

**February 26, 1996**

**P.S. Protest No. 95-51**

**ADAMS-MCCLURE, INC.**

**Request for Quotations 072368-96-A-0004**

**DIGEST**

Protest against the issuance of a purchase order to an incumbent printing contractor based on its previous Postal Service experience is sustained where unstated evaluation factors were used and award was not made in accordance with the RFQ's stated criteria.

**DECISION**

Adams-McClure, Inc., protests the issuance of a purchase order pursuant to a not Request for Quotations (RFQ) to R & M Colour Graphics.

The Denver Purchasing Service Center issued the RFQ on September 27, 1995, to seven companies, seeking quotations to print and mail information flyers for 1,100,000 Denver area households four to six times during 1996 for the Western Area Consumer Affairs office. The RFQ estimated that between one and six different flyers would be needed and stated:

Vendors are required to have knowledge of and meet any and all print specifications of the United States Postal Service. This will include such items as the placement, size, and color of bar codes, [ZIP C]odes, postal customer (address), and logos of the U S Postal Service. Failure to meet any of these specifications on any finished materials will be grounds for immediate rejection of that material.

The RFQ also stated that the Postal Service "may issue a Purchase Order to, or enter into a Basic Pricing Agreement with, the quoter offering the best value to the Postal Service. Best value includes price, quality, delivery terms and supplier capability and reputation."

Five offers were received by the due date of October 12. Adams-McClure's unit (per issue) price was \$26,601.30, while that of R & M Colour Graphics, the incumbent under contract

072368-95-P-0087, was \$26,747.20, a difference in price per issue of \$145.90. The other offers were higher-priced.

A memorandum dated November 3 and signed by both the purchasing specialist involved in the procurement and the contracting officer stated that the two references supplied by Adams-McClure had been contacted. Both had been "satisfied with [Adams-McClure's] work--but one reference. . . said there had been a problem with ink bleeding on a print job which was done with Adams' new Web printer. Problem was corrected and job reprinted when customer pointed problem out." The purchasing specialist asserts that Adams-McClure advised that it was using a new "printing machine - only one in area - that requires only one person to operate."<sup>1</sup> The November 3 memorandum went on to state:

Adams-McClure has been in business for only a short time, propose[s] using this new machine, and ha[s] not performed on any previous Postal Service print jobs. R & M Colour Graphics . . . has satisfactorily met all printing and delivery requirements to date under its present Postal Service contract, and has been highly recommended by Manager, Customer Services. Inasmuch as this is a time-critical publication that would be mailed directly to OUR customers, the general public, by the contractor, we do not feel it would be of benefit to the Postal Service to save \$583.80 on a \$107,000.00<sup>[2]</sup> job by awarding to a new contractor without past Postal experience who would be using a new type machine. Based on the above, and the fact that this is a 'best value' purchase, we feel that it is in the best interest of the Postal Service to make award to R & M Colour Graphics.

R & M Colour Graphics was selected on November 3. This protest followed. The protest asserts that the Postal Service "awarded the contract to a higher cost bidder [sic] with whom the Postal Service had a previous relationship and simply 'wanted' to do business."<sup>3</sup> The protest claims that the purchasing specialist "manufactured a quality problem" in Adams-McClure's product, allegedly based on information gained from a named business reference. According to the protester, the reference had discussed with the purchasing specialist how Adams-McClure had handled any problems which arose, and had given "a glowing report" on how Adams-McClure had "eliminated an ink bleed on the edge of the printed sheets of paper. . . . Ironically, [the reference] gave such example as an illustration of AMI's prompt attention and determination to satisfy the special needs of each customer -- not as a concern for the quality of AMI's service or product." Adams-McClure asserts that in a meeting with the contracting officer and purchasing specialist the purchasing specialist admitted that the "example of AMI's problem solving was not a disparaging comment

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<sup>1</sup> In its comments on the protest, the protester denies that its press is "new" or that it so represented it.

