

Protest of) Date: September 11, 1992
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AVANTI, INC.)
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Solicitation No. 105603-92-A-0001) P.S. Protest No. 92-38

DECISION

Avanti, Inc. ("Avanti") protests the award of a contract to R.R. Donnelley & Sons Company ("R.R. Donnelley") to produce and print the 19th, 20th, and 21st editions of The Postal Service Guide to U.S. Stamps ("guide")^{1/} and the Introduction to Stamp Collecting pamphlet ("pamphlet")^{2/} in 1992, 1993, and 1994, respectively. Solicitation No. 105603-92-A-0001 was issued by the Office of Procurement, Washington, DC on February 20, 1992 with an offer due date of March 27. The solicitation sought production and printing of 150,000 copies per year of the guide and 500,000 copies per year of the pamphlet. The contract included two one-year options for the publication of additional editions in 1995 and 1996.

Section B.7 described, in part, the responsibilities of the contractor with respect to the guide:

Contractor will excerpt and re-folio as necessary approximately 20 pages used in [the previous edition] of "The Postal Service Guide to U.S. Stamps" - All other pages must be written and designed by the contractor with the assistance of the Postal Service on specifications and suggestions as to the new content

^{1/} The guide is a softbound book containing reproductions, color and black-and-white illustrations, stories, prices and descriptions of U.S. stamps and philatelic items. It comprises approximately 344 pages.

^{2/} The pamphlet contains approximately 30 pages of information for beginning collectors which is taken directly from the guide.

Section M.1 specified that offerors were required to submit the following items with their technical evaluation:

1. Color comprehensive design and editorial copy for the following portions of the Nineteenth Edition of "The Postal Service Guide to U.S. Stamps:"
 - (a) Cover (front, back, spine) based on a design/marketing theme with a philatelic orientation.
 - (b) Two inside spreads of stamps with indication of format for stamp value treatment. For visible example, please refer to Pages 124 to 125 of the 18th Edition of "The Postal Service Guide to U.S. Stamps".
 - (c) One spread devoted to a philatelic-related subject of the offeror's choice with copy.
 - (d) One spread devoted to treatment of Columbus Quincentennial through stamps. For visible example, please refer to Pages 32 thru 37 of the 18th Edition of "The Postal Service Guide to U.S. Stamps".
2. Resumes and design/editorial credentials for principals assigned to this project, including:
 - (a) Creative Director
 - (b) Project Director
 - (c) Editorial Director
 - (d) Executive Designer/Art Director
3. Three (3) samples of editorial and/or design projects executed by offeror.
4. Description of work flow involved to coordinate all facets of this project and a description of quality and schedule controls to insure compliance.
5. Five (5) different examples of similarly printed material executed by offeror or offeror's printing subcontractor.

Section M.1 further specified that the technical proposals would be evaluated according to the following scheme:

The technical proposals will be evaluated on the basis of a total score of 100 points. This evaluation will be used to determine technical acceptability and to establish a competitive range. There are no predetermined cut offs for those technically acceptable offers within the competitive range. Unrealistically low or unreasonably high price proposals will not be considered to be within the competitive range from both the technical and price standpoints. Technical superiority will be the governing factor in award.

	Points
(1) Attractiveness of the layouts and copy in terms of appeal and marketability to a market which includes children 8-13 years old seeking an enjoyable and engaging project and parents and relatives of children to whom the book would appeal as a gift item that would be fun, educational, and worthwhile, and established collectors who purchase the book for whatever reason. Relevance of the cover to the content of the book is also a factor.	0-50
(2) Description of work flow, quality and schedule controls. Quality of copy and its ability to interest and convey meaning to the target market.	0-15
(3) Printing Samples. Quality of the printed ... samples which depicts the requirements stated in GPO Publication 310.1, Level II. Must come from offeror or subcontractor of offeror.	0-15
(4) Resumes and credentials. Experience in .. similar or related field of philatelic marketing and design.	0-10
(5) Editorial/Design samples. Appropriateness of the samples to the appeal and marketability to the target market.	0-10

Section M.4 further advised that "[c]ost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price."

