

14-1502



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Laidlaw Environmental Services, Inc.

**File:** B-244118

**Date:** July 29, 1991

Mona Bartoletti for the protester.  
Jeffrey I. Kessler, Esq., S.S. Goldberg, Esq., and David H. Scott, Esq., Department of the Army, for the agency.  
Roger H. Ayer, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency improperly evaluated two time-and-material solicitation line items is untimely filed under Bid Protest Regulations, where the method of cost/price evaluation was announced in the solicitation as amended and the protest was not filed until after the closing date for receipt of proposals.

### DECISION

Laidlaw Environmental Services, Inc. protests the award of a contract to Chemical Waste Management, Inc. by the Department of the Army under request for proposals (RFP) No. DAAD05-90-R-0167 for a base year and 4 option years of hazardous waste removal and disposal services. The RFP calls for 121 fixed-price items and 2 time-and-material (T&M) items. Laidlaw protests the Army's evaluation of the two T&M items.

We dismiss the protest.

The RFP called for award to the lowest priced, technically acceptable offeror. Two offers were received by the February 20, 1991, closing date, and evaluated considering the base year plus 4 option year prices (including the T&M items) as follows:

Laidlaw	\$33,853,863
Chemical Waste	\$32,462,521

On May 7, 1991, the Army made award to Chemical Waste.

Notwithstanding Chemical Waste's \$1,391.34 lower evaluated price, Laidlaw contends that but for the improper evaluation of the two T&M items, Laidlaw would have been the low technically acceptable offeror. Laidlaw argues that the Army improperly evaluated the T&M line items by simply adding \$410,000 to both offers instead of evaluating the required supporting pricing information for the T&M items that accompanied the proposals.1/

The Army contends that the protest is untimely because the RFP, as amended, expressly provided for the evaluation of the T&M items on the basis of agency furnished prices and Laidlaw did not protest this matter prior to the March 20 closing date for receipt of offers. Specifically, the Army pre-priced the T&M items in the RFP's price schedule<sup>2/</sup> as follows:

Item No.	Description	Quantity	U/M <sup>3/</sup>	U/P <sup>4/</sup>	Estimated Amount
0055	Emergency Spill	1	LT	_____.	\$50,000
0056	Waste pick-up	1	LT	_____.	\$360,000

A protest based upon an alleged impropriety apparent on the face of a solicitation must be filed with either the contracting agency or our Office prior to the receipt of proposals, or in the case of an impropriety introduced by an amendment before the next closing date, to be deemed timely filed under our Bid Protest Regulations. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(1)).

In our view, Laidlaw either knew, or should have known that the Army would not determine the total price on the basis of the supporting pricing information that it furnished. The RFP, as amended, clearly indicated that the total evaluated price would be computed on the basis of the agency provided prices. In this regard, the Army placed the prices for these items in the "amount" (i.e., extended price) column indicating

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1/ The RFP required offerors to provide information establishing their standard commercial prices for the kinds of services that may be involved in work ordered under the two T&M items. These prices would be the basis for invoicing the government for services actually provided under the T&M items.

2/ As originally issued, the amount column of the RFP's price schedule for both T&M items was blank.

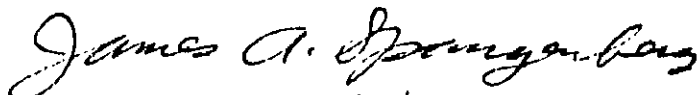
3/ Unit Measure.

4/ Unit Price.

that the agency would disregard any unit price offered.<sup>5/</sup> While the RFP required the submission of price information in the form of "a published price list, or some other verifiable document," nothing indicated this information would be utilized to calculate the total evaluated price. To the contrary, since there were no estimated quantities to which the requested price list could be applied, there was no common basis to determine a total price for these items based on the submitted information.

Consequently, Laidlaw's protest concerns an apparent alleged impropriety, which the firm should have protested prior to the March 1 closing date for receipt of proposals. Because Laidlaw did not file its protest until May 20, its protest is untimely and will not be considered. See Laketon Refining Corp., et al., B-235977.2 et al., Jan. 4, 1990, 90-1 CPD ¶ 10.

The protest is dismissed.



James A. Spangenberg  
Assistant General Counsel

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<sup>5/</sup> It is axiomatic that offers must be evaluated on the basis stated in the solicitation, Everhart Appraisal, Inc., B-213369, May 1, 1984, 84-1 CPD ¶ 485, and agencies must adhere to the stated criteria or inform all offerors of any changes made in the evaluation scheme. Cobro Corp., B-228410, Dec. 16, 1987, 87-2 CPD ¶ 600.