

Protest of )  
 ) Date: March 25, 1988  
 FREDERICK MANUFACTURING CO., INC. )  
 )  
 Solicitation No. 104230-87-B-0119 ) P.S. Protest No. 88-03

### DECISION

Frederick Manufacturing Co., Inc. (Frederick), protests the award of a contract to Intertek Services Corporation (Intertek) under Request for Proposals (RFP) No. 104230-87-B-0119. The protester questions the evaluation of its technical proposal and asserts that it should have been awarded the contract.

The RFP was issued by the Office of Procurement at Postal Service Headquarters on July 8, 1987, with an offer due date of July 30. The RFP, which requested both technical and price proposals, sought offers for quality assurance representative services for acceptance testing of mail processing equipment manufactured for the Postal Service by others under separate contracts. The solicitation contemplated a contract for a one-year period with options to extend the services for two (2) one-year periods. Under the evaluation criteria set forth in Section B - Evaluation and Award Factors, award would be made to the offeror with the highest overall score, composed of the sum of the indexed technical score (the points awarded to each offeror's technical proposal divided by the highest points awarded any proposal) multiplied by 40 and the indexed price score (the lowest offered average hourly rate for the three-year period divided by the offeror's average hourly rate for the same period) multiplied by 60.

Eight offers were received in response to the solicitation. The technical proposals were reviewed by an evaluation committee which found all of the proposals technically acceptable. Following best and final offers, the firms with the three highest overall scores were Nesco Design Group (Nesco) - 94.2; Intertek -89.9 and Frederick - 88.9. Award was made to Nesco on October 15, 1987. However, by letter dated December 30, 1987, the contracting officer advised all offerors that a second award was being made to Intertek. This award was for acceptance testing for a contract awarded for mail processing equipment to an affiliate of Nesco. The purpose of the second award was to avoid any possibility of a conflict of interest that could result from Nesco inspecting equipment manufactured by a related company.

Frederick protested the award to Intertek by a letter received by the contracting officer on January 21, 1988. The protester noted, in pertinent part, that Intertek's price was 18% higher than its offer and that, as the contractor on another quality assurance contract, its technical proposal should have been rated "comparable or better than" the proposals of the other offerors.

The contracting officer denied Frederick's protest as obviously without merit, finding it untimely under Postal Contracting Manual (PCM) 2-407.8 d (3).<sup>1/</sup>

By letter dated January 25, 1988, Frederick objected to the contracting officer's action, asserting that it did not receive the December 30 letter until January 11, 1988. As evidence to support its assertion, Frederick enclosed a copy of the contracting officer's letter bearing what Frederick contends to be its date of receipt stamp reflecting a January 11, 1988, date.<sup>1/</sup> It contends its protest was received by the contracting officer on January 21, seven working days after January 11, and that it was, therefore, timely. It also repeats its challenge to the evaluation of offers because its price was below that at which Intertek was awarded its contract. The contracting officer referred the matter to this office pursuant to PCM 2-407.8 d (4).

In his report to this office, the contracting officer states that the technical and pricing proposals of all offerors were properly evaluated, and, although Frederick's price was lower than Intertek's price, Intertek's overall score was higher. He asks that the protest be denied.

The record before us does not clearly establish when the notice of award letter dated December 30 was received by the protester or when Frederick otherwise knew of the proposed award to Intertek. The contracting officer has not supplied any evidence, such as a certified mailing return receipt, to show when the notice of award letter was received by the protester.<sup>1/</sup> Accordingly, we have no basis to conclude that Frederick's protest was not timely filed.<sup>1/</sup>

<sup>1/</sup>PCM 2-407.8 d (3) provides that protests must be received within 10 working days after the information on which they are based is known or should have been known to the protester, whichever is earlier.

<sup>2/</sup>Although the outline or border of the date stamp together with the word "Received" are clear, the date itself is not. Two parallel vertical lines, "11", are prominent. However the month and the year are less distinct and appear to be smaller in size than the "11".

<sup>3/</sup>In his report, the contracting officer did not refer to when Frederick may have received the December 30 letter. This letter was apparently not sent by registered mail, certified mail, or Express Mail.

<sup>4/</sup>See Lott's, P.S. Protest No. 80-8, March 10, 1980; Information Systems Design, Inc., et al, P.S. Protest Nos. 79-2 and 79-3, April 6, 1979; Grant Rental, Inc., P.S. Protest No. 77-40, November 4, 1977. In view of this determination, we need not consider the effect, if any, of Frederick's date stamp on the contracting officer's December 30 letter.

The protest must, however, be denied. As is well settled, the determination of the relative merits of proposals is the pro-curing activity's responsibility, and procuring officials necessarily have a reasonable degree of discretion in that regard. See Falcon Systems, Inc., et, al., P.S. Protest Nos.86-31, 86-33, and 86-35, July 25, 1986; F.R. and Lee Mackercher, P.S. Protest No. 85-45, September 17, 1985; Bray Studios, Inc., Comp. Gen. Decs. B-207723, B-207746, October 27, 1982, 82-2 CPD & 373. Our review of the technical evaluation of proposals is limited, Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986; Chamberlain Manufacturing Corporation, P.S. Protest No. 85-83, February 14, 1986, and this office will not substitute its judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of our procurement regulations. H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984.

That Intertek's price was higher than Frederick's is not determinative since, under the terms of the solicitation, award was to be made to the offeror having the highest overall score (technical and pricing). The worksheets submitted by the contracting officer in his report reflect that the technical evaluators rated Intertek's technical proposal higher than Frederick's and application of the solicitation's evaluation formula to the technical scores and prices resulted in a higher score for Intertek than for Frederick. There is nothing in the worksheets which suggests that this evaluation was unreasonable.

Unsupported allegations or mere disagreement with the evaluation scores given cannot amount to evidence necessary to sustain a protest. See Concepts Office Furnishings, Inc., P.S. Protest No. 85-59, November 18, 1985; Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984.

The protest is denied.

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**[checked against original JLS 2/23/93]**