

Protest of)	
)	Date: April 5, 1988
SAVIOA CORPORATION)	
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Advertisement for Bids for Space)	
Ramah, NM)	P.S. Protest No. 87-126

DECISION

Savioa Corporation (Savioa) protests the selection of a preferred area and the proposed award of a contract for the construction and lease of a new main post office in Ramah, NM.

On June 15, 1987, the Natelson Company, Inc., a Basic Real Estate Term Contractor with the Tucson Division-Support Services (Support Services), issued an Advertisement for Bids for Space for a new main post office in Ramah, NM. The advertisement requested offers to lease to the Postal Service a building to be constructed or an existing building within the preferred area "along State Highway 53, from the existing Main Post Office to Ashcroft.~ Postal officials placed advertisements of the need for rental space within that preferred area in local newspapers.^{1/}

Mr. Grant Clawson, vice-president of Savioa, saw an advertisement containing the description of the selected area in the Albuquerque Journal on July 1. On July 10, Savioa requested a bid package but, according to Mr. Clawson's statement submitted in support of the protest, was informed that since its site was located outside of the preferred area,^{1/} its bid would not be accepted. Savioa received the bid package but failed to submit a bid. Following a conversation held August 21 with Mr. Ben Lee of Support Services, Mr. Clawson sent him a letter dated August 26, explaining that the site owned by Savioa, located outside of the preferred area, was a better choice for the new post office than any site within the preferred area.

By July 27, bids for five sites had been received, one of which was outside the preferred area. A site selection committee from Support Services visited Ramah on September 17 to see the offered sites. On that date, Mrs. Sherril Lambson came to the Ramah post office and spoke with members of the committee, asking the committee to inspect property she owned within the preferred area. Although Mrs. Lambson had not submitted an offer for her property, the committee inspected her site after the other sites were inspected and concluded it was the most suitable for the new post office. On September

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22, Mrs. Lambson's husband submitted an offer for the Lambson property. That offer was determined to be acceptable and most advantageous to the Postal Service, but award was suspended pending resolution of the protest.

By letter dated October 15, Savioa was notified by the Acting Director for Support Services that the decision to locate the new post office in the preferred area remained unchanged. Savioa's protest,^{1/} dated November 17, and received by this office November 25, argues the contracting officer violated several Postal Service regulations in selecting the preferred area. Savioa claims the advertisement for space was not published in the Independent, the newspaper of general circulation in Ramah, as it should have been, that the preferred area for the site is unduly narrow and restrictive, and that what it considers the winning bid (Mr. Lambson's) was submitted after bid closing. Savioa further claims the selection process was tainted because of improper conduct and conflict of interest by Postal officials. It alleges that a member of the Lambson family claimed in 1986 to have the contract for the post office building already, that the former Ramah postmaster's daughter is married to an individual in partnership with Mr. Lambson's family, and that the daughter, a clerk at the Ramah post office, misled Mr. Clawson in his effort to obtain information concerning the status of the new post office project. Finally, Savioa argues that it should be excused from any obligation to submit its protest in a timely manner since it was unaware of the existence of bid protest rules.

In his report to this office, the contracting officer states proper notice of the need for space was given, submitting copies of the pertinent newspaper pages showing that advertisements for the preferred area were carried in the Independent. He also

states that the Advertisement for Bids for Space was posted in the existing Ramah post office. The contracting officer notes that a Facility Planning Concept study completed December 19, 1984, the Denver Building Management Engineering Office established the preferred area for the new post office. According to the contracting officer, the study considered future growth, size requirements, potential locations and local traffic, environmental, geographical, and topographical conditions, including alternative means of fulfilling future space needs in Ramah.

The contracting officer contends that section 7-202.2.4 of the Realty Acquisition and Management Handbook RE-1 (RE-1 Hand-book)¹⁷ permits solicitation of additional offers, such as the Lambson offer, after bid opening. He also contends that after a thorough review of the project file and discussion with the project manager regarding the advertisement, he ~finds that strict compliance with the RE-1 Handbook and the bidding documents has precluded any possible improper conduct or conflict of interest in this proposed award.~ The contracting officer finally asserts Savioa's protest to be untimely since it was received more than ten days after Savioa knew the Postal Service decision to build the new post office in the preferred area would not be changed.

