



Department of Transformation and Shared Service

Governor Sarah Huckabee Sander

Secretary Joseph Wood

Director Edward Armstrong

August 4, 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. S000000237: Janitorial Services for Main Street Mall Building

Dear Mr. Morgan:

On July 26, 2023, you submitted a timely protest on behalf of RazorClean Building Services, Inc. (RazorClean), of the Anticipation to Award to A. Moore Servicing Companies, Inc. (Moore) posted on July 13, 2023 in the above-referenced solicitation. For reasons set forth more fully below, the protest cannot be sustained.

I. LEGAL AUTHORITY

Arkansas Code Annotated § 19-11-244 governs the process for submitting protests in connection with the award of contracts as the result of a solicitation. It provides, in pertinent part, as follows:

(a) ...

(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

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(B) State facts that substantiate each ground on which the protest is based. ...

II. DISCUSSION

RazorClean cites Arkansas Code Annotated § 19-11-244(a)(4)(A)(ii), (iii), and (iv) as the basis for its protest of the anticipated award to Moore. In its succinct Notice of Protest, RazorClean contends that, “[a]s grounds, RazorClean firmly believes that the awards given to other contractors on this state building and others [that] RazorClean had contracts on had more complaints against them than RazorClean. Therefore, the designation of RazorClean as ‘Non-Responsible’ is unwarranted based on those facts.” RazorClean also contends that “... individuals responsible for awarding bids failed to adhere to the rules of procurement in good faith when RazorClean was designated as ‘Non-Responsible’ yet others, as mentioned were not.” Finally, RazorClean states that it “... has been denied the equal protection of the laws and procedural due process by others not receiving this designation yet having more complaints than RazorClean does and that any complaints, which we do not concede were originated in good faith, were sufficient to cause the designation ‘Non-Responsible’.

However, RazorClean cannot simply assert grounds to state a sustainable protest, it must also state facts that substantiate each ground on which the protest is based. See Arkansas Code Annotated § 19-11-244(a)(4)(B). It is the protestor’s burden to state facts substantiating each ground raised and to supply documents supporting the protest. See OSP Rule R2:19-11-244 and OSP Rule R3:19-11-244.

Although the protest at issue alleges various grounds in conclusory fashion, it fails to state specific facts substantiating the grounds claimed and is not supported by reference to documents that show the statutory grounds claimed are also grounded in fact. Below, each ground is considered specifically.

Arkansas Code Annotated § 19-11-244(a)(4)(A)(ii) provides a basis for protest when “[t]he procurement process violated a constitutional, statutory, or regulatory provision.” Other than asserting it was denied equal protection of law and procedural due process by others having more complaints without receiving a Non-Responsible designation, RazorClean’s protest fails to provide documents supporting this conclusion. For example, there is nothing to establish, as a matter of fact, how many complaints the anticipated awardee has received in comparison to the number of complaints the protestor has received.

Similarly, Arkansas Code Annotated § 19-11-244(a)(4)(A)(iii) provides a basis for protest when “[t]he 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”. Although the protest advances the conclusory allegation that “rules of the procurement” were not adhered to, it does not state facts identifying which “rules of the procurement” were not followed.

Finally, Arkansas Code Annotated § 19-11-244(a)(4)(A)(iv) provides a basis for protest when “[t]he procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition”. Again, RazorClean simply does not state facts that show that there was a coordinated bad faith effort to defeat fair market competition through collusion.

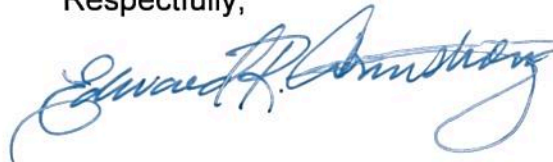
In sum, although the protest cites statutory grounds for its protest, it fails to articulate specific facts to substantiate all of these grounds as required by statute, which failure prevents me from being able to sustain the protest. I simply do not have authority to sustain a protest that does not state facts substantiating the grounds on which it allegedly rests.

III. CONCLUSION

Under the protest statute, it is not enough to simply identify one or more protest grounds. Facts must be stated that “substantiate each ground on which the protest is based.” Arkansas Code Annotated § 19-11-244(a)(4)(B). Here the protest fails to satisfy that requirement. Consequently, the protest is dismissed.

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

Respectfully,



Edward R. Armstrong
State Procurement Director