

~~J. M. ...~~  
S. RIBACK



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

# Decision

**Matter of:** Jay Boman  
**File:** B-248370  
**Date:** July 22, 1992

Jay Boman for the protester.  
Niel B. Moeller, Esq., Department of Commerce, for the agency.  
Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest against award to low-priced, technically acceptable offeror is dismissed where protester is third-low offeror and protest does not challenge acceptability of second-low offeror.

## DECISION

Jay Boman protests the award of a contract to Weather Plus, Inc. under request for proposals (RFP) No. 52ABNW200046, issued by the National Oceanic and Atmospheric Administration (NOAA) to acquire weather observation services for Baker City, Oregon.

We dismiss the protest because Jay Boman is not an interested party.

The RFP called for submission of firm-fixed-price offers to perform weather observation services for a base year and two 1-year option periods and provided that award would be made to the low-priced, technically acceptable offeror. In response to the solicitation, NOAA received 10 initial offers, 5 of which were determined after evaluation to be within the competitive range. The agency then engaged in discussions with the competitive range offerors and solicited their best and final offers (BAFO). After receiving and evaluating BAFOs, NOAA determined that all five competitive range offerors were technically acceptable. NOAA then made award to Weather Plus as the low-priced, technically acceptable offeror.

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Jay Boman argues that Weather Plus did not meet the RFP's requirements relating to the Fair Labor Standards Act and Service Contract Act wage determinations. The protester also argues that NOAA erred in making award to Weather Plus because the firm is not a labor surplus area concern.

Under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may maintain a protest before our Office. An interested party is defined as an actual or prospective 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) (1992). A protester is not an interested party where it would not be in line for contract award if its protest were sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

Here, there is an intervening offeror, John Bruce, between the protester and the awardee. Because John Bruce was determined to be technically acceptable and offered a price lower than Jay Boman's (and neither Jay Boman nor any other offeror has challenged John Bruce's acceptability), John Bruce, not Jay Boman, would be in line for award should Weather Plus be determined ineligible. Jay Boman therefore lacks the direct economic interest required to maintain its protest. Id.

The protest is dismissed.



John M. Melody  
Assistant General Counsel