The solicitation included the following provision describing the steps that prospective offerors desiring an explanation of the solicitation should take:

J.7 EXPLANATION TO PROSPECTIVE OFFERORS (Provision A-6)
(October 1987)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, or specifications must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their proposals.

The contracting officer issued three amendments to the solicitation. Amendment A01, March 5, set out the name of a new contact person for this solicitation. Amendment A02, March 13, provided answers to several questions that had been asked by offerors including the following question and answer:

Is direct communication with the Philatelic Division available?

Any offeror may submit questions or request a meeting with the Postal Service to discuss any issues concerning this solicitation. All contact inquiries must be addressed through the Printing Procurement Division, see Amendment [sic] 1. All questions and corresponding answers to questions and/or meetings will be submitted to each offeror.

Amendment A03, March 19, instructed offerors to include "reply card prices" in their price breakdowns, and advised offerors that there would be no extension of time for submission of proposals.

The Postal Service received offers from four offerors. A four-member committee reviewed the technical proposals. Avanti received 52.5 points on its technical proposal, the lowest score of the four proposals received. The two highest-scored offerors, R.R. Donnelley and Stephenson Printing ("Stephenson"), received scores of 87 and 80.75 points. Based on the recommendation of the technical evaluation committee, the contracting officer established a competitive range which included only R.R. Donnelley and Stephenson. Avanti was excluded from the competitive range^{1/} after the contracting officer determined that it lacked a reasonable chance of being selected for award as a result of the major deficiencies which the evaluators had identified in its proposal.^{1/} Discussions were held with R.R. Donnelley and Stephenson, which were

^{3/} The contracting officer erred in failing to notify Avanti and the other omitted offeror in a timely manner that they had been excluded from the competitive range. Avanti was not so advised until May 21, after award had been made. Procurement Manual ("PM") 4.1.5 g.2.(c) requires "prompt" written notice of such exclusion.

^{4/} While identifying "major deficiencies" in Avanti's proposal, the contracting officer has not stated in any

requested to submit Best and Final Offers following discussions.

On May 21, award was made to R.R. Donnelley for a price of \$1,873,794.00. Avanti and the other unsuccessful offerors were given written notification of the award on that date. On May 27, Avanti telephoned the contracting officer to request a debriefing and sent a written request to that effect. The contracting officer responded to these requests in a letter dated June 1 which stated, in part:

This letter is in response to your firm's request for a debriefing. The Postal Service's procurement regulations require all debriefings to be conducted face-to-face. I plan to meet with you in early June to discuss these findings in detail.^{1/}

The following is a brief synopsis of the evaluation findings for Avanti's proposal

Criteria 1 - The fold-out format submitted as part of your proposal was very creative and fun for the audience. The cover was considered too dark, cluttered, confusing, and exceeded the target audience the USPS was trying to reach (13 years of age). The inside spread, listing section, did not exemplify the requirements stated in the solicitation and contained poor color quality. Also, the technical proposal contained many misspelled words and grammatical errors.

Criteria 2 - The Technical Evaluation Committee cited the description work flow as not showing that Avanti fully understood the requirements about submitting articles and stories.

Criteria 3 - Deemed acceptable.

Criteria 4 - The resumes and credentials submitted with your proposal did not fully reflect the experience and expertise related to the sample designs and spreads. Also, the resumes contained misspelled words, not worthy of the quality level required under this solicitation.

Criteria 5 - The writing samples were considered acceptable, but still exceeded the target audience. This section also contained misspelled words and grammatical errors.

submission that the proposal was found to be technically unacceptable. We thus presume that the proposal was technically acceptable, but was excluded from the competitive range because it had no reasonable chance of being selected for award. PM 4.1.5 g.2.(a).

^{5/} This meeting took place on June 16.

