

Protest of

OWEN L. HARRISON

Under Solicitation No. 190-71-86

) Date: February 25, 1987

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) P.S. Protest No. 87-09

DECISION

Owen L. Harrison protests against award of a contract for highway transportation of mail between Baltimore and Lineboro, MD. Mr. Harrison contends that answers to written questions he posed to the contracting officer were not issued as an amendment as required by the solicitation, and bid prices were thus affected.

Solicitation No. 190-71-86 was issued by the Philadelphia Transportation Management Service Center on December 12, 1986. It requested bids for mail transportation service using three van-type vehicles. Seventeen bids were received by the bid closing date of January 12, 1987. The bids ranged from \$148,936 to \$300,511.78. Eleven bids were below \$200,000. Mr. Harrison's bid of \$242,607.47 was 15th lowest.

Mr. Harrison protested on January 20, asking that the solicitation be cancelled because the contracting officer failed to issue an amendment as required by the solicitation. Mr. Harrison had written to the contracting officer by letter received December 29, 1986, in which he questioned whether the Postal Service would provide parking, whether drivers would have to be paid for travel time if no parking were available, and whether the 22-foot minimum interior length requirement for vehicles was correct. The contracting officer answered by letter on January 5, 1987, that parking is permitted on Postal Service grounds at Baltimore whenever possible, but is not guaranteed and, if available, is limited to one vehicle per contract, and may be withdrawn at any time. The contracting officer also stated that the Department of Labor requires drivers to be paid from the time they enter their vehicles, and that the 22-foot interior length was correct.

The solicitation states that "[a]ny explanation desired by a bidder regarding the meaning or interpretation of this Solicitation must be requested from the contracting officer in writing.... Any interpretation made will be in the form of an amendment to the Solicitation and will be furnished to all prospective bidders...." Mr. Harrison argues that the contracting officer's failure to issue the correspondence as an amendment to the solicitation was material because other

bidders did not know that they must pay their drivers for transit time, and their bids therefore did not include all cost elements. He also states that other bidders do not know that a vehicle must be 24 feet in length in outside dimensions to meet the 22-foot interior length requirement.

The contracting officer states that she did not make an interpretation that required an amendment, but merely provided answers to specific questions posed by a prospective bidder. The contracting officer's position is that the Postal Service did not guarantee any parking, and bidders therefore could not reasonably expect that parking would be available. The contracting officer states that the interpretations of requirements concerning wages and work hours are the responsibility of the Department of Labor. Further, the contracting officer contends that the solicitation states that the estimate of hours necessary to perform the trips do not include any hours resulting from unique operations of the contractor, and it also is the responsibility of the bidder to calculate the actual hours required. Finally, the contracting officer notes that the solicitation requires a minimum 22-foot interior length and there is no mention of any exterior length requirement.

At a conference on the protest, the protester reiterated his concerns, stating that he added 904 hours for transit time because of lack of parking, and that other bidders, ignorant of the lack of parking, bid on the basis of fewer hours. Two other bidders submitted comments; one stated that the solicitation was clear and there was no need for re-solicitation, while the other stated an amendment should be issued because drivers would have to be paid for the transit time.

We do not reach the merits of the protest. The solicitation's lack of amendment was a circumstance evident to the protester before the bid opening. Under our bid protest regulations, protests invoking "alleged deficiencies in a solicitation which are apparent before the date set for the receipt of offers" must be received by the time set for the receipt of offers. Postal Contracting Manual 2-407.8 d.(1). Since Mr. Harrison's protest was not received until five working days after the bid opening, it cannot be considered. See Skyways, Inc., Comp. Gen. Dec. B-201541, June 2, 1981, 81-1 CPD & 439. This rule has been established because it permits the contracting officer to correct a mistake when it is possible to do so and precludes an offeror from a "second bite" at the solicitation after he knows his initial bid is unsuccessful. Cf. James D. Sandberg, P.S. Protest No. 80-77, January 8, 1981. Otherwise, an offeror could wait until after the results of the bid opening were known to challenge the solicitation when he should have done so earlier. The reason for the rule is evident here: the protester seeks to overturn a competition as to which his offer was high by raising concerns which he indicates were only marginally associated with the cost of his bid.^{1/} In the circumstances,

^{1/} The protester attributes 904 hours of labor costs to his concern about parking and transit time. At the wage rates set out in the solicitation and used by the protester in his bid, his labor would have to be reduced by more than 7,300 hours in order to displace the low bid.

the record offers no compelling justification for the relief sought.

The protest is dismissed.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 2/23/93 WJJ]