



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** U.S. Pollution Control, Inc.

**File:** B-259577

**Date:** December 20, 1994

## DECISION

U.S. Pollution Control, Inc. (USPCI) protests the proposed award of a contract by the Defense Reutilization and Marketing Service (DRMS) under request for proposals No. SP4400-94-R-0014, for hazardous waste disposal.

We dismiss the protest.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 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) (1994). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit of the relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1968), 88-1 CPD ¶ 151. A protester is not an interested party where 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.

USPCI asserts that the agency did not properly evaluate the responsibility and past performance of the awardee, Tri-State Government Services, Inc., that DRMS failed to consider price reasonableness and allowed a buy-in to occur, and that the agency's best value analysis, which traded off price and past performance, was flawed. The record shows that even if USPCI were correct and the agency eliminated Tri-State's proposal from consideration, there are seven other offerors whose proposals are rated equal in technical merit to USPCI's, whose prices are lower than USPCI's, and who therefore precede USPCI in eligibility for award under the solicitation. The protester therefore lacks the direct economic interest required to challenge the award to Tri-State since, even if its protest were sustained, it would not be in line for award.

The protester also contends that discussions were inadequate, because the agency failed to advise offerors other than USPCI of its interpretation of the solicitation's listing of hazardous waste. Specifically, it is the agency's position that the schedule listing is not exclusive, i.e., that a contractor may be required to dispose of other kinds of hazardous waste than those specifically listed. This ground of protest is untimely.

By cover letter to its initial proposal, dated February 16, 1994, USPCI advised the agency of its understanding of the listing of hazardous waste in the solicitation, stating its view that "new or different waste streams will be added work to the contract to be awarded." By letter dated October 31, the agency advised USPCI that it regarded USPCI's interpretation as incorrect and that the bid schedule was structured to cover all waste categories. USPCI replied by letter dated November 2, asserting that "[t]he playing field [was] no longer level" since USPCI was the only potential offeror aware of the agency's interpretation. The agency proceeded to receive best and final offers (BAFO) on November 16. Thus, at the latest, USPCI was on notice by November 16 that the agency was proceeding with the procurement without taking the action USPCI advocated--formally advising all offerors of its interpretation of the schedule.

Under your Bid Protest Regulations, protests alleging solicitation improprieties must be filed prior to the next closing date for receipt of proposals; other protests must be filed within 10 days after the basis of protest is known. 4 C.F.R. § 21.2(a)(1), (2). In essence, USPCI is alleging a solicitation impropriety--an ambiguity in the schedule--which should have been raised no later than November 16, the next closing date for proposals after USPCI received the agency's October 31 letter setting out the agency's position. Even accepting USPCI's characterization of its argument as concerning unequal discussions, the protester should have known that DRMS would hold no further discussions, at the latest, by November 16, when the date for submission of BAFOs passed without further negotiations. Even in that case, the protest should have been filed within 10 days--by December 1; the protest, filed with our Office on December 5, is therefore untimely.

*Christine S. Melody*  
Christine S. Melody  
Assistant General Counsel