

July 25, 1997

P.S. Protest No. 97-15

DIANNE BYERS

Solicitation No. 089480-97-A-0219

DIGEST

Protest against award of contract for cleaning services is denied: protester who was not the low offeror failed to show that the contracting officer's decision was arbitrary or not supported by substantial evidence.

DECISION

Dianne Byers protests the award of a cleaning services contract for the Palmyra, NY, post office under Solicitation No. 089480-97-A-0219.

The solicitation was issued on February 27, 1997, with a due date for proposals of March 19. Section M.1 of the solicitation states:

The Postal Service intends to award a contract to the responsible offeror whose proposal conforming to the solicitation offers the best value to the Postal Service, considering price, price-related factors, and/or other evaluation factors specified elsewhere in this solicitation.

Section M.2 advises offerors that:

a. Award will be made to the responsible offeror whose proposal offers the best value to the Postal Service, (i.e. a combination of price, price-related factors, and/or other factors). The primary areas to be used to determine which proposal offers the best value to the Postal Service are listed below in descending order of importance:

- General Approach to Scheduling of Work

- Ability to Perform the Requirements; Contingency Plan for Replacement; and Reliability and Availability

- Project Work; Flexibility; and Safety

- Years of Experience

b. Cost/Price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price.

Three offers were received and evaluated. Ms. Byers, who had previously held a cleaning contract for the Palmyra, NY, post office, was given a technical evaluation score of 80 points out of a possible 100 points; her price for the two-year contract was \$25,981.90. Robert C. Herrington, who offered a price of \$23,400, received a technical score of 91 points.

Ms. Byers called the contracting officer on April 21 to inquire about the solicitation. At that time she was told that an award was being made to the low offeror, Mr. Herrington, and she was briefed on her evaluation by the Palmyra postmaster. That evaluation faulted Ms. Byer with respect to her previous performance, contending that she had trouble performing certain functions such as climbing ladders to maintain fluorescent light fixtures, and that she had failed to provide replacement help on days that she could not come to work.

On April 24, Ms. Byers filed a protest with the contracting officer in which she disputed the evaluation with respect to the use of a ladder for the maintenance of the fluorescent fixtures, and explained her failure to provide replacement help during her absences which she contends occurred only three times in 3 and 1/2 years. She also questioned how she could have been rated lower than a party who had never cleaned the post office before. Lastly, she alleges that before she submitted her offer, the postmaster told her that he believed "a lot of people would probably submit bids for more than \$9.00 an hour so I should bid lower." However, Ms. Byers also stated in her protest "I had already decided to bid \$8.50 per hour."

The contracting officer responded to the protest in a letter dated May 8 denying the protest as obviously without merit, and expanding the list of Ms. Byers' shortcomings by adding such things as her failure to perform a number of other required cleaning chores, such as vacuuming and dusting various areas, and often working less than the 3.17 hours per day specified by the contract.

On May 15 Ms. Byers protested to this office contesting some of the contracting officer's findings and admitting others, saying that:

- She was not afraid to use a ladder, but told the postmaster that the wooden ladder was unsafe.

- As to certain cleaning requirements she used her judgment, but admits that in some cases she should have done the tasks more often.
- The requirement of 3.17 hours per day for cleaning was "quite a lot" in relation to the amount of work that needed to be done, and she disputes the postmaster's statements about her arrival times.
- She discussed her prospective offer with the postmaster but she knew that he could not "guarantee a bid" for her and that she "was only asking him his opinion."

The contracting officer's report dated June 25 repeats, substantially, the information contained in the letter of May 8 denying Ms. Byers' protest.

DISCUSSION

The thrust of Ms. Byers' protest is a dispute over her evaluation and her allegation that she discussed her offer with the postmaster. With respect to the evaluation we have said in the past:

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).

In reviewing the information provided by Ms. Byers in support of her protest, we find no independent evidence to support her contentions, only her own statements. Those statements are insufficient to carry the burden of affirmatively proving the allegations concerning her evaluation. *Rita Dwight*, P.S. Protest No. 92-15, October 21, 1992.

Ms. Byers also complains about the Palmyra postmaster's discussions concerning the amount she should propose. While the postmaster disputes the asserted content of those discussions, it is difficult to understand the basis of the protester's complaint even under the facts she alleges. Indeed, the protester has acknowledged that the postmaster, who was not, and could not have been, privy to the intentions of the offerors, was not in a position to advise her how to price her offer successfully.

The protest is denied.

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