Avanti was given 52.5 points out of a possible 100. Because of the above evaluation, the Technical Evaluation Committee did not deem Avanti as being technically superior nor in the competitive range.

Prior to receiving this summary or the requested debriefing, Avanti filed a protest alleging that it was not evaluated in a fair manner, contending that its proposal offered the best value to the Postal Service and satisfied or exceeded the evaluation criteria of Section M. Avanti further asserted that it is the largest 100 percent minority-owned printer in the United States, and that it was recently recognized as the 1991 National Minority Supplier of the Year.

After its debriefing on June 16, Avanti supplemented its protest. In these comments, Avanti alleges that its proposal was not evaluated in accordance with Section M. Specifically, as to the first criterion, Avanti claims that there were three target audiences (children, their parents, and established collectors), not one (children), and that its copy covered all three. It claims that it did research "with people within those age brackets" and "found [its copy] to be very acceptable and understand[able] on all levels."

With regard to the committee's finding that Avanti's inside spreads had poor color quality, Avanti alleges that Section M of the solicitation requested offerors to submit "a color comprehensive design⁴² . . . not a final product approach . . . that should be realistic on all levels." The protester states that if it had known that the Postal Service was looking for the type of color reproduction quality found in a final product, it "would have proceeded to actually photograph stamps, color separate them, and furnish [the Postal Service] with a color matchprint."⁴³

The protester contends that it learned for the first time during its debriefing that the solicitation had been amended, but that it had not received them. The protester claims that its failure to receive these amendments put it at a disadvantage. According to the protester, when its sales representative called to ask for assistance on what the Postal Service was looking for, he was told that he had to refer to the solicitation and could not receive any other assistance, contrary to the advice provided in Amendment A02.

The protester also alleges that it was given an extremely short period of time to design, assemble and finish its presentation, so that it lacked time to follow its "normal production process of checks and balances for spelling, grammar and typography."

⁴² The protester defines this as a "[d]esign and layout with all the type in place and the artwork accounted for used to give the client an idea of how a product can look before going into production."

⁴³ Avanti defines a matchprint as a "[f]inal proof used to show how the finished color and composition of a product will look after it has been printed. It is realistic on all levels" We note that Matchprint" is the 3M Company's trademark for a color transfer proof process.

The protester contends that the solicitation did not stress the importance of a presentation that reflected a finished press product, with correct spelling and grammar. Avanti states that if it had known that it was being evaluated on "more than [its] creative style", it would have submitted a finished product. Avanti asserts that it has been in business for over 25 years and that the bulk of its clients are in the retail business and cannot afford to have any mistakes in the copy. It has learned through the years to "operate and produce projects that are extremely accurate in copy, production and time."

Avanti states that it is one of the largest bulk mailers in the Southeast, making it one of the Postal Service's most valuable customers. The protester further asserts that over the years it has been watching with concern the rate increases that the Postal Service has been levelling on Avanti's customers. Avanti questions how the Postal Service can operate profitably when it makes decisions, such as the one here, to award contracts to offerors with much higher prices. Avanti claims that there is no way that R.R. Donnelley's proposal could "be a better value" to the Postal Service and the taxpayers, since Avanti's price was \$880,347 lower and the Postal Service agrees that Avanti is "qualified to fulfill this solicitation."

In his statement replying to the protest, the contracting officer states that the allegations raised by the protester have been addressed in the initial phone debriefing on May 27, in the June 1 written debriefing, and in the formal debriefing on June 16.^{4/} According to the contracting officer, the only new allegations raised by Avanti pertain to its concerns about the Postal Service's rate increases and waste of taxpayer money. The contracting officer claims that neither of these concerns is germane and that "this protest is not the appropriate forum for their debate."

