

Protest of) Date: February 19, 1992
JALOR GRAPHICS)
Solicitation No. 339990-91-A-0202) P.S. Protest No. 91-95

DECISION

Jalor Graphics ("Jalor") protests the award of a contract to operate a contract station to La Grange Convenience Stores, Inc., d/b/a Mini Mart ("La Grange"). The protester, through counsel, claims that its proposal was not evaluated fairly and that it should have received award.

Solicitation No. 339990-91-A-0202 was issued by the Procurement Service Office in East Orange, NJ, on June 18, 1991, with an offer due date of July 10. The solicitation sought a contractor to operate a contract station in Bayside, NY for a fixed annual price.^{1/} Attachment I to the solicitation described the "general boundaries" of the desired unit's location as "Francis Lewis Blvd, 32nd Ave and 35th Ave, between Francis Lewis Blvd and Clearview Expressway" and "Francis Lewis Blvd., East side, between 32 Ave and 35 Ave." Section M.3 of the solicitation explained that the Postal Service would make its selection for award in the following manner:

- a. Selection for award will be based on the highest final score, based on business score and price score.
- b. Business and price scores will be calculated as follows:

Business score = Points awarded to a specific proposal divided by highest points awarded any proposal

Price score = Lowest offered annual rate divided by offeror's annual rate

- c. Final score will be obtained as follows:

Business score will count for 70% of the final score, and price

^{1/} The file suggests that Jalor, which had been operating a contract station under a previous contract, had exercised its right to terminate that contract and was seeking a new contract for additional compensation.

score will count for 30% of the final score (must total 100%).

(Business score x 70% plus price score x 30% = final score)

The solicitation further specified in Section M.2 that the business proposals would be evaluated according to the following criteria and point allocation:

	<u>Maximum Points</u>
1. Suitability of Location Is the proposed facility-- (a) Within the area designated by the solicitation? (b) Easily accessible to handicapped and other customers? (c) In a location likely to stimulate usage by customers? (d) An appropriate distance from the nearest Postal Service operated facility?	40
2. Suitability of Facility (a) Is the proposed facility attractive, well maintained and in good repair? (b) Is parking sufficient? (c) Does the proposed facility have at least the square footage required by the solicitation?	30
3. Ability to Provide Service (a) Does the offeror have relevant experience? (b) Does the offeror have personnel sufficient to operate the facility or means of obtaining them?	30

Jalor and La Grange submitted offers priced at annual rates of \$40,000 and \$6,000 respectively. A three-member evaluation committee was established to evaluate the business proposals in accordance with section 3.5 of Postal Service Handbook AS-707F, Contracting for Contract Postal Units, July 1989. Jalor received a score of 92.99 out of a possible 100 points on its business proposal, while La Grange received a score of 89.66. On October 9, the contracting officer requested both offerors to submit their best and final offers ("BAFO") by October 15. La Grange increased its annual rate from \$6,000 to \$14,500. Jalor did not change its offer.

The procurement was the subject of congressional attention as the result of inquiries initiated on Jalor's behalf which apparently delayed the award. In late November, La Grange was asked to provide the surety bond required of the successful offeror. On

December 2, the contract was awarded to La Grange and a letter was sent to Jalor advising it of the award. This office received Jalor's December 26 protest on December 27.

In its protest, Jalor alleges that the manner in which proposals were evaluated was flawed. The protester claims that the statement made by the Postal Service that the two offerors "were essentially comparable on all evaluation factors except cost" is false. The protester asserts that it has been operating its postal contract station for two years in a manner that "has won universal praise from the community." Jalor notes that La Grange does not have this experience.

Jalor claims that its facility is more suitably located than the awardee's facility.^{1/} Jalor alleges that while its facility is located on a commercial strip with ample parking and provides access to residents who have depended on its service for the past two years, La Grange's facility is located near an intersection which is dangerous to pedestrian and vehicular traffic and where parking is often impossible. In addition, the protester states that handicapped customers will be hampered by the new location in a way that they never were at its facility.