<sup>2</sup> This figure assumes four issues.

<sup>3</sup> "Bid" and "bidders" are not proper terms to use with respect to negotiated procurements, including those involving RFQs, rather than formally advertised sealed bid procurements. In negotiated procurements, "offerors" or "quoters," rather than "bidders," submit "proposals" or "quotations" rather than "bids." See, e.g., *Government Contract Advisory Services, Inc.; B&B General Contracting, Inc.*, P.S. Protest Nos. 93-21; 93-25, December 16, 1993.

regarding the quality of AMI's service and product . . . ."

The protester asserts that the contracting officer "continually admitted" that the Postal Service "really wanted to work with [the awardee] since it has worked with them numerous times before" and "just felt better" contracting with R & M Colour Graphics "despite the higher price." Adams-McClure further states that it was told that its lack of postal experience was a deciding factor. The protester claims that award was based upon "a standard best value criteria [sic]" or "factors stated in the solicitation" and that "there were possibly additional perhaps unwritten qualifications which a business must meet before it may be granted a Postal Service contract." The protester claims that it has "experience, resources, financial stability, equipment and ability to produce at a lower cost than its competition" but that the Postal Service was not interested in its abilities. It asks that the award be overturned and a new award be made to it.

The contracting officer's statement in response to the protest asserts that the offers of the protester and the awardee were evaluated in accordance with the solicitation's terms:

The price was so close between the protester and the awardee that it was not considered a significant factor; quality and delivery terms were comparable; and the decision between the two closely ranked offers was based on a perceived advantage of the awardee in capability and reputation. This advantage, reasonably determined within my discretion, was based in large part upon the Postal Service's prior experience with the awardee, which had proven itself to be an excellent contractor. Our lack of similar experience with the protester tipped the scales in favor of the awardee. AMI's short history as a company, regardless of the individual experience of its employees, contributed to the decision.

The contracting officer states that although "[b]oth companies appeared capable," the awardee was "found to be better qualified, based on all available information, including the strength of references and past experience." He confirms that Adams-McClure's reference had stated that the problem with its work had been satisfactorily corrected; however, he asserts that "the quality concern itself could not be construed as an accolade." Nonetheless, the contracting officer denies that Adams-McClure was found not to be qualified for Postal Service work. "What was said was that in regard to this award, [Adams-McClure] did not have any Postal Service experience. In fact, it was told that it would be considered as a source for future solicitations or RFQs." The contracting officer concludes: "AMI was not 'disqualified,' but merely failed to receive the award in a close competition. The awardee was better qualified based on both its longer history as a company and the Postal Service's experience with it."

Replying to the contracting officer's statement, the protester asserts that the quoted reference had intended that his comments be "construed as an accolade."<sup>4</sup> Further, the

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<sup>4</sup> The protester has submitted an affidavit signed by the business reference to which the parties refer. He states that when he was contacted by the purchasing specialist, "I gave AdamsMcClure a very high rating." He states that when responding to the question of how AMI handles its problems, he described the ink bleed, "in an attempt to illustrate AdamsMcClure's high level of service. . . . AdamsMcClure not only immediately corrected the ink bleed, but was even willing to reprint the entire job for me even

protester asserts that "history as a company" and "experience with the Postal Service" were not evaluation criteria stated in the RFQ. Adams-McClure stresses that in admitting that Adams-McClure was downgraded because of a lack of Postal Service experience, the contracting officer admitted that postal experience was a qualification for the contract, "a requirement which was never disclosed prior to the award." The protester asserts that some of its employees previously worked for the awardee on postal printing jobs.

The protester claims that the November 3 memorandum (text, *supra.*) "appears somewhat suspect," as if "the author was trying hard to justify his/her decision" after a protest had been filed instead of being concurrent with the November 3 award. In support of its accusation, the protester states that the report's focus on it seems to indicate that the memorandum was written with the protest in mind, since "[c]ommon sense would indicate that if a true analysis were performed, all bidders would be analyzed and discarded until the successful bidder was determined."<sup>5</sup> The protester reiterates its claim that no "quality" problem existed before contract award and arose only when "there was a need to justify the award to a higher bidder."