The contracting officer commends Avanti for being chosen the National Minority Contractor of the Year. According to the contracting officer, the Postal Service representatives involved in this procurement never doubted that Avanti is a good printer. The contracting officer states, however, that Avanti must understand that an evaluation must be based on the proposal that is presented, not on "what [an offeror] think[s] [it] know[s]." The technical evaluation committee here impartially reviewed the proposal and rated it "as they saw it." The contracting officer asserts that "if Avanti had been as diligent with [its] proposal as [it has been] with [its] protest, [its score] would have been more favorable."

The protester submitted comments in response to the contracting officer's statement.

^{4/} According to Avanti, it was not debriefed in its initial telephone debriefing, and the written debriefing gave it only a brief explanation why it did not get the award, so that it was not until its formal debriefing on June 16 that it understood how it had been misled. Taking Avanti at its word, we fail to see any impropriety in the debriefing process. The face-to-face debriefing is intended to convey the sort of information which Avanti agrees it received.

The protester claims that it learned during its debriefing that there was no way it could have put together the type of presentation that the Postal Service was looking for, because "several amendments were never given to Avanti." It also asserts that it learned that Avanti was not judged on the criteria stated in the solicitation, but instead "upon some other criteria that [it was] completely unaware of," such as the Postal Service's expectation of getting a matchprint instead of a color comprehensive design and layout.

At a conference on its protest and in comments submitted after its conference, Avanti elaborated on several issues. It states that normally it is given some type of direction from the client as to what that the prospective client wants before it prepares a presentation, as by conference held with the client and Avanti's in-house art department and copy writers. In this procurement it was unable to get any assistance from the contracting officer who would only refer Avanti to the solicitation.

Avanti further claims that it provided the Postal Service with all the materials and information that were requested in Section M such as the resumes of its creative staff, past printing samples and a description of Avanti's work flow. The protester claims that its work flow description contained "a general description of how [it] would approach a typical project," since Avanti had no prior experience with the Postal Service. It described how Avanti handles copy generally since each client is different. With respect to its printed samples and resumes, Avanti states that it doesn't understand how the resumes of its creative staff could be found unacceptable, when the printing samples, which were produced by these same people, were found acceptable.

The protester also reasserts its disagreement with the technical evaluation committee's finding that its copy and presentation were too complex and exceeded the target audience and its disagreement with the finding that its presentation was too dark and had poor color quality. With respect to the finding that Avanti's copy had spelling and grammatical mistakes, Avanti states that it did not know that it was being judged on "more than [its] creative style" since the solicitation did not stress the importance of a finished press product with correct spelling and grammar. Avanti claims that its protest has merit and asks us to reverse the contracting officer's decision.

The contracting officer submitted a supplemental report in response to our request for additional information. He states that the standard procedure for issuing amendments to offerors is to send them by First-Class Mail to the same mailing list which was established for the original solicitation. According to the contracting officer, the three amendments were prepared by the Printing Contract Specialist and mailed out by the Printing Division's Secretary on March 5, March 12 and March 19 to a mailing list which included Avanti.

With respect to the issue of whether the color quality would be better in a matchprint than in a color comprehensive design, the contracting officer states that "[a] matchprint

can be a better color representation because it . . . show[s] the final artwork as opposed to the preliminary comprehensive. However, using a matchprint instead of a comprehensive will not improve an unappealing design." The contracting officer states that offerors needed to "convey to the committee their abilities not only to conceptualize the product, but also to produce it." The contracting officer asserts that Avanti "was regarded as not being the best offeror to produce the Postal Service's final product under this solicitation."

Discussion

Although the protester characterizes its protest as a challenge to the award made to R.R. Donnelley, it is really challenging its exclusion from the competitive range. Our standard for reviewing such a challenge is as follows:

The evaluation of technical proposals and the resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. We will not disturb a contracting officer's decision to exclude a firm from the competitive range unless this determination was unreasonable. A protester has the burden of proving that the contracting officer's evaluation was unreasonable. In reviewing the contracting officer's decision, we will not reevaluate technical proposals but instead will examine the committee's evaluation to ensure that it was not arbitrary or in violation of procurement laws and regulations. (citations omitted).