Jalor's protest also disputes the awardee's ability to maintain sufficient personnel to operate the contract station. Jalor claims that it cannot understand how La Grange will be able to retain even one full-time employee given La Grange's low price. Finally, Jalor argues that since the business proposal had a weight of 70% while price was worth only 30%, Jalor should have received award.

In his statement on the protest, the contracting officer states that Jalor's protest is untimely pursuant to Procurement Manual ("PM") 4.5.4 d.^{2/} Jalor's protest was dated December 26, which, according to the contracting officer, was 18 business days after award. Addressing the merits of Jalor's protest, the contracting officer states that he relied on the findings of the evaluation committee in making his final determination. He asserts that no one on the evaluation committee disputed Jalor's ability to provide the service. However, the "price disparity between the two offerors resulted in La Grange's offer being more favorable to the Postal Service" The contracting officer notes that La Grange is located within the geographic area described in the solicitation and that it conducts a business which is suitable for operation of a contract station and is accessible to postal customers. The contracting officer adds that while La Grange has to acquire equipment and train personnel, he does not think that this will be a problem.

Replying to the contracting officer's statement, Jalor asserts that its protest was not untimely because the contracting officer provided neither it nor its counsel with the PM provisions dealing with the time requirements for filing protests until mid-December, and its counsel did not receive written notification of award before December 16.

^{2/} Jalor is at 200-09 32nd Avenue. La Grange is at 205-11 35th Avenue.

^{3/} PM 4.5.4 d. states that "protests must be received not later than ten working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question."

With respect to the evaluation process, the protester asserts that the contracting officer's statement did not address many of the issues. Jalor states that the contracting officer did not identify either the offerors' final scores or how the scores were compiled.

Furthermore, the contracting officer failed to address how the evaluation committee was formed, the criteria employed for selecting its members, the qualifications of its members, whether the committee complied with the provisions of Handbook AS-707F, or whether the proceedings took place in a timely manner. The protester questions whether the congressional inquiries played a role in the contracting officer's decision and why the information that the Postal Service supplied to the congressional offices was not disclosed to the public.

The protester further argues that although La Grange's lack of training and equipment should have been major factors in evaluating its suitability, it is clear from the contracting officer's statement that these factors were not considered to be very important. Finally, the protester states that the contracting officer failed to indicate whether he took into account the facts that Jalor is a woman-owned enterprise, that the La Grange facility is less accessible to the handicapped and has less available parking, and that the differences in price between the two offers are attributable to the varied levels of service and staffing provided by the offerors.

La Grange submitted comments in response to the protest, asserting that it disagrees with Jalor's contention that Jalor is more suitably located than La Grange. According to La Grange, traffic flow is significantly greater on 35th Avenue than on 32th Avenue. La Grange argues that while both locations have metered parking in front of the stores, only La Grange has a rear parking lot. La Grange further stresses that it can serve handicap customers without any inconvenience, while Jalor has steps that must be traversed to enter and leave the premises. La Grange adds that it has the necessary experience, having sold stamps on consignment for the past two years, and that it has the necessary personnel to provide the service. Finally, La Grange explains that it does not consider the contract station to be an income producing operation, but rather a service that it is providing to its customers.

Discussion

At the outset, there is the question whether Jalor's protest has been timely filed. Apparently acknowledging that the protest was untimely as received more than 15 working days after contract award, the protester seeks to justify the delay because of the contracting officer's failure to notify protester's counsel of the award or to provide the protester or its counsel with a copy of the PM provisions concerning protests in a timely manner. We find no merit to either claim. With respect to the first, PM 4.1.5 i. states that "[p]romptly after award, the contracting officer must send all offerors that submitted proposals" a written notification of award. [Emphasis added]. There is no general obligation to notify an unsuccessful offeror's counsel of an award determination and no indication here why such notification would have been required or expected. An unsuccessful offeror is in a better position than the contracting officer to provide its counsel with whatever information it believes its counsel should have.

