

**February 19, 1997**

**P.S. Protest No. 96-23**

## **ENVIRONMENTAL CONTRACTING, INC.**

**Solicitation No. 082530-96-A-0154**

### **DIGEST**

Protest against evaluation of offers for window replacement contract is dismissed in part and denied in part; fourth-ranked offeror lacks standing to contest evaluation of first-ranked offeror when intervening evaluations are not challenged, challenge to evaluation of protester's offer is not substantiated.

### **DECISION**

Environmental Contracting, Inc., (ECI) protests the award of a contract for window replacement to Mill City Construction, Inc.

Solicitation 082530-96-A-0154 for the replacement of windows at the Newport, RI, post office was issued July 25, 1996, by the Windsor, CT, Facilities Service Office. Section M.1 of the solicitation provided that award would be made "to the responsible offeror whose proposal . . . offers the best value to the Postal Service, considering price, price-related factors, and other evaluation factors specified elsewhere in this solicitation."

The solicitation contained a "contractor's qualification package" consisting of forms on which offerors were to provide information about themselves; the second page of the solicitation provided, in part, as follows:

A committee will review the documentation in the prequalification package and rate the contractor on the following factors in descending order of importance:

PRICE: (50 points)

GENERAL CONSTRUCTION EXPERIENCE: (30 points)

The offeror will be evaluated on past and ongoing performance as a general contractor performing repair and alteration projects similar in nature to the one that will be issued. 10 years experience as prime contractor, having completed 3 projects of similar size and scope in the past five years (20 points). Subcontractor; certified and licensed Asbestos/Lead Abatement subcontractor with 5 years experience in their field and have completed multiple projects of similar size and scope in that time frame. Subcontractor should submit copies of certification and license and separate listing of projects. (10 points).

PROJECT MANAGEMENT: (30 points)

The offeror will be evaluation on their quality performance program (5 points), safety program (5 points), project control (5 points), ability to run a phased project (10 points) and work completed by the contractor's own forces (5 points).

FINANCIAL CAPABILITY: (20 points)

The offeror will be evaluated on bonding capability and banking references. Ability to finance multiple projects. A current Dun and Bradstreet Report is preferred but not mandatory. Offerors must complete all forms.

COMPANY ORGANIZATION: (20 points)

The offeror will be evaluated on the capacity of the company's current staffing, manpower, equipment, resources, and the current workload of the company.

Four offers were received and evaluated. ECI proposed to perform the work for the lowest price, \$664,000, and thus received the full 50 points for the price factor. It received a technical score of 57 points for a total score of 107 points. Mill City, which offered the second lowest price, \$673,000, received 49.3 price points. It received a technical score of 89 points for a total score of 138 points. The other two offerors' scores fell between those of Mill City and ECI.

ECI's protest contends that it was entitled to the contract as the "low bidder" which was also "the most qualified contractor/bidder." Further, it questions the Postal Service's ability to make an affirmative determination of Mill City's responsibility or to rate it higher technically than ECI, contending that it "has no operating facility, but rather is operated out of the home of one of its principals"; and questioning whether Mill City has provided proof of adequate environmental insurance.

The contracting officer's statement on the protest includes the following summaries of the evaluations of ECI and Mill City:

Environmental Contracting, Inc's submittal indicated that it has not completed any projects of similar size or scope. Their submittal included three projects in the amounts of \$244,000, \$300,000, and \$253,000, while this project was estimated at \$623,000. The protester also failed to demonstrate the ability to run a phased project, [and] the proposal did not provide any detail on its quality program, did not break down project control, and demonstrated an average safety program.

[Mill City] was the second low offeror, only \$9,000 higher than the low offer, and was the highest rated technical offer. Mill City Construction, Inc., had performed large phased projects, in the amounts of \$2,800,000, \$1,600,000, and \$1,100,000. Its submittal demonstrated a good safety record, very good company organization, very good financial capability, good quality package and project control package, and an excellent ability to run a phased project. In light of the vastly superior technical package, it was my decision that Mill City Construction, Inc., provided the best value to the Postal Service, notwithstanding its slightly higher price proposal.

With respect to the protest's other contentions, the contracting officer notes that Mill City has a corporate office which is not its principal's residence, but that the existence of its facility is irrelevant, since the solicitation included no requirement for the offeror to have an operating facility. Further, Mill City provided all necessary proofs of insurance.

Finally, the contracting officer notes that since the protester was ranked fourth of the four proposals received, it lacks standing to raise this protest, since even if the protest were sustained, it would not be entitled to award.

