



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wastren Remediation, Inc.

File: B-252550.3

Date: May 27, 1994

Brad R. Wright, Esq., Wright Law Offices, for the protester.
Ricke D. Hamilton, Esq., Department of the Air Force, for
the agency.
Christina Sklarew, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protester is not an interested party to protest agency's
alleged failure to award two contracts to small business
concerns under a partial small business set-aside
procurement where it would not be in line for award even if
the agency had determined to make two such awards.

DECISION

Wastren Remediation, Inc. protests the award decisions that
the Air Force made under request for proposals (RFP)
No. F42650-90-R-0370, for various hazardous waste cleanup
services under the agency's Installation Restoration
Program. We dismiss the protest because Wastren is not an
interested party.

The RFP contemplated the award of up to six indefinite
quantity delivery order contracts, for the services required
to clean up landfills, chemical burial sites, waste disposal
trenches, and leaking underground storage tank sites, etc.,
with the overall goal of remedying all environmental
contamination problems resulting from past hazardous waste
disposal practices at the Ogden Air Logistics Center. The
RFP's cover page identified the procurement as a partial
set-aside for small business concerns and stated that:

"[U]p to two of the six . . . contracts will be set
aside for small business (partial set aside) if
competitive offers are received from at least two
responsive, responsible small business concerns who can
comply with the limitation of subcontracting in FAR
52.219-14 and technical criteria listed in the
solicitation."

The solicitation advised that award would be made under the Air Force Logistics Command's streamlined source selection procedures and established the evaluation criteria under which proposals would be evaluated. No separate instructions or evaluation standards were included for small business concerns.

Wastren was among the vendors who submitted a timely proposal and best and final offer. However, it was not among the six firms who received a contract award. The Air Force notified Wastren by letter of December 22, 1993, of the awards to the firms it had selected. One of the firms receiving an award was a small business, while the other five were large businesses. Wastren requested a debriefing, and met with agency officials on January 10 and 18, 1994. This protest followed.

Wastren contends that despite the fact that proposals allegedly were received from at least two qualified small business concerns, the agency failed to award two contracts to small businesses, and thus violated the small business set-aside provision in the RFP.¹ While the Air Force asserts the protest is without merit, the Air Force also argues that Wastren lacks the requisite interest to protest the agency's alleged failure to award two of the contracts to small businesses because it would not be in line for award if its protest were sustained.

Our Bid Protest Regulations define an interested party for purposes of filing a protest as an actual or prospective bidder or offeror 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) (1994). Where there are intermediate parties that have a greater interest than the protester, we generally consider the protester's interest to be too remote to qualify as an interested party. GTA Containers, Inc., 70 Comp. Gen. 85, (1990), 90-2 CPD ¶ 396. Specifically, a party will not be deemed interested where it would not be in line for the protested award even if its protest were sustained. Id.

¹Notwithstanding the fact that the Air Force identified one of the awardees, ACCI/ASRC Contracting Company, as a small business concern when it discussed the awards with Wastren. The protester apparently questions the small business status of this firm; however, Wastren was advised of the award to ACCI/ASRC in late December, but did not file any size status protest. In any event, our Office has no jurisdiction to review size determinations, which is a matter for the Small Business Administration. See 4 C.F.R. § 21.3(m)(2); Survive Eng'g Co., B-235958, July 20, 1989, 89-2 CPD ¶ 71.

Here, the abstract of offers shows that Wastren would not be in line for award even if the agency had determined to award contracts to the two most highly evaluated small business offerors. The Air Force did award one contract to a small business concern, and one other small business offeror had a higher technical rating and lower price than Wastren.² Thus, Wastren is not an interested party to protest this issue. Technology Prods. Mfg. Corp., B-238182.3; B-238182.5, Apr. 10, 1990, 90-1 CPD ¶ 381.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel

²While Wastren has also protested that small business offers should have been evaluated under different standards than offers from large business concerns, it has not challenged the evaluation of the intervening offeror (or otherwise indicated that such evaluation would have altered the competitive standing among small business offerors); moreover, this basis of protest is untimely raised, since it alleges improprieties that were apparent from the evaluation scheme that was established in the RFP and thus had to be protested prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1).