



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advanced Data Design Systems, Inc.

File: B-231883.2; B-231884.2

Date: October 4, 1988

DECISION

1. A protester is not an interested party where it is not in line for award after the addition of the Buy American Act evaluation factors even if its protest were sustained since the protester does not have the requisite direct economic interest in the contract award to be considered an interested party under the General Accounting Office's Bid Protest Regulations.

2. Agency properly concluded that low offeror was not subject to evaluation under the Buy American Act where the evidence available shows that the item offered is manufactured in the United States.

DECISION

Advanced Data Design Systems, Inc. (ADDS), protests the rejection of its proposals under request for proposals No. DLA400-88-R-1316 and DLA400-88-R-3167 issued by the Defense Logistics Agency (DLA).

We dismiss the protests.

Solicitation 1316 sought proposals for 909 storage batteries. ADDS was the low offeror. In connection with a review of ADDS' responsibility, DLA conducted a pre-award survey of ADDS' facility and its supplier's facility. The conclusion of the surveys was a recommendation that no award be made to ADDS based on findings that production, quality, and packing capabilities were unsatisfactory. Based on this report, the contracting officer found ADDS to be nonresponsible, and because ADDS was a small business, on June 6, 1988, he referred his determination to the Dallas regional office of the Small Business Administration (SBA) under the certificate of competency (COC) procedures. The SBA notified ADDS in a letter dated June 8 that its application for a COC was due on June 15. ADDS filed an

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application, but on June 24 the SBA informed ADDS that pursuant to 13 C.F.R. § 125.5(c) (1988) it was not eligible for a COC because it was supplying a foreign product.

In its protest, ADDS alleges that the negative responsibility determination stemmed from erroneous information that ADDS had supplied non-conforming goods and because the pre-award survey team did not conduct the survey properly.

We need not resolve this issue, however, because ADDS is no longer the low evaluated offeror after application of the Buy American Act evaluation factors. Although ADDS had certified in its offer that it was providing a product manufactured in the United States, in connection with its application for a COC ADDS advised the SBA that, contrary to what was stated in its offer, it was supplying a product from Mexico. This requires the addition of a 50 percent evaluation factor to its offer, which in turn results in ADDS' being displaced by Johnson Controls, Inc., as the low acceptable evaluated offeror.

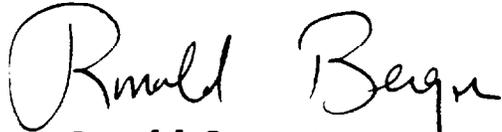
Accordingly, ADDS would not be in line for award even if its protest were sustained and therefore it is not an interested party for purposes of eligibility to protest. Our Bid Protest Regulations require that a protester be an interested party before we will consider its protest. 4 C.F.R. § 21.1(a) (1988). A protester is not an interested party if it would not be in line for award if its protest were upheld. Kellogg Plant Services, Inc., B-227689.3, Nov. 24, 1987, 87-2 CPD ¶ 510.

ADDS contends that Johnson Controls may not be able to supply a domestic end item either because the only domestic supplier has ceased production and the only available domestic made batteries are those presently in stock. Therefore, ADDS believes, both offerors should have been treated the same since neither could supply a domestic product.

We disagree. Johnson Controls certified in its offer that it would furnish domestic end items and, upon additional inquiry from DLA, stated that the batteries to be supplied were currently manufactured in Wisconsin. Moreover, ADDS admits that there may be domestic manufactured stock available to satisfy the solicitation requirements. Under these circumstances, it appears that DLA properly did not apply the Buy American Act evaluation factor to Johnson Controls' offer. See Hewlett-Packard Co., B-228271, Dec. 3, 1987, 87-2 CPD ¶ 545.

Finally, ADDS protests the award under solicitation, No. DLA400-88-R-3167, issued by DLA for 700 storage batteries. DLA has informed us that ADDS is not in line for award on that solicitation because it is not the low offeror even before the addition of the Buy American Act evaluation factor. Therefore, for the reasons discussed above, ADDS is not an interested party to protest under this solicitation.

The protests are dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the typed name and title.

Ronald Berger
Associate General Counsel