



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

Director Edward Armstrong

July 12, 2023

Mr. R. Scott Morgan
PPGMR Law, PLLC
201 East Markham Street, Suite 200
Little Rock, Arkansas 72201

Re: Protest of Award in Solicitation No. S000000233: Janitorial Services for Commerce Building

Dear Mr. Morgan:

On June 23, 2023, you submitted a timely protest to me on behalf of RazorClean Building Services, Inc. (RazorClean) of the anticipated award of a contract to A. Moore Servicing Companies, Inc. (AMSC) in the above-referenced solicitation. Notice of the anticipated award was posted on June 9, 2023.

I. LEGAL AUTHORITY

Arkansas Code Annotated § 19-11-244, which I will refer to hereinafter as the "Protest Statute," provides in pertinent part as follows:

- (4) A protest submitted by an aggrieved person under this section shall:
- (A) Be limited to one (1) or more of the following grounds:
- (i) The award of the contract exceeded the authority of the director or the procurement agency;
 - (ii) The procurement process violated a constitutional, statutory, or regulatory provision;
 - (iii) The director or the procurement agency failed to adhere to the rules of the procurement as stated in the solicitation, and the failure to adhere to the rules of the procurement materially affected the contract award;
 - (iv) The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; or
 - (v) The award of the contract resulted from a technical or mathematical error made during the evaluation process; and
- (B) State facts that substantiate each ground on which the protest is based.

III. DISCUSSION

RazorClean correctly identifies the Protest Statute as the statute that governs the protest process but misconstrues it. RazorClean contends that, "The statute which governs this situation, Ark. Code Ann. § 19-11-244 *et seq.*, provides that the aggrieved bidder should be provided 'facts' in being designated 'non-responsible'.... [I]f I am reading the statute correctly, which I think I am, your office has an obligation to provide 'facts' and additionally attempt to resolve this situation."

Office of State Procurement

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In construing the Protest Statute, we adhere to the basic rule of statutory construction, which is to give effect to the intent of the legislature by construing it just as it reads, giving the words their ordinary and usually accepted meaning in common language. "If the language of a statute is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation." *State Office of Child Support Enforcem't v. Terry*, [336 Ark. 310](#), [985 S.W.2d 711](#) (1999).

Giving the words of the Protest Statute their ordinary and usually accepted meaning, an aggrieved person submitting a protest under the Protest Statute's authority: (1) "shall" identify at least one of the five grounds for protesting an anticipated contract award, Ark. Code Ann. § 19-11-244(a)(4)(A); and (2) "shall" state facts that substantiate each ground on which the protest is based. Ark. Code Ann. § 19-11-244(a)(4)(B). The way the statute is worded, it is clear that it is a protestor who has an obligation to state grounds and supporting facts. *See id.*

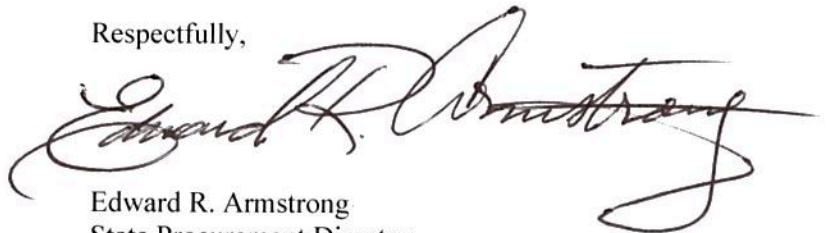
RazorClean does not state a statutory ground of protest nor facts substantiating any of them. Because RazorClean's protest fails to state any of the five statutory grounds or facts in support thereof, it fails to state any grounds that I can support. Not only was RazorClean's "Notice of Appeal" substantively deficient for the foregoing reasons, RazorClean failed to provide notice of its protest to AMSC, the anticipated awardee, as required by statute. *See* Ark. Code Ann. § 19-11-244(a)(2)(B). This is another reason why I am unable to sustain the protest RazorClean submitted.

IV. CONCLUSION

RazorClean failed to identify a recognized basis for protest, articulate facts to substantiate a statutory ground, and to provide notice of the protest to the anticipated awardee. RazorClean's failure to comply with statutory requirements is fatal to its protest. Consequently, its protest is dismissed.

Pursuant to Ark. Code Ann. § 19-11-244 (e)(1), this determination is final and conclusive.

Respectfully,

A handwritten signature in black ink, appearing to read "Edward R. Armstrong". The signature is written in a cursive style with a large, sweeping flourish at the end.

Edward R. Armstrong
State Procurement Director