



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Joseph Wood

Director Edward Armstrong

July 5, 2023

Mr. Antonio Moore
A. Moore Servicing Companies, Inc.
6114 Lyndell Drive
Little Rock, AR 72209

Re: Protest of Award in Solicitation No. S000000236: Janitorial Services for Agriculture and State Crime Lab

Dear Mr. Moore:

On June 21, 2023, you submitted, on behalf of A. Moore Servicing Companies, Inc. (AMSC), a timely protest of the June 12, 2023, Anticipation to Award to Sharp Property Management (Sharp) in the above-referenced solicitation.

I. THRESHOLD CONSIDERATIONS

As a threshold matter, I note that Arkansas Procurement Law only authorizes me to determine the merits of a protest that has been timely submitted by an interested party who raises one or more statutory grounds of protest.¹ A protest that is untimely or that does not rest on statutory grounds is dismissed.

II. LEGAL AUTHORITY

Arkansas Code Annotated § 19-11-244 addresses resolution of protested solicitations and awards and 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.

¹ See Ark. Code Ann. § 19-11-244 and OSP Rule R1:19-11-244.

III. DISCUSSION

Essentially, AMSC alleges that the anticipated awardee does not meet a solicitation requirement pertaining to experience. While the ground for protest is not specifically identified, I will consider AMSC's argument as one encompassed within Arkansas Code Annotated § 19-11-244(a)(4)(A)(iii) in which "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."

AMSC relies upon Section 1.10.D of the solicitation, which addresses Prospective Contractor Qualifications for the Agriculture and the Arkansas State Crime Laboratory Buildings, and provides in pertinent part as follows:

To be considered a responsible bidder, the Prospective Contractor shall demonstrate past experience and present capacity to clean approximately 65,000 square feet or more of commercial general office space of similar size and scope of the Agriculture and the ASCL Buildings for a minimum of twelve (12) consecutive months within the last two (2) years and to the satisfaction of their customers, as evidenced by providing reference letters. (See Section 1.10 for additional requirements for reference letters.)

AMSC contends that Sharp, a newly formed company since August 2022, "wouldn't have been in business for 12 consecutive months as required per the request for proposal. The references for the former company should not count for the new company either."

However, Arkansas Code Annotated § 19-11-272, specifically addresses the experience requirement as follows:

- (a)
 - (1) The General Assembly finds that:
 - (A) An invitation for bids, a request for proposals, and a request for qualifications often require that bidders and offerors have a certain amount of experience to qualify;
 - (B) These experience requirements often apply to the business of the bidder or offeror rather than the key personnel of the bidder or offeror;
 - (C) As a result, new businesses with highly qualified personnel often do not qualify to compete for state contracts even though the executives and employees of the business have the experience required; and
 - (D) It is in the best interests of the state to encourage new businesses and to seek out the most qualified people to provide products and services to the state.
 - (2) The General Assembly intends for this section to:
 - (A) Encourage entrepreneurship;
 - (B) Level the playing field for new businesses to compete for business opportunities; and
 - (C) Enable new businesses with highly qualified personnel to compete for state contracts.
 - (b) If an invitation for bids, a request for proposals, or a request for qualifications under this chapter requires a certain amount of experience or a certain number of years in existence for the bidder or offeror, the requirement shall be satisfied by either:
 - (1)
 - (A) The amount of experience of the bidder or offeror.
 - (B) A bidder or offeror may use the combined experience of its owners or senior executive staff to satisfy the requirement under subdivision (b)(1)(A) of this section; or
 - (2) The combined amount of experience of the key personnel of the bidder or offeror that will be responsible for satisfying the requirements of the contract to be procured....

As Sharp had 9 years of demonstrable experience and present capacity to clean in accordance with the stated requirements, as evidenced by its letters of reference, it is clear that Sharp met the solicitation requirements. As a result, the procurement agency did not fail to adhere to the rules of the procurement as stated in the solicitation and under the applicable law, and Sharp's selection as an anticipated awardee is in compliance with the solicitation's requirements.

IV. CONCLUSION

The procurement agency did not fail to adhere to the solicitation requirement identified by AMSC as the ground for its protest, it simply considered experience as required by Arkansas Code Annotated § 19-11-272. Therefore, AMSC's protest is dismissed.

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

Respectfully,

A handwritten signature in black ink, appearing to read "E. Armstrong", with a large, sweeping flourish extending from the end of the name.

Edward R. Armstrong
State Procurement Director