The protester concludes that "it is apparent from the report of the contracting officer and the evaluative determination that the Postal Service awarded the contract to its favored vendor and then worked hard to contrive and manufacture problems with AMI to justify their award" and asserts that if prior postal experience had been a stated requirement, it could have informed the Postal Service of the employees who had previously worked on postal jobs for R & M Colour Graphics.

## **DISCUSSION**

When a protester claims that offers were improperly evaluated, this office will not disturb the evaluation unless the protester shows that it was "arbitrary or in violation of procurement regulations." *Caravelle Industries, Inc.*, P.S. Protest No. 93-17, November 10, 1993; *Cutler Manufacturing Corporation*, P.S. Protest No. 90-28, July 5, 1990; *Computer Systems & Resources, Inc.*, P.S. Protest No. 86-4, March 27, 1986.

Contrary to the protester's general objection, a contracting officer may undertake to evaluate factors other than price in determining which of several offers or quotations provides the best value to the Postal Service. See PM 4.2.5 b; 4.3.1 e. Also, it is not impermissible for "postal experience" to be used as a prequalifier or an evaluation factor. See, e.g., *W.M. Schlosser Co., Inc.*, P.S. Protest No. 93-30, March 9, 1994; *Kleinknecht*

(..continued)

though a reprint was not needed."

<sup>5</sup> The record shows no evidence that the November 3 memorandum was contrived for the protest file. On the contrary, the memorandum is the typical one which purchasing specialists and contracting officers make concerning the determination to award a contract to a particular offeror. The protester appears to be accusing the contracting officer of backdating the memorandum. That accusation, supported only by the protester's pure speculation, does not come close to providing their "refragable proof" necessary to sustain an allegation of bad faith on the part of a government official. See *Anthony Owens*, P.S. Protest No. 94-32, September 9, 1994.

*Mechanization Group*, P.S. Protest No. 92-24, October 2, 1992. However, it is axiomatic that a solicitation must "fairly advise prospective offerors of the basis on which their offers will be considered for award." *Dawson Construction Co., Inc.*, P.S. Protest No. 91-47, September 25, 1991; *International Technology Corporation*, P.S. Protest No. 89-21, May 8, 1989. An offeror must have notice of the factors that by themselves could eliminate the offeror from competition. See, e.g., *Hratch Kouyoumdjian & Associates, Inc.*, P.S. Protest No. 93-03, April 16, 1993. This principle applies to RFQs in purchases conducted under simplified purchasing procedures under PM 4.3., which the contracting officer states were used here. Where factors other than price will be considered in a simplified purchase, the contracting officer must advise the prospective offerors of the basis on which their offers will be evaluated for award. See, e.g., *Domino Amjet, Inc.*, P.S. Protest No. 91-54, October 8, 1991; *The Office Place, Inc.*, P.S. Protest No. 90-15, May 11, 1990.

In this case, it is evident that the contracting officer declined to award to Adams-McClure primarily on the basis of its lack of Postal Service experience and its short length of time in existence as a company, matters which were not established as evaluation criteria in the RFQ. Of the four identified factors other than price, the contracting officer has properly eschewed reliance on "quality" and "delivery terms," leaving "supplier capability" and "reputation." Neither of these can reasonably be understood to relate to prior Postal Service experience or to the number of years the company has existed. The award decision, which was made on a basis other than that stated in the RFQ, was, accordingly, arbitrary.

The contracting officer is directed to place no more orders under this RFQ, and to resolicit the requirement for the production of further printings of customer flyers. The new solicitation should state clearly the evaluation factors which will be applied to the offers, and the evaluation must be consistent with the factors stated.

The protest is sustained.

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Contract Protests and Policies