The protester submitted further comments, dated January 6, rebutting the contracting officer's characterization of its submission, and raising new contentions about the adequacy of Mill City's submissions based on its review of Mill City's contractor qualification package. The submission included the following points:

- ECI did demonstrate the ability to run a phased project, did provide quality program information, did break down project control, and has "an excellent safety record and program."
- Mill City improperly received higher point scores for company organization than ECI despite its failure to complete the company organization, scheduling, and project staffing portions of the form.
- Mill City's subcontractor did not have a certified lead abatement contractor's license.

— The Postal Service improperly relied on past postal experience with Mill City, rather than on the contents of Mill City's qualification statement, in evaluating Mill City's ability.

— The evaluation of offers was performed too quickly, in that all offers were evaluated within one day after offers were received; the evaluators failed to contact any of ECI's references, even though it made the lowest offer.

## DISCUSSION

We first address the issue of ECI's standing to challenge the evaluation of Mill City's offer. The contracting officer is correct that ECI, the fourth-ranked offeror, which has raised no challenge to the evaluation of the second- and third-ranked offerors, lacks standing to challenge any improprieties in the evaluation of the first-ranked offer.

A previous decision explained the basis for this conclusion:

A key element of our protest regulations is that only an interested party can file a protest. [Procurement Manual (PM)] 4.5.2 a. . . . The necessary criterion for an entity to qualify as an "interested party" to be able to file a protest was established in *Electrocraft Industries, Inc.*, P.S. Protest No. 83-42, September 1, 1983: "[W]hether the protester could be . . . eligible for award of the contract if the protest was upheld." The rule of *Electrocraft Industries* has been frequently followed in subsequent decisions of our office. . . . In *Consultants & Designers Inc.*, P.S. Protest No. 90-11, May 18, 1990, dealing with a negotiated procurement conducted under the PM, the fifth[-]ranked offeror lacked standing to challenge the award to the first[-]ranked offeror without challenging all the interviewing offerors. As we explained in *Gulf & Atlantic Maritime Services, Inc.*, P.S. Protest No. 90-22, July 18, 1990, if an offeror fails to challenge the eligibility of all higher[-]ranked offerors, it lacks standing because, even if the award to the successful offeror was reversed, the protester would not receive award.

The requirement that a protester have standing as an interested party is not a mere whim or caprice, but a very real limitation on the power of our office to render protest decisions. . . . Where a party lacks the necessary "self-interest" in protest issues, . . . it would be "academic" to reach the merits of a protest, since the protester will not be eligible for award even if the protest is sustained. . . . We are without authority to waive the procedural requirement of standing established by our protest regulations. "To render a decision on a matter over which we have no jurisdiction would be to engage in a meaningless excursion." *POVECO, Inc., On Reconsideration*, P.S. Protest No. 85-9, June 12, 1985.

*Rickenbacker Port Authority and The Turner Corporation*, P.S. Protest No. 91-78, February 10, 1992.

However, to the extent that ECI is challenging the evaluation of its own offer, it has standing. *Mid Pacific Air Corporation*, P.S. Protest No. 92-62, November 23, 1992. Accordingly, we turn to that aspect of the protest.

This office plays a limited role in reviewing the technical evaluation of pre-qualification or similar information submitted by a potential offeror. The technical determinations of a contracting officer will not be overturned unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. The protester bears the burden of overcoming the "presumption of correctness" which accompanies the statements of contracting officers. Accordingly, we must determine if [the protester] has met this burden and shown that the contracting officer's decision was arbitrary or not supported by substantial evidence.

*Daniel J. Keating Construction Company* P.S. Protest No. 89-92, March 1, 1990 (citations omitted).

The contracting officer's summary of the evaluation of ECI's proposal noted its failure to identify previous projects of similar dollar value to the Newport project, to demonstrate the ability to run a phased project, to provide any detail on its quality program, or to "break down project control." In its comments on the contracting officer's report, ECI contends that its proposal did adequately address these last three items, although it did not point to any specifics of its submission in that regard.

We have reviewed ECI's submission, and cannot conclude that the evaluators acted arbitrarily in finding that it did not fully address the evaluation factors of project phasing, quality control, and project control.

Since the solicitation set out the documentation requirements and sufficient warning of the consequences of not meeting them, the protester has no basis to complain about being rejected.

The contracting officer was not obligated to seek out information that should have been in the proposal. The burden to submit an adequately written and complete proposal was the protester's. Any reduction in the evaluation scoring that results from an incomplete proposal is attributable only to the offeror.

*CIR Industrial Automation, Inc.*, P.S. Protest No. 95-47, April 29, 1996 (citations and internal quotations omitted).

The protest is dismissed in part and denied in part.

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Contract Protests and Polices