

Protest of ) Date: July 19, 1990  
 )  
DATAVIEW CORPORATION )  
 )  
Solicitation No. 118925-90-A-0095 ) P.S. Protest No. 90-31

### DECISION

Dataview Corporation ("Dataview") protests the issuance of a purchase order to Viking Metal Cabinet Company, Inc. ("Viking") for eight models of tag and label racks. The protester alleges that since it was the lowest bidder on these items, it should have received award of the purchase order.

Solicitation No. 118925-90-A-0095 was issued on March 29, 1990, by the Tampa, FL Division Procurement Office as a simplified purchase pursuant to Procurement Manual ("PM") 4.2.2 b.1. The solicitation requested offers on a total of eight different models of tag and label racks. Section 1.1 of the solicitation listed specifications and Viking model numbers "to show the Postal Service's requirements." The solicitation stated that "[t]he Viking Metal Cabinet Co. Inc. models below or equal units from other manufacturers, will be accepted, as long as the other manufacturer's units meet the minimum specifications of the Viking cabinets." The items to be ordered by the Postal Service were described in this manner: Item No. 1 - Viking Metal Cabinet Co. Inc. Model #BF 100, Openings, -100, 24-1/2" W x 23" H x 3-1/2" D, can be placed in a stand, put on a table or hung on a wall.<sup>1/</sup> Section 3.1 of the solicitation stated that "[t]he Postal Service intends to award a contract to the responsible offeror whose proposal will be most advantageous to the Postal Service, considering cost or price and other factors specified elsewhere in this solicitation."

Three offers were received on this solicitation. Dataview was the low offeror with a price of \$20,221.65, and Viking was high at \$24,891.01.<sup>2/</sup> The purchase order was awarded to Viking on June 12, 1990. This office timely received Dataview's protest on June 18. Viking agreed to suspend its performance under this purchase order pending the outcome of this protest.

In its protest, Dataview states that since its bid<sup>1/</sup> was over \$4,000 less than Viking's bid,

<sup>1/</sup>Each of the eight items described in the solicitation contained descriptions which were similarly detailed.

<sup>2/</sup>Dataview offered an alternate proposal priced at \$20,162.85 which substituted a new tag rack for one of the eight models specified in the solicitation. This new rack allegedly eliminated the need for any lifting to get the labels from the rack.

<sup>3/</sup>The terms "bid" and "bidder" are incorrect because those words apply only to formally advertised procurement procedures. This purchase order was issued under negotiated procurement procedures.

it should have been awarded the purchase order. Dataview adds that it was informed by the procurement office that safety was the reason the purchase order was awarded to Viking. The protester continues that its alternate proposal offered a safer model than the Viking model listed in the specifications since its new unit was lighter in weight and did not require any lifting.

The contracting officer reports that award was made to other than the low offeror based upon the best value to the Postal Service and the recommendations of the proposal evaluator. He lists safety and product versatility as the factors that make Viking's racks a better value to the Postal Service. In particular, he adopted the evaluator's comments that Viking's label racks were constructed of lightweight metal as opposed to the wood and plywood material used by Dataview and the other vendor. The contracting officer's report adds that the lightweight material is safer because it increases the stability and portability of the racks. He states that the evaluator reported to him that a general mail facility that used the Dataview label racks had one topple over when it was moved.

The contracting officer further states that the Viking label racks are more versatile since they have metal partitions that can be moved to accommodate different size labels and that wood racks are glued together and cannot be modified. He cites the strength, durability and rigidity of the Viking racks as other advantages, and also adds that although the protester offered an alternative cabinet that was allegedly safer than Viking's model for one of the eight models, the stability and safety of the remaining models was still in question. The contracting officer recommends that Dataview's protest be denied since he relied upon the comments of an evaluator who is very experienced with this type of equipment when he awarded the purchase order to Viking.

The protester disagrees with the evaluator's assessment of the safety of Viking's products. Dataview claims that the Viking racks, by design, require lifting and bending to use the labels. Dataview agrees that its wooden racks are heavier but adds that since its racks require no lifting, the additional weight is of no consequence. The protester disputes the contracting officer's statement that metal racks offer more strength, durability and rigidity than wooden racks.

Dataview further argues that it also has a line of racks that have movable partitions to accommodate different size labels, but that such features were not a requirement of the solicitation. Dataview also dismisses the evaluator's reliance upon Viking's two-year product guarantee as evidence of Viking's product value. The protester again points out that such a guarantee was not required by the solicitation, but that it could offer a three-year guarantee on its products. The protester lastly asserts that its bid was within the technical requirements of the solicitation.<sup>1/</sup>

therefore the correct terms are "offer" and "offeror". See Handling Systems, Inc., P.S. Protest No. 89-70, December 19, 1989.

<sup>4/</sup>Viking briefly comments that the racks it offered conformed to the specifications and that its record of product performance and safety has been well established during its 28 years of business.

## Discussion

Dataview alleges the improper evaluation of its proposal. "When a protester claims that improper evaluation procedures were used, this office will not disturb the evaluation of a proposal unless it is shown to be arbitrary or in violation of procurement regulations." Cutler Manufacturing Corporation, P.S. Protest No. 90-28, July 5, 1990.

The Procurement Manual ("PM") 4.2.3 b. states that, for simplified purchasing, "[e]valuation must be made on the basis of best value to the Postal Service, taking into account price and price-related factors. . . ." PM 4.2.3 b. PM 2.1.6 a. further requires the contracting officer to "develop a source selection plan for each procurement subject to competitive procedures (see 4.1) whenever price and price-related factors will not be the sole basis for proposal evaluation and contractor selection." (Emphasis added.) PM 4.1.4 a. explains that "[p]roposals must be evaluated in accordance with the source selection plan (see 2.1.6) and the evaluation criteria specified in the solicitation."

In this solicitation, there were no evaluation criteria, therefore, price had to be the sole basis for evaluating these proposals. Indeed, evaluation on the basis of anything other than price would violate the PM requirements as well as the terms of the solicitation. The contracting officer erred when he selected the higher priced Viking proposal over Dataview's based upon "best value" criteria like safety and product versatility. These technical factors were not included in the solicitation; therefore, they could not be used in the evaluation of offers. See Cutler Manufacturing Corporation, supra; cf. International Technology Corporation, P.S. Protest No. 89-21, May 8, 1989 ("[h]ere, the evaluation criteria clearly state that technical considerations are more important than price and will be the governing factor in award"). The contracting officer's rejection of Dataview's offer was not based on criteria set forth in the solicitation, and was, therefore, incorrect.<sup>14</sup>

As relief for this error, we order that Viking's purchase order be terminated for convenience and the requirement resolicited with a product description which clearly sets out the salient characteristics which an equal product will have to meet to be considered for award. If technical requirements are to be evaluated as part of the selection process, the contracting officer should not use simplified purchasing procedures and should ensure that the technical criteria and their role in the evaluation process are set forth specifically.

<sup>54</sup>We note in passing that the solicitation was defective because it required brand name or equal products without a sufficient functional description of what an equal product would be. PM 2.3.3 c. states that:

[I]f fewer than three acceptable brand-name products are specified, . . . [t]he product description must include a description of the item's essential characteristics, such as kind of material, size or capacity, equipment with which the item is to be used, and restrictive operating or environmental conditions."

The solicitation's product descriptions did not meet the above regulation requirements. Therefore, since there was insufficient information on which to gauge whether a proposed equal was, in fact, equal, the procurement was a de facto noncompetitive purchase of the brand name product.

The protest is sustained.

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

**[checked against original JLS 6/4/93]**