



Comptroller General
of the United States
Washington, D.C. 20548

146904

Decision

Matter of: Laidlaw Environmental Services (GS), Inc.--
Reconsideration

File: B-245587.4

Date: June 12, 1992

William E. Hughes III, Esq., Whyte & Hirschboeck, for the protester.
Michele S. Pavlak, Esq., Defense Logistics Agency, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The General Accounting Office denies a request for reconsideration of a decision denying a protest of a solicitation requirement to propose a single percentage factor--to be applied against agency pre-priced line items when determining the contractor's evaluated price and compensation--where the protester merely reiterates arguments previously considered in reaching the decision.
2. Allegation that the General Accounting Office failed to consider comments submitted by firms that did not have a substantial chance for award if the protest were denied and therefore were not interested parties for the purpose of participating in a protest does not form a basis for reconsidering a decision.
3. Highest priced offeror with same "good" technical rating as four lower priced offerors under a request for proposals is not an interested party under the Bid Protest Regulations eligible to protest the award to the lowest priced "good" offeror, where it neither protests its own evaluation nor the eligibility of the intervening offerors.

DECISION

Laidlaw Environmental Services (GS), Inc. requests reconsideration of our decision in Laidlaw Envntl. Servs. (GS), Inc., B-245587; B-245587.2, Jan. 16, 1992, 92-1 CPD ¶ 82, which denied in part and dismissed in part Laidlaw's protest of various provisions in request for proposals (RFP) No. DLA200-91-R-0025, issued by the Defense Logistics Agency (DLA), Defense Reutilization & Management Service for

hazardous waste removal and disposal services at various California locations. Laidlaw also questions the award under the RFP to Security Environmental Systems, Inc. (SESI), at a price significantly below the total estimated price indicated in the solicitation.

We deny the request for reconsideration and dismiss Laidlaw's protest of the contract award.

Our prior decision found that the agency could require offerors for this solicitation for a requirements contract to propose as their price only a single percentage factor that the agency would apply to the numerous line items of disposal services, which had been pre-priced in the RFP, to calculate the contractor's evaluated price and compensation. While the protester asserted that the agency should have permitted offerors to submit prices for each line item, we found the "net pricing" requirement in the RFP to be a legitimate method to prevent deliberate unbalancing of prices by offerors and to assure award to the low-priced offeror for the contract work, regardless of quantities ordered. We further found that the agency prices and quantity estimates for the various line items--to which the single percentage factor would be applied--were properly prepared on the basis of historic information and had not been shown to be incorrect. We also dismissed as untimely Laidlaw's objections to the RFP's "best value" evaluation provision.

With regard to the "best value" evaluation provision contained in the RFP, Laidlaw argues that our decision improperly allows DLA's continued use and inconsistent interpretation of this provision, and cites various examples from other procurements. As stated above, we dismissed Laidlaw's protest of this provision as untimely. On reconsideration, Laidlaw does not argue that its protest of this provision was timely. Thus, we will not reconsider Laidlaw's protest of this provision.¹

Laidlaw has raised a variety of objections to our prior decision's determination that the "net pricing" requirement was proper--e.g., that the pre-pricing of line items causes

¹To the extent Laidlaw objects to the actions in this or any other procurements, it is required to be an interested party and to file a timely protest under our Bid Protest Regulations. 4 C.F.R. §§ 21.0(a), 21.1(a), 21.2(a)(1), 21.2(a)(2), 21.2(a)(3) (1992). The record provides no evidence that Laidlaw is either an interested party or is timely protesting the cited procurement actions. Also, as discussed below, Laidlaw is not an interested party to protest the award in this case.

unbalanced pricing, that we wrongfully permitted the allocation of excessive risk on the contractor, and that the protested procurement practices improperly inhibit competition. All of Laidlaw's contentions are, in our view, merely a reiteration of Laidlaw's original grounds of protest; each of the issues was discussed in detail on our prior decision, and Laidlaw's rearguments provide no basis warranting the reversal of our decision. See Tandem Computers, Inc.--Request for Recon., B-221333.2 et al., Sept. 18, 1986, 86-2 CPD ¶ 315.

