



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Concrete Systems, Inc.

**File:** B-259291

**Date:** March 20, 1995

Richard D. Day for the protester,  
Ronald M. Pettit, Esq., Defense Logistics Agency, for the  
agency.  
Paula A. Williams, Esq., Office of the General Counsel, CAO,  
participated in the preparation of the decision.

### DIGEST

Protester is not an interested party to assert that the contracting agency improperly evaluated awardee's "equal" product in a brand name or equal procurement where the protester would not be in line for award even if the allegations were correct.

### DECISION

Concrete Systems, Inc. (CSI) protests the award of a contract to A-Z Precast Concrete Products, Inc., under request for proposals (RFP) No. DLA730-93-R-7112, issued by the Defense Construction Supply Center, Defense Logistics Agency, for a precast modular concrete building. The protester contends that the awardee's "equal" product does not conform to various salient characteristics listed in the solicitation.

We dismiss the protest.

The RFP was issued on September 15, 1993, soliciting proposals for a brand name or equal precast concrete modular building. It specified the Concrete Systems, Inc. Model MC535 precast concrete building as the brand name product. The RFP, as amended, required offerors proposing an "equal" product to submit descriptive literature necessary for the contracting officer to determine whether the product offered met the salient characteristics listed in section C of the solicitation. Section C listed specific and general salient characteristics addressing, among other things, plant certification and future expansion capabilities.

The agency received four offers, including those from the protester and the awardee. The A-Z Precast proposal, which was the lowest-priced offer, was for an "equal" product; CSI offered its brand name product and submitted the third lowest-priced offer. A-Z Precast's product was evaluated as equal to the brand name and based on best and final offers, A-Z Precast was determined to be the low-priced, technically acceptable offeror.<sup>1</sup>

On September 23, the agency awarded a contract to A-Z Precast. After being notified of the award, CSI filed a protest with the agency challenging the evaluation of A-Z Precast's proposal on various grounds and questioning the selection of that firm's "equal" product. On November 9, CSI filed this protest with our Office, essentially based on the same arguments. CSI cites a legal memorandum from the agency's legal office containing advice to the contracting personnel (which was erroneously attached to the November 1 letter from the contracting officer denying CSI's agency-level protest) as support for its position.

Under the Competition in Contracting Act of 1984 and our regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 31 U.S.C. § 3553 (1988); 4 C.F.R. § 21.1(a) (1995). That is, a protester must have a direct economic interest which would be affected by the award of a contract, or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a).

We will not consider the protest because CSI lacks the direct economic interest necessary to qualify as an interested party to challenge the award to A-Z Precast. The agency report shows that CSI's proposal was the third lowest-priced offer, and there is another acceptable offer besides that of the awardee. The protester has not challenged the acceptability of that firm's offer; thus, even if we sustained the protest and recommended that the award be set aside, there is an intervening offeror who

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<sup>1</sup>The basis for award was Federal Acquisition Regulation § 52.215-16, under which award is to be made to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the government, cost, or price and other factors, specified elsewhere in this solicitation, considered.

would be in line for award before CSI. See Ebon Research Sys., B-253833.2; B-253833.3, Nov. 3, 1993, 93-2 CPD ¶ 270; U.S. Defense Sys., Inc., B-248928, Sept. 30, 1992, 92-2 CPD ¶ 219.<sup>2</sup>

The protest is dismissed.



Michael R. Golden  
Assistant General Counsel

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<sup>2</sup>The agency reports that contract performance was not suspended since the protest was filed more than 10 days after award, and A-Z Precast has delivered the building required under the contract.