Crane National Vendors, P.S. Protest No. 92-12, July 22, 1992.

Avanti alleges that its technical proposal was improperly evaluated in several respects. First, it alleges that the technical evaluation committee incorrectly subtracted points from its score because Avanti's presentation failed to reach the target audience of children between the ages of eight to 13.

A fair reading of section M. of the solicitation reveals that the primary audience that the Postal Service intended to reach was the 8 - 13 year old group. Contrary to the protester's understanding, older people (parents and relatives) are relevant only as gift givers for the target audience or as "established [stamp] collectors who purchase the book for whatever reason." It was reasonable for the technical evaluation committee to evaluate proposals on the basis of whether they would appeal to children between the ages of eight and 13. Although Avanti disagrees with the technical committee's conclusion that its cover and sample articles were too complex for this age group, it has not presented any evidence to show that the scoring of its proposal on this item was unreasonable or arbitrary.

Avanti further alleges that it described in its technical proposal how it "handles copy" in a general way and suggests that points shouldn't have been deducted in this area. The technical evaluation committee found that Avanti had not demonstrated that it fully understood the requirement of writing articles in the "Approach Section" of its technical proposal. Although its proposal states that Avanti has a staff of copywriters and lists some of the types of things they have worked on, it doesn't address specifically how the copywriters would be involved in this project. It was not unreasonable for the technical evaluation committee to question whether Avanti understood this element of the requirement.

Avanti next alleges that although the solicitation stated that offerors were supposed to submit a color comprehensive design and layout, the Postal Service really expected offerors to submit a matchprint. Avanti claims that it was unfair for the Postal Service to judge it on this basis.

The record affords no evidence to support the protester's contention that the Postal Service expected offerors to submit a matchprint and evaluated them on that basis. The technical evaluation committee states in its memorandum to the contracting officer that "[t]he proposals were reviewed independently by each panel member . . . [and] were not compared to each other." It is clear from the contracting officer's additional comments that he, as well as the technical evaluation committee, realized that the color quality would be better in a matchprint than in a color comprehensive design. The technical evaluation committee found, however, that Avanti's color quality was poor even for a color comprehensive design. Although Avanti disagrees with the technical evaluation committee's findings, it has not shown that they were arbitrary or in violation of procurement regulations.

The protester further alleges that although the solicitation did not "stress the importance of a presentation that reflects a finished press product, with correct spelling and grammar," the technical evaluation committee improperly subtracted points from Avanti's score for the spelling, grammatical and syntax mistakes it found in Avanti's sample stories. Avanti alleges that it was obvious that its proposal was "strictly a creative presentation, not a finished product." Although the solicitation did not specifically state that correct spelling and grammar was required, it was reasonable for the technical evaluation committee to take these factors into account in evaluating the overall quality of the offerors' proposals. Section M.1 2(2) states that one of the areas in which offerors were being evaluated was "[q]uality of copy" which could reasonably be interpreted to include the use of correct spelling, grammar and syntax. The protester's argument that its proposal was improperly downgraded for misspelled words in the writing sample and its technical proposal is unpersuasive.^{1/}

^{1/} To the extent that Avanti complains of a lack of time to submit its proposal, its protest is untimely. "Protests based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals must be received by the date and time set for the receipt of proposals." PM 4.5.4 b. The due date for proposals was apparent on the face of the solicitation. Avanti's failure to raise this

The protester also disputes the technical evaluation committee's finding that its resumes "were not acceptable." The technical evaluation committee did not find that the resumes were not acceptable, but rather found that the resumes did not demonstrate that Avanti's staff had the "required copy experience" or "expertise in the sample designs [and] spreads." Avanti therefore received a score of 4.5 in this area out of a possible 10 points. We reviewed the resumes submitted by Avanti and found that the "Copy Chief's" resume did demonstrate that Avanti had some copy experience as well as a copy department consisting of eight writers. We note, however, that even if Avanti had received more points in this area, its score would have remained substantially lower than those of the offerors who were included in the competitive range and the outcome in this case would not be affected. See Restaura, a Greyhound Company, P.S. Protest No. 90-14, May 24, 1990.

