



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Jerry Watson Realty  
File: B-228122  
Date: September 25, 1987

### DIGEST

Where administrative sanction imposed by contracting agency against protester precludes protester from competing under solicitation, protest of award under that solicitation is dismissed because protester has no legitimate interest in the procurement, as required by General Accounting Office Bid Protest Regulations.

### DECISION

Jerry Watson Realty (JWR) protests the award of a contract under invitation for bids (IFB) No. 002-125-87 issued by the Department of Housing and Urban Development (HUD), Property Disposition Program, for area management broker services for certain properties owned by HUD in Clark and Nye Counties, Nevada. JWR contends, in effect, that it was unfairly denied the opportunity to submit "bids" on the solicitation and that the services contracted cannot be performed at the prices bid by the awardees. We dismiss the protest.

The subject procurement is the resolicitation for services HUD previously sought to procure under IFB No. 001-125-87, issued on March 31, 1987. On May 26, the agency canceled that solicitation after bid opening because of suspected collusive bidding on the part of the protester and the need for certain revisions to the specifications. Following its referral of the matter to the Department of Justice for investigation, HUD issued, on August 18, 1987, a Temporary Denial of Participation (TDP) (24 C.F.R. § 24.18(a) (1987)) against the participation of JWR and its affiliates in the HUD Property Disposition Program for a period of 1 year. According to HUD, the action was taken because of

040069

irregularities in JWR's performance in the Program and suspicion of certain antitrust violations. (See Jerry Watson Realty--Reconsideration, B-227883.2, Sept. 14, 1987, 87-2 C.P.D. ¶ \_\_\_\_\_, in which we affirmed our dismissal of JWR's protest of HUD's cancellation of the solicitation and declined to consider questions concerning the sanctions imposed by the agency.) We have been informed by HUD that a hearing in the matter of the imposition of the TDP was held on September 9, 1987, and a decision was rendered affirming that action.

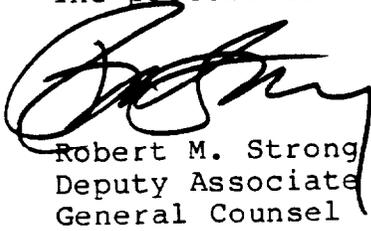
Thus, JWR is here protesting that it was not allowed to compete for a requirement, the initial solicitation for which was canceled, in part, because of apparent bidding improprieties of the protester.

HUD's imposition of a TDP against the protester constitutes an administrative sanction which precludes the protester from participating in the agency's Property Disposition Program within the jurisdiction of the agency's office that initiated the action, the Las Vegas office. 24 C.F.R. § 24.4(h). Although there is a formal distinction under HUD's regulations between the imposition of a TDP and a suspension action against a contractor or grantee, the effect of the TDP here is tantamount to a suspension of the protester, limited to the relevant jurisdiction and program (see 24 C.F.R. § 24.4(b)), since it renders the firm ineligible to compete for any solicitation issued under that authority. See, generally, Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.407 (1987). Because the TDP against JWR was in effect on August 20, 1987, the date bids were due, the protester was not eligible to compete for the subject solicitation. Southern Dredging Co., Inc., B-225402, Mar. 4, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 C.P.D. ¶ 245.

Under our Bid Protest Regulations, a protester must have a legitimate interest in the matter of which it complains before this Office will consider its protest. 4 C.F.R. § 21.1(a) (1987). A contractor that is not eligible to compete under a solicitation has no legitimate interest in the procurement and, therefore, is not an interested party entitled to protest any matter pertaining to that solicitation. See Delta Manufacturing and Sales, Inc., B-221836.2, Feb. 10, 1986, 86-1 C.P.D. ¶ 147.

Since JWR was ineligible to compete under the solicitation, it is not an interested party for purposes of protesting the award. We, therefore, will not consider JWR's protest on the merits. 4 C.F.R. § 21.3(f).

The protest is dismissed.



Robert M. Strong  
Deputy Associate  
General Counsel