By letter dated January 4, 1988, protester's counsel submitted comments in rebuttal to the contracting officer's report. That rebuttal states bid protest procedures were violated by the contracting officer because he did not notify prospective offerors and interested parties of the pending bid protest and that documents pertaining to notice and selection of the preferred area should have been submitted with the report. He contends title to the Lambson site is clouded, supplying a copy of a published notice of a quiet title action purportedly relating to the site. Aside from these issues, the comments repeated issues raised in Savioa's and Mr. Clawson's earlier letters.

This office cannot reach the merits of Savioa's protest concerning the selection of the preferred area as it is untimely. Our regulations governing bid protests appear in the Postal Contracting Manual (PCM), and, at 2-407.8 (d) (3), provide:

[P]rotests must be received not later than 10 working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question.

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The timeliness requirement imposed by this regulation is jurisdictional, and we cannot consider the merits of any issue which has been untimely raised. K-D Engineering Inc., P.S. Protest No. 87-114, November 27, 1987; Bessemer Products Corporation, P.S. Protest No. 86-5, March 26, 1986. Savioa's claim that it did not possess information on which its November 17 protest is based until less than ten working days before submission to this office conflicts with other information submitted with the protest. In Mr. Clawson's statement accompanying the protest, he acknowledges the protester knew of the selection of the preferred area on or about July 1, 1987, when it became aware of the advertisement in the Albuquerque Journal. Savioa's letter dated August 26, 1987, also manifests knowledge of the preferred area. The latest date the protester could conceivably rely on is October 17, 1987, when it received the letter from the Acting Director, Support Services, advising that the preferred area would not be changed. Even this date is more than 10 working days before the protest was filed. Savioa's protest relating to the preferred area is clearly untimely.

Savioa's attempt to excuse submission of an untimely protest by claiming ignorance of bid protest procedures is unavailing. This office has consistently held that PCM regulations, incorporated by reference in the Code of Federal Regulations at 39 C.F.R. ' 601.100, have the force and effect of law, and bidders are held to constructive notice of them. Dawson Construction and Electric, P.S. Protest No. 87-28, June 5, 1987; Quality Roofing Co. Inc., P.S. Protest No. 85-97, March 20, 1986; see DeMatteo Construction Co. v. United States, 600 F.2d 1384, 1391 (Ct. Cl. 1979).

We do not reach the merits of the other issues raised in Savioa's protest. In order for a protest to be considered on its merits the protester must have standing to raise the issues. The PCM describes this requisite as the determination that the protester is an "interested party." PCM 2-407.8 c. The test to determine if a protester is an "interested party" is whether the protester could be eligible for award of the contract if the protest were upheld. Strapex Corporation, P.S. Protest No. 85-33, July 11,

1985; accord Malcolm A. Miller, P.S. Protest No. 87-87, August 25, 1987.

Savioa admits its site is not within the preferred area as set forth in the Advertisement for Bids for Space. "Offers of properties outside the preferred area, received in response to an advertisement, are not considered as contending sites." S.H. Demarest, P.S. Protest No. 84-1, February 9, 1984. In W.A. Whitney Corporation, Comp. Gen. Dec. B-227082, July 7, 1987, 87-2 CPD | 20, the protester challenged the specification requirements as unduly restrictive and raised a number of issues related to the evaluation and selection process. The protester admitted its product could not meet the stated specification requirements. Once the Comptroller General denied the protest to the contract specifications, he dismissed the remainder of the protester's objections because, since the protester admittedly could not meet the requirements, "it is no longer an interested party to object to the other solicitation defects." Similarly, Savioa lacks standing to protest other aspects of the solicitation because its site outside the preferred area is not a contending site and Savioa would not be eligible for award even if the other aspects of its protest were sustained.

The protest is dismissed.^{1/}

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[Compared to original 6/6/94 WJJones]

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