The protester further argues that it was prejudiced by its failure to receive three amendments because had it received amendment A02 it would have requested a meeting with the Postal Service to obtain further information on how to prepare and present its presentation.^{10/} Although the contracting officer has a duty "to use reasonable methods for the dissemination of solicitation documents to prospective competitors," this "does not make the contracting [officer] a guarantor that these documents will be received in every instance" Power Engineering Contractors, Inc., Comp. Gen. Dec. B-241341, 91-1 CPD & 123, February 6, 1991. An offeror "bears the risk of not receiving [solicitation] amendments" Four Corner Forestry, Inc., Comp. Gen. Dec. B-226438, 87-1 CPD & 439, April 27, 1987. "Consequently, a prospective offeror's nonreceipt of solicitation [amendments] will not justify overturning a contract award absent significant deficiencies in the dissemination process, the failure to receive fair and reasonable prices, or a deliberate attempt by the contracting agency to exclude a particular prospective offeror, even where the late [receipt] or nonreceipt has the effect of eliminating the source from the competition." North Santiam Paving Co., Comp. Gen. Dec. B-241062, 91-1 CPD & 18, January 8, 1991.

Here, the contracting officer states that the printing division's secretary mailed a copy of the three amendments to all offerors who were on the mailing list for the original solicitation by First-Class Mail. The record indicates that Avanti was one of the offerors on that mailing list and that copies of the three amendments were mailed to it on March 5, March 13 and March 19, respectively. Although it is unfortunate that Avanti did not

issue before offers were due renders this part of its protest untimely. See Dawson Construction Co., Inc., P.S. Protest No. 91-47, September 25, 1991.

^{10/} Holding a meeting with the Postal Service was not the only option open to Avanti for getting more information on this project. If the protester had questions concerning the requirements in Section M, it could have requested an explanation in writing, as prescribed by Provision A-6 of the solicitation. See Blackhorse Services Corp., d/b/a MAACO Auto Painting and Bodyworks, P.S. Protest No. 91-71, December 3, 1991. Avanti, however, did not take advantage of this opportunity.

receive these documents, there is nothing in the record to show that Avanti's failure to receive the amendments resulted from a deficient dissemination process, a regulation violation, or a deliberative effort to exclude it from competition.

The protester repeatedly makes reference to the fact that it is 100% hispanic-owned and that it was selected the National Minority Supplier of the Year in 1991. To the extent that the protester's references to its minority status are assertions that the Postal Service violated its socioeconomic policies by not giving Avanti enhanced consideration by reason of its minority ownership, it is incorrect. "The policies set out in Section 10.1 of the PM are meant to encourage the participation of small and minority-owned businesses, but they do not set forth enforceable requirements which compel postal procurement employees to take any particular procurement action." COR, Inc., P.S. Protest No. 90-16, June 22, 1990; see also Cherokee Carriers, Inc., P.S. Protest No. 91-46, November 13, 1991. The contracting officer acted properly in not giving Avanti any particular special consideration because of its minority ownership.

Finally, the protester challenges the reasonableness of the awardee's price, arguing that the Postal Service is not getting the best value here since the awardee's price is \$880,347 higher than Avanti's. The protester, however, overlooks the fact that the solicitation made it clear that price would not necessarily be the determinative factor in the contract award, and that even where price is a factor with respect to otherwise satisfactory offers within the competitive range, it is not improper to deny the award to a lower-priced offeror whose offer is not within the competitive range. See Proffitt and Fowler, Comp. Gen. Dec. B-219917, 85-2 CPD & 566, November 19, 1985 ("once a proposal is determined to be outside of the competitive range as a result of its technical evaluation, the potentially lower price which that offer might provide is irrelevant since an offer not within the competitive range cannot be considered for award").

The protest is dismissed in part and denied in part.

William J. Jones
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