

MATTER OF: Associate Control, Research and Analysis, Inc.

DIGEST:

In view of broad authority of Secretary of HUD in conducting financial transactions pursuant to Housing Act of 1949 (42 U.S.C. 1450 et seq.) (1970), no useful purpose would be served by reviewing propriety of proposed sale by local public agency using funds provided pursuant to such Act.

Associate Control, Research and Analysis, Inc. (Control) has requested our review of the granting by the Board of Directors of the District of Columbia Redevelopment Land Agency (RLA) to Gerald D. Hines Interest (Hines) of an exclusive right to submit a development proposal for parcels 3 and 5 of the Downtown District of Columbia (D.C.) Urban Renewal Area. Control argues that the award is invalid because RLA failed to follow the D.C. Material Management Manual by not negotiating with all offerors and not including all the terms of the offering in the solicitation documents.

Briefly, RLA is a Government corporation created by the D.C. Redevelopment Act of 1945, as amended (D.C. Code Sec. 5-701, 1974 Supp.). RLA is also a local public agency under Title I of the Housing Act of 1949, as amended. (42 U.S.C. 1450 et seq.) (1970).

Under the Redevelopment Act, supra, the RLA, acting as a local public agency, acquires by sale or eminent domain proceedings designated parcels of land within the boundaries of an urban renewal area. The acquired land is subsequently sold or leased to redevelopers for development in accordance with the conditions of the urban renewal plan. See D.C. Code Sec. 5-706(d) (1973). The first step in this process, however, is the grant by RLA of the exclusive right to submit a development proposal.

In this case, RLA solicited interest from potential developers for the lease or sale of five parcels of land in the D.C. renewal area. The solicitation plan provided that all interested developers responding to the advertisement would be sent a copy of the offering prospectus. Interested developers, after reviewing the prospectus, could request a developer's kit for more detailed information and the necessary forms. Both Hines and Control received developer's

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kits. However, RLA received only one formal expression of interest, that of Hines. On March 3, 1976, after evaluating the submission, the RLA Board of Directors awarded Hines the exclusive right to submit a development proposal.

Control's complaint, which was filed by letter dated August 18, 1976, is based primarily upon a Memorandum of Understanding between Hines and the Mayor of D.C. executed on July 17, 1976. This Memorandum states, among other things, that the D.C. Government will undertake discussions to determine under what conditions it may lease office space in buildings constructed by Hines under the redevelopment plan, if Hines is selected as the developer. The Memorandum does not bind Hines to submit a final redevelopment proposal. Neither Hines nor the D.C. Government is required to enter into a lease agreement.

Control maintains that if the D.C. Government informed it that it was willing to make such a "financial commitment", Control could have offered an attractive development proposal to RLA. Since this agreement was made by the D.C. Government exclusively with Hines, after the closing date for submission of development proposals, Control argues that Hines received favored treatment.

It is reported by RLA that the funding for this project is made available to it by the Department of Housing and Urban Development (HUD) through a loan and grant agreement made pursuant to the Housing Act of 1949, as amended. This Act, which is designed for the purpose of eliminating slums and blight in urban areas, originally vested powers in the Administrator, Housing and Home Finance Agency. Such powers were transferred to and vested in the Secretary, HUD, by the Act of September 9, 1965, Public Law No. 90-19, Sec. 5, 79 Stat. 669. The Act provides "That such financial transactions of the Secretary as the making of advances of funds, loans, or grants and vouchers approved by the Secretary in connection with such financial transactions shall be final and conclusive upon all officers of the Government." 42 U.S.C. § 1456(a)(2) (1970).

The responsibility of this Office under the Act is limited to performing an audit in accordance with the principles and procedures applicable to commercial transactions, as provided by the Government Corporation Control Act, ch. 557, Title I, 59 Stat. 597, as amended, 31 U.S.C. § 846 et seq. (1970), which requires that a report of the

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audit finding will be presented to the Congress. 31 U.S.C. 851 (1970).

In view of the broad authority granted the Secretary in conducting financial transactions under the Housing Act of 1949, supra, we believe that no useful purpose would be served by our reviewing the propriety of a proposed sale of land by a local public agency with funds provided pursuant to that Act.

for Milton J. Fowler
Paul G. Dempling
General Counsel