Secondly, the protester claims that the contracting officer failed to provide it timely

access to the applicable PM protest provisions.^{1/} Here the solicitation advised offerors there were time constraints on their ability to protest unfavorable aspects of the procurement.^{1/} "It is for the protester to gather the information it needs to protest in a timely manner, and its failure to do so, while unfortunate, does not mean that its otherwise untimely protest is rendered timely." Coopers & Lybrand, P.S. Protest No. 89-91, March 21, 1990.

Since Jalor's protest was not received by this office until December 27, 18 working days after contract award, it is untimely. The timeliness requirement is jurisdictional, and this office has no authority to waive it. Computer Systems & Resources, P.S. Protest No. 87-38, June 24, 1987; Tulsa Diamond Manufacturing Corp., et al., P.S. Protest Nos. 85-18, 85-20, 85-23, July 17, 1985. We therefore dismiss Jalor's protest.

Nevertheless, we will comment briefly on the major issues raised by the protester. Jalor's main contention is that its proposal was not evaluated in an equitable manner. "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." Dataview Corporation, P.S. Protest No. 90-31, July 19, 1990, quoting Cutler Manufacturing Corporation, P.S. Protest No. 90-28, July 5, 1990. Section M of the solicitation stated that award would be made to the proposal with the highest final score. Jalor's business score was 1 and its price score was .3625.^{1/} La Grange's business score was .9641 and its price score was 1.^{1/} Jalor's final score thus was .80875 while La Grange's final score was .9749. While Jalor may disagree with the evaluation of its proposal, there is nothing in the record which suggests that the evaluation was arbitrary or in violation of procurement regulations.^{1/}

^{4/} It appears to be the protester's view that the contracting officer was obliged to inform it of the protest regulations even in the absence of the protester's request. There is nothing in the protester's submission to suggest that it made a timely request for such information or that such a request was untimely fulfilled.

^{5/} Section K.4 of the Solicitation provided that "[p]rotests will be considered only if submitted in accordance with the time limits and procedures provided in Chapter 4 of the USPS Procurement Manual. A copy of the protest procedures may be obtained from the office issuing the solicitation."

^{6/} Jalor's business score of 1 was computed as stated in the solicitation by dividing the points that were awarded to its proposal (92.99) by the highest points awarded to any proposal (92.99). Jalor's price score of .3625 was computed by dividing the lowest offered price (\$14,500) by its offered price (\$40,000).

^{7/} La Grange's business score of .96418 was similarly computed by dividing the points that its proposal was awarded (89.66) by the highest points awarded to any proposal (92.99). La Grange's price score of 1 was computed by dividing the lowest offered price (\$14,500) by its offered price (\$14,500).

^{8/} Nothing in the file suggests any impropriety with respect to the areas which Jalor identifies as of concern. Our review indicates that the evaluation was conducted in an appropriate manner; there is nothing to suggest that the congressional interest had any effect on the evaluation; La Grange's ability to obtain equipment and resources were properly considered; the advantages and disadvantages of the offerors' locations were fairly compared; and the solicitation provided no comparative advantage for women-owned enterprises.

With regard to Jalor's assertion that La Grange's pricing was below cost, we note that, in general, the fact that an offeror may suffer a loss if awarded the contract is not, of itself, grounds for not awarding the contract to it. Canteen Service, Inc., P.S. Protest No. 90-68, November 15, 1990; Lightron of Cornwall, Inc., P.S. Protest No. 84-6, February 27, 1984. It is clear from La Grange's comments that it realizes it may not make a profit from this contract. However, as La Grange explains, its primary motivation for submitting an offer for the contract station was to provide a service to its customers, not to make a profit.^{1/}

The protest is dismissed.

[Signed]

William J. Jones
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Office of Contracts and Property Law

[Compared to original 5/18/95 WJJ]

^{9/} Indeed, the file suggests that Jalor's previous operation of the contract station at less than full compensation was motivated by similar considerations. See, e.g., Scott Engel, "Critics Slam Postal Sub-Station Closing," The Courier, December 19-26, 1991, furnished by the protester, which quotes Jalor's proprietor as saying: "We were a community service . . . [b]ut the postal work took up 80% of our time and we decided we should be compensated."