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The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: Dynamics Corporation of America  
File: B-224848  
Date: December 1, 1986

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### DIGEST

1. Protest, filed after receipt of initial proposals, that evaluation criteria were inadequate, is untimely under General Accounting Office Bid Protest Regulations, which require that protests against improprieties in a solicitation which are apparent prior to the closing date be filed before that date.
2. Agency may reasonably exclude twenty-first low offeror from competitive range on basis of price without consideration of technical factors where agency reasonably determines that offeror's price is so much greater than lowest offers selected for inclusion in competitive range that offeror has no reasonable chance for award.

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### DECISION

Dynamics Corporation of America (Dynamics) protests the rejection of its offer under request for proposals (RFP) No. 7PN-69188/H6/7FC, issued by the General Services Administration (GSA). We dismiss the protest in part and deny it in part.

GSA issued this RFP on April 21, 1986, to acquire 15 large diesel generator systems, including control panels and transfer switches, for delivery to 13 different sites nationwide. The RFP described the minimum requirements for the generators and provided space for offerors to enter a price for each site. The RFP provided that the contract would be awarded on the basis of price and other factors. There were no other specific evaluation criteria and no technical proposal was required.

Twenty offerors submitted prices lower than did Dynamics. GSA selected the seven lowest offerors for competitive negotiation of a contract.

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Dynamics contests its exclusion from the competitive range. The firm contends that the RFP was defective because it did not state the evaluation factors and their relative importance, and asserts that GSA has failed to assure that the offers selected for inclusion within the competitive range satisfy the minimum technical requirements of the solicitation. Dynamics also argues that it was improper for GSA to exclude Dynamics from the competitive range solely on the basis of price, and objects to GSA's conduct of discussions with firms within the competitive range without affording Dynamics a similar opportunity to submit a best and final offer.

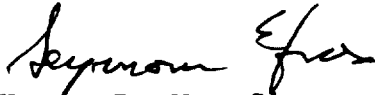
Dynamics' objection to the lack of specificity in the evaluation criteria is a challenge to the propriety of the RFP. Our Bid Protest Regulations require that a protest based on alleged improprieties in an RFP which are apparent prior to the closing date for receipt of proposals be filed before that date. 4 C.F.R. § 21.2(a)(1) (1986). Since Dynamics did not file its protest until after the closing date for receipt of proposals, this allegation is untimely and will not be considered. Morris Marine, Inc., B-223289.2, June 19, 1986, 86-1 C.P.D. ¶ 569.

As to the balance of Dynamics' protest, GSA states that all of the offerors in the competitive range can satisfy the technical requirements of the RFP and notes that Dynamics' prices were substantially higher than the prices of any of the offerors in the competitive range. GSA also states that, although excluded from the competitive range, Dynamics submitted an unsolicited best and final offer which was substantially higher than the highest offer within the competitive range. GSA suggests that this unsolicited offer confirms its determination that Dynamics had no reasonable chance for award of the contract.

We have reviewed the prices offered in the initial round of responses to the RFP and find that Dynamics' prices were, as GSA states, substantially higher than the prices of any competitor within the competitive range. We have held that an agency may exclude a technically acceptable proposal from the competitive range, and thus from the negotiations process, when the offeror's price is substantially higher than the prices of other acceptable offerors and the agency reasonably determines that the higher-priced proposal has no reasonable chance of being selected for award. Pan Am World Services, Inc., B-215308.5, Dec. 10, 1984, 84-2 C.P.D. ¶ 641. Simply put, Dynamics was the twenty-first low offeror in a procurement of equipment for which acceptable items are available from a substantial number of suppliers. In these

circumstances, we cannot question the reasonableness of GSA's rejection of Dynamics' offer without discussions. See Federal Acquisition Regulation, 48 C.F.R. § 15.610(b) (1985). Moreover, we agree with GSA to the effect that Dynamics was not prejudiced by its exclusion since the firm's unsolicited best and final offer was substantially higher than any of the original offers in the competitive range.

The protest is dismissed in part and denied in part.

*for*   
Harry R. Van Cleve  
General Counsel