

Protest of) Date: December 28, 1988
GRIMEFIGHTERS, INC.)
Solicitation No. 451800-88-A-4213) P.S. Protest No. 88-69

DECISION

Grimefighters, Inc. (Grimefighters) has timely protested the award of Contract No. 451800-89-R-0069 to T.W.S., Inc., objecting to the basis upon which award was made.

Solicitation No. 451800-88-A-4213 for vehicle washing services was issued on September 20, 1988 by the Columbia Division, Office of Support Services, Columbia, SC. Bid opening was set for October 12 at 4:00. Five offers were received and were opened as scheduled. T.W.S. was found to be the low, responsible offeror and award was made to it on October 18.

The solicitation was set out in the standard postal procurement form 7394 and 7395 for vehicle maintenance, but vehicle washing was the only service requested. The basis on which award would be made was set out on the reverse of form 7394 as follows:

The United States Postal Service may enter into one or more Vehicle Repair and Maintenance Agreements to perform maintenance, repair and servicing of vehicles assigned to an individual Postal Service Installation. Each offeror is advised that the Postal Service will only enter into agreements with those offerors whose proposals represent the lowest overall costs to the Postal Service. Distance from the postal installation (deadhead time), hours of operation of both the postal installation and the offeror (i.e., ability to service when postal vehicles are idle), availability and cost of emergency road service are part of the criteria used in arriving at the lowest overall cost. Additionally each offeror must be determined to be a "responsible contractor" by having an adequately equipped shop, trained personnel capable of performing the required services and requisite financial resources.

The solicitation also provided that all washing services were to be performed at the postal facilities listed in the solicitation and all service was to be performed on Sundays or at other times when the vehicles were not in use.

Grimefighters protests that the contracting officer improperly considered only price in evaluating the offers. It claims that the Postal Service took only thirty minutes to make its decision to award the contract to T.W.S., paid no attention to the ability of the offerors to perform, and, by releasing Grimefighters' pricing schedule from a previous contract, undermined the bidding process by making it possible for anyone to undercut Grimefighters' prices in order to receive the present contract. Grimefighters also complains that the Postal Service required no verification from the bidders that they would abide by federal and state laws with regard to certificates of insurance and workman's compensation requirements. Grimefighters does not allege that there is a particular requirement in the solicitation for such verifications which was disregarded by the offerors.

In his report to this office, the contracting officer denies the allegation that the award decision was made on October 12. He states that thirty minutes after bid opening, one of the procurement specialists received a telephone inquiry from Grimefighters regarding the status of the evaluation process. The procurement specialist advised Grimefighters that T.W.S. was the apparent low offeror, but did not indicate that award had been made.

The contracting officer contends that the release of pricing data from prior contracts between the Postal Service and Grimefighters is irrelevant to this solicitation and, in any event, was proper. He maintains that every contractor is expected to comply with all applicable federal, state and local laws, and that certificates of insurance and workman's compensation were not a requirement of the solicitation. If, after award, a contractor does not comply with such laws, it would be a matter of contract administration.^{1/}

Grimefighters' objection that price was the only criterion considered does not warrant overturning the contract award. The solicitation required the contracting officer to evaluate the offers and make award on the basis of "the lowest overall costs to the Postal Service." The price offered by T.W.S. was the lowest. The three additional criteria set out in the solicitation are not relevant to the award process in this instance. Under the terms of the solicitation, all offerors agreed to wash the vehicles on Postal Service property, making the "distance from the postal installation" criterion irrelevant. The "hours of operation" factor was also immaterial, since the solicitation specified that the vehicles were to be washed during times when they were not in use. Further, the availability of emergency road service is irrelevant to a vehicle washing contract. There was no reason to adjust the several bidders' prices to reflect additional cost considerations.

Grimefighters complains that the contracting officer did not evaluate T.W.S.'s ability to perform the contract. This is a challenge to the contracting officer's affirmative determination of T.W.S.'s responsibility. The well-settled standard by which we review such

^{1/}T.W.S. submitted comments as an interested party in response to Grimefighters' protest, contending that improvement in its cleaning methods makes it possible to offer more competitive prices without reducing quality of service.

a determination is as follows:

An affirmative determination of responsibility is a matter within the broad discretion of the contracting officer and is not subject to being overturned by this office in the course of a protest absent fraud, abuse of discretion, or failure to apply definitive responsibility criteria.

Knoxville Glove Company, P.S. Protest No. 88-75, November 15, 1988, quoting Gage Constructors, P.S. Protest No. 87-11, July 13, 1987; see also Triad Building Maintenance Co., P.S. Protest No. 88-11, February 17, 1988. Grimefighters offers no evidence of fraud or abuse of discretion.

The fact that other offerors may have had access to pricing information from prior Grimefighters' contracts did not compromise the bidding process, as Grimefighters suggests. The price paid under a Postal Service contract is information generally subject to public disclosure. In any event, Grimefighters' objection in this regard, first raised after contract award, is untimely. Postal Contracting Manual (PCM) 2-407.8 d.

To the extent that Grimefighters complains that the certificates of insurance or verification of compliance with workman's compensation laws should have been included in the solicitation, this is an objection to the terms of the solicitation and is also untimely. PCM 2-407.8 d. A contracting officer may presume that offerors will comply with applicable laws. After performance has begun, should the contracting officer discover that the contractor is not abiding by such laws, it will be a question of contract administration, unreviewable in a bid protest proceeding. Knoxville Glove Company, supra; Nelson Window and Glass Company, P.S. Protest No. 86-44, July 25, 1986.

This protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 3/4/93]