

**DECISION**

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

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**FILE:** B-211357**DATE:** September 7, 1982**MATTER OF:** Federal Data Corporation**DIGEST:**

Protest of alleged readily discernible solicitation defect is untimely because it was not filed until 6 months after closing date for receipt of initial proposals.

Federal Data Corporation (FDC) protests the award of a lease contract to Falcon Systems, Inc. (Falcon), for automatic data processing equipment (ADPE) under request for proposals (RFP) No. DLAH00-82-R-0230, issued by the Defense Logistics Agency (DLA).

FDC protests that any contract awarded under the RFP violates the General Services Administration (GSA) delegation of procurement authority (DPA) which advised that:

"The capacity of the replacement systems should be of the same relative capacity of the installed systems and in no event should it exceed 150% of the computing power of the existing systems over the 3 year systems life."

FDC argues that the awardee's computer processors increase DLA's computing power approximately 500 percent over the existing system and that DLA improperly has purchased more costly, larger capacity computers than permitted under GSA's DPA. Because of the above, FDC requests that the requirement be resolicited.

On August 21, 1981, GSA initially granted a DPA for an interim ADPE system to DLA. A September 23, 1981, modification to the DPA contained the limitation quoted above. DLA prepared and issued the RFP. DLA included a provision which it believed met the GSA limitation. In essence, DLA required the replacement systems to process in 10 hours or less the workload which the installed systems could process in 15 hours--a minimum of a 33-1/3-percent reduction in "runtime."

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Five proposals, including FDC's, were received by the September 15, 1982, closing date, and discussions were held with and best and final offers received from the five offerors. FDC was ranked fourth of the five offerors. Falcon was determined the most desirable evaluated offeror and Falcon was awarded a lease which included an option to purchase on March 23, 1983. By letter of April 5, 1983, FDC protested to DLA, and on April 6, 1983, it filed a protest with GAO.

We solicited comments from GSA concerning DLA's adherence to the GSA DPA. By letter filed with GAO on July 25, 1983, GSA advised that the DLA provision requiring a 33-1/3 percent reduction in runtime does not meet the DPA limitation. DLA denies that it exceeded the DPA limitation. Further, DLA points out that GSA received the solicitation prior to issuance and did not object to the above provision.

We dismiss the protest.

DLA argues that FDC is not an interested party to assert this protest issue under our Bid Protest Procedures, 4 C.F.R. part 21 (1983), because FDC was evaluated fourth of the five offerors and, thus, even if its protest was upheld, the protester would not be in line for award. We do not agree with DLA. Where, as here, no offeror would be eligible for award under an RFP if the protest is sustained, and the appropriate relief is cancellation and resolicitation which would permit the protester to rebid, a party not in line for award is an interested party. See Whitney's Welding and Container Repair, dba Richmond and Drydock and Marine Repair, B-202517.3, June 26, 1981, 81-1 CPD 533; International Business Investments, B-202164.2, June 8, 1981, 81-1 CPD 459; Cardion Electronics, 58 Comp. Gen. 591 (1979), 79-1 CPD 406. However, the protester has not timely raised the issue of the propriety of the RFP because protests based upon alleged solicitation improprieties which are apparent before the closing date for receipt of offers must be filed before that date. 4 C.F.R. § 21.2(b)(1) (1983).

FDC states it did not obtain copies of the DPA and the Falcon contract until March 25 or 26, 1983; therefore, it was unreasonable to expect FDC to have discovered the basis of its protest prior to receipt of this information.

The basis of this protest is an apparent solicitation impropriety--the failure of DLA's RFP to effectuate the limited capacity provision contained in the DPA which improperly allowed all offerors to propose increased capacity systems allegedly beyond the DPA limitations. All the information necessary for FDC to protest its alleged solicitation impropriety was known or available to FDC prior to the closing date for initial proposals, September 15, 1982.

First, the contested RFP provision was in the original RFP and was not changed by any of the subsequently issued amendments thereto, or any event during the entire 6-month procurement process. Second, GSA, by notice in the Federal Register of May 11, 1981, 45 Fed. Reg. 26178 (1981), announced that copies of agency requests for DPA's and DPA's issued would be available to the public, effective May 6, 1981, and provided the GSA location where interested parties could obtain this information. FDC has not challenged the public availability of this DPA from GSA. The DPA was initially approved by GSA by letter of August 31, 1981, and then further modified by letter dated September 23, 1981, which contained the specific capacity limitation at issue. The DPA was available at the time the RFP was issued and, thus, its existence was readily discernible prior to the closing date of September 15, 1982.

Accordingly, FDC's protest is untimely since it was filed approximately 6 months after the initial closing date. M-R-C, Joint Venture, B-210482, June 17, 1983, 83-1 CPD 663. We do not consider this ruling to be unduly harsh under the circumstances. The reason for the rule requiring the filing of protests involving improprieties before the closing date is to permit GAO to consider the allegations while corrective action, if indicated, is most practicable and, thus, least burdensome on the conduct of the procurement. Schwarze Industries, Inc., B-209512, November 2, 1982, 82-2 CPD 404. For us to consider at this late date a protest by a willing participant in the competition against a readily discernible impropriety evident at the procurement's inception would render meaningless the stated purpose behind our timeliness rules.

We dismiss the protest.

*Harry R. Van Cleve*  
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Acting General Counsel