



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Leslie Fiskens

March 12, 2025

Ms. Tiffany Flock
General Counsel
O.J.'s Service Two, Inc.
301 N. Broadway
North Little Rock, AR 72114

RE: Protest of Anticipation to Award, IFB 710-25-028 - REVISED from February 24, 2025 determination letter

Dear Ms. Flock,

The Office of State Procurement (OSP) has reviewed O.J.'s Service Two, Inc.'s (O.J.'s) protest of the Department of Human Services's (DHS) anticipated award to Aquamen Cleaning, Inc. (Aquamen) for janitorial services (IFB 710-25-028). O.J.'s alleges that Aquamen falsified its bid submission by improperly listing Mr. Donnell Morris as its supervisor under Section 2.3(B) of the solicitation. In support, it attaches to its protest Mr. Morris's affidavit stating that he is not employed by Aquamen. O.J.'s asserts that this error and falsification should disqualify Aquamen from consideration pursuant to Ark. Code Ann. § 19-11-244 (a)(4)(A)(iii), which disqualifies bidders when the rules of the procurement were not adhered to, and Ark. Code Ann. § 19-11-244 (a)(4)(A)(iv), which concerns bids submitted in bad faith. O.J.'s protest is sustained because Aquamen did not meet the minimum requirements of the solicitation.¹

I. Protested issue: Ark. Code Ann. § 19-11-244(a)(4)(A)(iv)

On December 6, 2024, DHS issued public notice of an Invitation for Bid (IFB) for janitorial services for seven DHS buildings. Aquamen bid on two locations, Lake Charles and Blytheville. DHS tentatively awarded the contract to Aquamen for the Blytheville location on January 30, 2025. O.J.'s timely filed a protest pursuant to Ark. Code Ann. § 19-11-244, and Aquamen timely responded.

¹ O.J.'s also alleges that Aquamen failed to provide a certification of good standing as required by the IFB and was not registered to do business with the State. Because the protest is sustained on other grounds, this issue is not addressed.

Under Ark. Code Ann. § 19-11-244(a)(4), protests may only be made on specific grounds. One ground is that the “procurement agency failed to adhere to the rules of the procurement as stated in the solicitation.” Ark. Code Ann. § 19-11-244(a)(4)(iii). Another ground is that, “[t]he procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition...” Ark. Code Ann. § 19-11-244(a)(4)(A)(iv).

The IFB stated that the contractor “shall assign a supervisor to inspect the building at least once a week” and that the contractor “must provide the name, address, and telephone number of the supervisor” who would be assigned to inspect the building at least once a week to ensure compliance with the solicitation’s requirements. IFB 710-25-028, Section 2.3. This requirement was identified as a “minimum qualification” of the solicitation. The IFB further provides that the words “must” and “shall” are mandatory and that “exceptions taken to any Requirement in this IFB, whether submitted in the bid or subsequent correspondence, **shall** cause the vendor’s bid to be disqualified.” IFB 710-25-028, Section 1.6 (emphasis in original).

Aquamen’s bid stated that Donnell Morris would be the supervisor assigned to perform inspections. Its bid did not specify whether Morris would be assigned to the Lake Charles or Blytheville location, or both. Nevertheless, O.J.’s protest included Mr. Morris’s affidavit, which states that Aquamen identified him as the supervisor who would be assigned to the contract without his knowledge or permission. The affidavit further states that when Mr. Morris called Aquamen and asked about the use of his name in its bid, Aquamen’s owner “stated he used [his] name to ‘demonstrate experience’ since he did not have the experience necessary for the contract.”

In response to O.J.’s protest, Aquamen’s owner, Mr. Christian Gilbert, while not directly addressing the allegations made in Mr. Morris’s affidavit, admitted that Mr. Morris will not serve as a supervisor. He stated that, “Mr. Morris was initially considered for a supervisory role for the Lake Village location, which is a separate site that [Aquamen] does not service.” Mr. Gilbert now claims that he will serve as the supervisor of the Blytheville location.

However, assuming Mr. Gilbert’s statement that he intended Mr. Morris to only supervise the Lake Charles location as true, Aquamen’s bid still must be disqualified because it failed to identify a supervisor for the Blytheville building. Again, the IFB required bidders to identify the supervisor assigned to inspect the buildings. Aquamen’s bid only identified Mr. Morris as a supervisor. If Mr. Gilbert did not intend for Mr. Morris to supervise the Blytheville building, then he failed to identify a supervisor for that location as specifically required by the IFB. Even though this information became available after the award was announced, DHS must disqualify a contractor who fails to meet the minimum qualifications. IFB 710-25-028, Section 1.6 (“exceptions taken to any requirement in this IFB, whether submitted in the bid or subsequent correspondence, **shall** cause the vendor’s bid to be disqualified.”) (emphasis in original).

Accordingly, given the information presented, I find that Aquamen failed to meet the minimum qualifications because its bid did not contain a supervisor for the location it was awarded. This disqualifies Aquamen from consideration for this contract.

II. Conclusion

The contract awarded to Aquamen Cleaning, Inc., for janitorial services should be rescinded due to its failure to meet minimum qualifications. See Ark. Code Ann. § 19-11-244(a)(4)(A)(iii). Therefore, O.J.'s protest is granted. DHS may not proceed with the award of the solicitation to Aquamen under Arkansas Procurement Law. This determination is final and conclusive. Ark. Code Ann. § 19-11-244(e)(1).

Sincerely,

A handwritten signature in black ink that reads "Jessica Patterson". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Jessica Patterson
State Procurement Director