We note that the protester in Custom Env'tl. Serv., Inc., 70 Comp. Gen. 184 (1991), 91-1 CPD ¶ 38, unsuccessfully attacked the same "net pricing" evaluation scheme on a landscaping contract, raising virtually the same arguments advanced by Laidlaw here.² While Laidlaw attempts to distinguish Custom Env'tl., arguing that the government estimates in that case were generally reasonable, whereas the estimates in this case are not, Laidlaw has not provided persuasive evidence to support its assertions. As discussed in Laidlaw Env'tl. Servs. (GS), Inc., supra, when requested by DLA to provide evidence of any unreasonable pre-pricing, Laidlaw only provided evidence of its costs for two items, which it cautioned were only applicable to itself, given its own competitive situation, and were not applicable to other potential competitors.

Laidlaw contends that our decision erred in not expressly addressing the comments submitted by two interested parties--USPCI Remedial Services and Moheat Environmental Services. Contrary to Laidlaw's belief, we considered these firms' comments to the extent they addressed Laidlaw's protest issues, but found none of the points raised warranted a direct response. In any case, neither USPCI nor Moheat is an interested party for the purpose of participating in Laidlaw's protest, since neither was in line for award upon denial of Laidlaw's protest. See 4 C.F.R. § 21.0(b), which states:

"'Interested party' for the purpose of participation in a protest means an awardee if the award has been made or, if no award has been made, all

²For example, Custom Environmental had argued that depriving the protester of the ability to adjust the pricing of individual line items could cause the government to pay too much for various line items, thereby causing unbalanced bidding, and that the scheme imposed unreasonable risks on the contractor. Since the award to the low-priced bidder or offeror under this evaluation method necessarily will result in the lowest cost to the government for the contract work, we perceive no possibility of material unbalancing.

bidder or offeror who appear to have a substantial prospect of receiving an award if the protest is denied."

Under the circumstances, Laidlaw's contentions concerning our alleged failure to consider USPCI's and Moheat's comments provide no basis for us to reconsider our decision.

Laidlaw protests the source selection of, and the affirmative determination of responsibility of, SESI under the RFP. Laidlaw is not an interested party under our Bid Protest Regulations eligible to contest these matters. Laidlaw received the identical "good" technical past performance/experience rating as did SESI and three other offerors, but had the highest price of those offerors with "good" ratings.⁴ Thus, Laidlaw would not be in line for award, even if its complaint relating to the award selection were sustained.

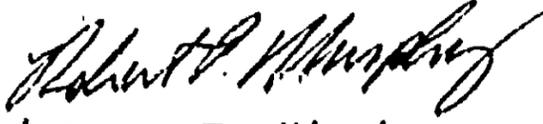
Under the bid protest provisions of the Competition in Contracting Act, 31 U.S.C. §§ 3551-3556 (1988), only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party, where, as here, it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849-2, Jan. 3, 1990, 90-1 CPD ¶ 7. Since there has been no challenge to Laidlaw's relative rating or the eligibility for award of the intervening offerors who would precede the protester in eligibility under this solicitation, the protester lacks the direct economic

³Assuming USPCI's and Moheat's comments could be considered protests of the solicitation provisions, they were filed after the September 27, 1991, closing date for receipt of proposals and were thus untimely. 4 C.F.R. § 21.2(a)(1). In this regard, USPCI raised its concerns about the solicitation with the agency on September 5, and the agency responded on September 23, but USPCI did not file with our Office its comments on Laidlaw's protest incorporating these concerns until October 17. Moheat only filed its comments on the protest with our Office on October 11.

⁴The RFP technical evaluation factor was past performance/experience. The highest technical rating awarded was "good," which was given to five offerors. The record indicates that the agency drew no particular technical distinction among the offerors, which received the "good" past performance/experience rating.

interest required to maintain a protest. See Comstock
Coms., Inc., B-242474, May 6, 1991, 91-1 CPD ¶ 438.

The request for reconsideration is denied and the protest of
the award to SESI is dismissed.


for James F. Hinchman
General Counsel