

Protest of) Date: January 4, 1990
MAZZANTI'S NOVELTY SHOP)
Solicitation No. 416608-89-A-0184) P.S. Protest No. 89-89

DECISION

Mazzanti's Novelty Shop (Mazzanti's) protests the contracting officer's rejection of its proposal as technically unacceptable. The proposal was submitted in response to Solicitation No. 416608-89-A-0184 for the operation of a contract station in the south side of the area nearby the New Castle, PA post office. The Procurement and Material Management Office in Pittsburgh, PA issued the solicitation on July 31, 1989 with an offer due date of August 21, 1989.

The solicitation stated that the contract station would be operational from 10:00 am to 5:00 pm, Monday through Saturday, and would provide sales of stamps, stationary and money orders, with regular, special and Express Mail service. The offerors were to furnish the facility, utilities, counters, safe and common office supplies. It was estimated that the Postal Service revenue generated by this contract station would be \$50,000 the first year.

The evaluation criteria listed in the solicitation were location, facility and service. More specifically, the location had to be within a specified area, accessible to customers and have available parking. The layout, appearance and handicapped accessibility of the facility were additional factors. Finally, the staffing, service reliability and compatibility of postal and nonpostal services were considered. There was a possible total of 100 technical points awarded for each proposal - 30 points for location, 25 points for facility and 45 points for service. The technical score was one half of the evaluation formula and price comprised the other half.

Two offerors submitted proposals. The evaluation committee rejected both proposals as technically unacceptable. The contracting officer informed the protester of the rejection of its proposal by letter dated October 25, 1989. The protester requested and received a copy of the evaluation report supporting its rejection. Mazzanti's November 14th protest to this office followed.

The protester's main allegation is that it does not agree with the evaluation committee's reasons for rejecting its proposal. In particular, Mazzanti's disagrees with the evaluation committee's remarks concerning the lack of adequate parking facilities and the reliability and suitability of its six month old gift shop as a location for the postal contract station. Mazzanti's also disputes the evaluation committee's remarks that its ceramic gift shop is not a wise investment for a declining section of town like the south side of New Castle. The protester closes its letter with an offer to revise its price from \$8,736 to \$5,000 annually.

In his report, the contracting officer addresses these allegations and elaborates upon the reasons why Mazzanti's proposal was rejected. The contracting officer points out that due to the amount of estimated revenue the Postal Service expected to receive, they anticipated high volume traffic inside the postal contract station. This high volume would translate into a need for quick and easily available public parking since most of the daily traffic would be motorized rather than pedestrian. Mazzanti's parking location in the rear of the store was deemed to be too remote for the type of quick transactions that would be typical in the proposed contract station. Since there was no ability to add to parking as necessary, Mazzanti's proposal was determined to be inadequate in this category.

The contracting officer also found Mazzanti's proposal lacking in the area of service capability. Mazzanti's was not deemed to be very reliable because a number of different businesses had been conducted by the owners of Mazzanti's in that same location.^{1/} Therefore, although a gift shop might seem compatible with a postal contract station, the contracting officer feels that there is no assurance that the gift shop would remain for any length of time. According to the contracting officer, the varied business history of the owners negated any justification for negotiation on this point.

The final problem with the Mazzanti's proposal was the apparent lack of security for postal funds and stamps. This security problem stemmed from both the declining south side area and the parking situation. Because Mazzanti's primary parking was in the rear of the building, the back door had to remain open during business hours, seriously jeopardizing security. The contracting officer determined that reworking the physical layout of the store and increasing security to an acceptable level would be economically unfeasible.

^{1/}The Mazzanti's gift shop had been in existence about six months when the proposal was submitted. Prior to that shop, a beauty parlor had existed in that location.

Discussion

Initially, there is a question about the timeliness of Mazzanti's protest. The letter which informed Mazzanti's of the rejection of its offer was dated October 25. Mazzanti's requested additional information concerning its rejection in its letter dated November 7, which was furnished by the contracting officer by letter dated November 8. Therefore, at the latest, one can assume that Mazzanti had notice of its rejection by November 7. Mazzanti's protest letter, dated November 14, was received by the contracting officer and our office on November 20 and 22, respectively.

For a protest to be timely filed pursuant to Procurement Manual 4.5.4 d, it "must be received no later than ten working days after the information on which [it is] based is known or should have been known, whichever is earlier. . . ." The file does not make clear when the contracting officer's letter of October 25 was received, but we can assume that at the latest it was received by Mazzanti's by November 7, the date of its letter requesting additional information. See Donahower and Associates, Inc., P.S. Protest No. 84-89, February 11, 1985. Ten working days from November 7 is November 21. As the contracting officer received notice of Mazzanti's protest on November 20, it was just within the timeliness cutoff point.

In addition, the letter of October 25 was so vague that Mazzanti's was justified in requesting additional information, which the contracting officer supplied. It is our rule that, in the absence of objective evidence to the contrary, we will consider a protest timely. Evergreen International Airlines, Inc., P.S. Protest No. 86-07, May 5, 1986; Lightron of Cornwell, Inc., P.S. Protest No. 84-6, February 27, 1984; Information Systems Design, Inc. and United Computing Systems, Inc., P.S. Protest Nos. 79-2, 79-3, April 6, 1979. Given the uncertainty of the date of Mazzanti's receipt of the October 25th rejection letter and due to the vagueness of that letter, we find that Mazzanti's protest has been timely filed.

On the merits of this case, our standard of review is clear. This office will not substitute our judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. Handling Systems, Inc., P.S. Protest No. 89-70, December 19, 1989; LazerData Corporation, P.S. Protest No. 89-60, September 29, 1989; Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986.

The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal de novo, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable. A protester's mere disagreement with the contracting officer's judgment does not meet its burden of proving that the technical evaluation was unreasonable.

Computer Systems & Resources, Inc, supra (citations omitted).

The protester has failed to show that the evaluation of its proposal was arbitrary. On the contrary, the protest file discloses several adequate reasons for the contracting officer's adverse decision. Although the protester disagrees with the evaluation, as stated above, mere disagreement does not satisfy the burden of proof requirements. In addition, the contracting officer has sufficiently documented why negotiations would be futile, thereby rendering Mazzanti's proposal deficiencies fatal.

The protest is denied.

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[checked against original JLS 5/26/93]