



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Tri-State Government Services, Inc.

**File:** B-255201.2

**Date:** January 31, 1994

John R. Peoples for the protester,  
Matthew Pausch, Esq., Defense Logistics Agency, for the  
agency.

Daniel I. Gordon, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

1. Where price is the determining evaluation criterion, there is an intervening proposal between the protester's and the awardee's proposals, and the protest challenges only the acceptability of the awardee's proposal, the protester is not an interested party for the purpose of filing a protest.

2. A challenge to the accuracy of a solicitation's estimated quantities under a requirement contract must be filed prior to the time for receipt of offers where the protest is based on knowledge of the actual quantities needed and that information was known to the protester prior to time for receipt of offers.

### DECISION

Tri-State Government Services, Inc. protests the award of a contract to Laidlaw Environmental Services (GS), Inc. under request for proposals (RFP) No. DLA200-93-R-0007, issued by the Defense Logistics Agency. Tri-State contends that the awardee's proposal should have been rejected as materially unbalanced.

We dismiss the protest.

The RFP, issued on March 1, 1993, solicited proposals for the removal and disposal of hazardous waste in and around certain military facilities in Kentucky and Tennessee. The RFP anticipated award of a fixed-price requirements contract for an 18-month base period, with a 1-year option. Tri-State is the incumbent contractor.

Section M of the RFP provided that price was the most important evaluation factor. Past performance, the only other evaluation factor, was described as significant, but

"somewhat less" important than price. Award was to be based on a "best value" determination.

After initial proposals were evaluated and discussions conducted with offerors whose proposals were in the competitive range, best and final offers (BAFO) were requested. Among the seven BAFOs received, Laidlaw's price was second low; Tri-State's was fourth low. "Good" ratings for past performance were assigned to the low-priced proposal as well as to Laidlaw's and Tri-State's; the third low proposal received only an "acceptable" rating for past performance. Based on BAFO prices and the past performance evaluations, the agency selected Laidlaw's proposal for award. The selection was based on a price/technical tradeoff, in which the agency concluded that Laidlaw's advantage in the area of past performance relative to the offeror of the low-priced proposal justified paying Laidlaw's somewhat higher price.

Tri-State contends that some of Laidlaw's contract line item (CLIN) prices are significantly overstated, while others are significantly understated, and that, as a result, the pricing in Laidlaw's proposal is materially unbalanced. Tri-State also alleges that it knows, based on its experience as the incumbent, that the RFP estimated quantities are inaccurate.

The agency requested that our Office summarily dismiss the protest because Tri-State, as the offeror of the fourth-low proposal, was not an interested party. The agency based its request on the fact that Tri-State's protest challenges Laidlaw's eligibility for award, but does not dispute the eligibility of either the low-priced proposal or the third-low proposal. We declined to dismiss the protest summarily and instead requested that the agency submit a full agency report.

In its report, in addition to addressing the merits of the protest and providing relevant documents, the agency again requested that the protest be dismissed. The agency explained why, in the context of this procurement, Tri-State is not an interested party. The agency also argued that the protest is untimely, in any event, since it is based on a challenge to the accuracy of the RFP estimated quantities, a matter which Tri-State was required to protest prior to submission of proposals. On the basis of the fully-developed record, we agree with the agency on both issues.

Where price is the determining evaluation criterion, there is an intervening proposal between the protester's and the awardee's proposals, and the protest challenges the acceptability of only the awardee's proposal, the protester is not an interested party for the purpose of filing a

protest, because the protester's proposal would not be in line for award even if its protest were sustained.  
INTERLOG, B-249613 et al., Oct. 26, 1992, 92-2 CPD ¶ 282.

Other than suggesting that the agency "could" award to Tri-State based on a price/technical tradeoff, Tri-State has not articulated any challenge to the acceptability for award of the low-priced proposal, which was assigned the same "Good" rating that Tri-State's higher-priced proposal received for past performance. Tri-State has thus not provided any argument which would suggest that its proposal would be in line for award if its protest against award to Laidlaw were sustained. We therefore conclude that it is not an interested party for purpose of filing a protest.

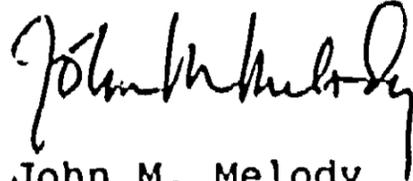
Tri-State's challenge to the accuracy of the RFP quantity estimates would be dismissed as untimely even if the cryptic language in Tri-State's comments on the agency report could be construed as challenging the eligibility of the intervening proposals.<sup>1</sup> A challenge to the accuracy of the estimated quantities for a requirements contract must be filed prior to the time for receipt of offers where the protest is based on knowledge of the actual quantities needed and that information was known to the protester prior to that time. 4 C.F.R. § 21.2(a)(1) (1993); Allstate Van & Storage, Inc., B-247463, May 22, 1992, 92-1 CPD ¶ 465. This

---

<sup>1</sup>In any event, Tri-State has not stated a legally adequate claim of material unbalancing. In the context of a requirements contract, an offer may be materially unbalanced where solicitation estimates are inaccurate and an offeror sets high prices for items which it believes the agency will actually order in greater quantities than the solicitation estimates, and low prices for items which it believes will not be ordered as often as the solicitation indicates. See Trataros Painting and Constr. Corp., 56 Comp. Gen. 271 (1977), 77-1 CPD ¶ 37. The result is doubt whether the government will actually benefit from the offeror's apparent low prices. See Federal Acquisition Regulation § 15.814(b)(1). Here, Tri-State complains that Laidlaw's pricing was unjustifiably low for CLIN No. 9907--but it also asserts that the agency will actually order in greater quantity under that CLIN than the RFP indicates. If Tri-State is correct, the higher quantities ordered will ensure that the government obtains the benefit of Laidlaw's low prices, and the pricing is thus not materially unbalanced.

is the case here, where Tri-State bases its challenge to the RFP estimates on its experience as the incumbent. Accordingly, Tri-State's postaward protest is untimely.

The protest is dismissed.



John M. Melody  
Assistant General Counsel