

Protest of ) Date: May 7, 1991  
GRADY STEPHENS PRESSURE )  
CLEANING, INC. )  
Solicitation No. 119990-91-A-0114 ) P.S. Protest No. 91-22

### DECISION

Grady Stephens Pressure Cleaning, Inc. ("Grady Stephens") timely protests the award of a contract for vehicle washing to S & J Fleet Service ("S & J"). The protester contends that on this contract S & J is using workers who do not carry the various types of insurance required by the solicitation, allowing S & J to offer a lower price.

The Procurement Service Office in Tampa, FL, issued Solicitation No. 119990-91-A-0114 on January 31, 1991, with a due date of February 15. The solicitation sought a contractor to provide the labor, materials and equipment to wash the interior and exterior of approximately 200 postal vehicles at five different postal locations. Section M.1, "Basis of Award", stated that the Postal Service would award a contract to the responsible offeror whose proposal represented the best overall value. In addition, Section H.11, "Insurance", informed offerors that:

During the term of this contract and any extension, the contractor must maintain at its own expense the insurance required by this clause. . . . The contractor must maintain and furnish evidence of workers' compensation, employers' liability insurance, . . . general public liability and automobile liability insurance. . . . Insurance must be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. . . . The maintenance of insurance coverage as required by this clause is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination for default.

Award was made to S & J on February 22 for \$39,130. Grady Stephens had offered a price of \$52,777. The protester was notified of this award by letter dated February 22. Grady Stephens timely filed its protest with the Tampa office, where it was received on March 15. The Tampa office forwarded the protest to this office for resolution.

In its protest, Grady Stephens alleges that based upon information it has received from people who work for S & J, S & J uses "subcontractors" instead of employees to perform its vehicle washing contracts. Grady Stephens contends that since S & J's workers are subcontractors, according to his reading of the solicitation, these subcontractors are required to furnish their own worker's compensation, general liability

insurance and automobile liability insurance.

Grady Stephens further alleges that the people it talked to who worked for S & J revealed that they did not have the required insurance. The protester adds that although S & J may carry the required insurance, the people performing the work appear not to be insured. The protester points out that S & J is given an unfair price advantage if it is allowed not to comply with the insurance requirement. Grady Stephens asks that if it is found that S & J is not complying with this requirement, the solicitation should be rebid.

The contracting officer, in his statement, reports that S & J signed its proposal, indicating its intent to abide by the terms and conditions of the contract. He states that this contract is with S & J, as a prime contractor, and that it is the prime contractor who will be responsible for any insurance requirements. The contracting officer further reports that he has not heard from S & J subcontractors concerning insurance problems. He adds that the protester has failed to present any documentation concerning lack of insurance and that proof of insurance is not required with an offeror's proposal.

The contracting officer also states that the Postal Service does not control a contractor's costs and that offerors that offer the best value to the Postal Service will be awarded contracts. He affirms that to date, S & J's performance has been satisfactory, and that therefore, there is no reason to single it out for compliance. He requests that the protest be denied.

The protester responds that S & J may be conforming to the letter of the contract by having the required insurance but that it is not conforming to the intent of the contract. Grady Stephens questions the propriety of a requirement that the prime contractor be covered without requiring the same of the subcontractors. The protester interprets the contracting officer's statement concerning S & J's satisfactory performance as a statement that since the performance is good, compliance is not necessary. Grady Stephens find this attitude to be too cavalier.

### Discussion

The protester's complaint is that it believes that S & J may not be complying with Section H.11 of the solicitation.<sup>1/</sup> Section H.11 is clearly a contract clause and not a solicitation provision. Section H.11 begins "[d]uring the term of this contract and any extension, the contractor must maintain . . . the insurance required by this clause." Emphasis added. Section H.11 uses terms such as "contractor", "contract" and "clause" because this section is a part of the contract, once executed, not a solicitation requirement for offerors. C.R. Daniels, Inc., P.S. Protest No. 90-62, December 21, 1990.

Since compliance with Section H.11 is a contractor requirement and not an offeror's

<sup>1/</sup> We note, in passing, that Grady Stephens has not shown any proof that its allegations concerning S & J's noncompliance with the insurance provisions are true. In fact, it repeatedly states that it is possible that S & J does have the required insurance.

requirement, it is a matter of contract administration whether or not Grady Stephens is complying with this insurance clause. Matters of contract administration are unreviewable in a bid protest proceeding. Grimefighters, Inc., P.S. Protest No. 88-69, December 28, 1988; see also Ginny Baker, P.S. Protest No. 90-04, March 16, 1990 (awardee's alleged non-compliance with applicable regulations is a matter of contract administration outside our bid protest jurisdiction). Since the protester raises an issue that cannot be the basis of a protest, this protest is dismissed.

The protest is dismissed.

**[Signed]**

Counsel                      William J. Jones                      Associate General  
   Office of Contracts and Property Law  
**[Compared to original 5/16/95 WJJ]**