Protest of	)	Date: February 9, 1988
	)	
LEWIS HICKS	)	
	)	
Solicitation No. 479984-87-A-R286	)	P.S. Protest No. 87-129

Decision

Mr. Lewis Hicks has protested the rejection of his offer to construct and lease a postal facility for Mooringsport, LA, in response to Solicitation No. 479984-87-A-R286.

The solicitation, issued by the Facilities Service Center, Memphis, TN, sought offers for the construction and lease of a post office to be built on a site controlled by a Postal Service option to purchase. When offers were opened October 8, 1987, Mr. Hicks was found to have submitted the lowest offer, at an annual rental of $16,088 for the base term. Mr. Hicks had previously been awarded a contract to construct and lease a post office at Anacoco, LA, a contract which was terminated for default on June 1, 1987, after Mr. Hicks had failed to obtain financing for the project. Believing that Mr. Hicks' financial circumstances had not improved in the interim, by letter dated November 3, the contracting officer advised Mr. Hicks that "your offer has been determined to be nonresponsible [sic]" because of the termination concerning Anacoco.

By letter dated November 9, received November 12, Mr. Hicks advised the contracting officer of his intention to protest concerning the rejection of his offer, and requested "the necessary forms for same." The letter does not set out the basis for the protest.

During the pendency of Mr. Hicks' protest, the contracting officer awarded the contract to the second low offeror, North Hearne Development and Leasing Co., on November 25. A file concerning the protest was forwarded to this office with a transmittal letter dated December 7. By letter dated December 14, the protester was invited to comment on the contracting officer's statement, but has not done so.[1/]

[1/]By letter mailed December 29, the protester advised of his intent to comment "within a few days," but no comments have yet been received. The timeliness standards set out in our bid protest regulations, PCM 2-407.8 f. (4) (five working days after receipt of the contracting officer's report), have long since been exceeded.

When a protest is addressed to a contracting officer, the contracting officer may take one of three actions. The protest may be found obviously meritorious, with specified approvals it may be found obviously without merit, or, if neither of these determinations can be made, it must be forwarded to this office for resolution. Postal Contracting Manual (PCM) 2-407.8 e. However, whatever action is taken on the protest by the contracting officer must be taken within five working days after the protest is received.

Here, the contracting officer could have found Mr. Hicks' protest obviously without merit because of its failure to set out its grounds. See United Chem-Con Corporation, North American Manufacturing Corporation, P.S. Protest Nos. 86-45, 86-, August 27, 1986. Failing that, the contracting officer had an obligation to forward the protest to this office promptly for our resolution. A contracting officer's failure to deal with a protest in a timely fashion is a serious matter because it severely limits the ability to allow corrective relief when such action is required. Mid-America Elevator Co., Inc., P.S. Protest 87-73, August 11, 1987. The contracting personnel's failure to deal with Mr. Hicks' protest as a protest in a timely manner cannot be condoned.

The contracting officer also disregarded regulations limiting his authority to award a contract once a protest had been filed. Contract award cannot occur while a protest is pending absent a finding that the Postal Service will be seriously injured make by the failure to award and the obtaining of appropriate higher level approvals. PCM 2-407.8 g. (1). There is no evidence in the record before us that the contracting officer made an adequate finding of injury and it is apparent that the necessary approvals were not obtained. For the protest procedure to offer meaningful relief to offerors, contracting officers must postpone contract award once a protest is filed unless the strict 47 requirements of PCM 2-407.8 g. (1) are met.

In the instant case, however, relief is not appropriate. The Postal Service's bid protest regulations, PCM 2-407.8, do not

prescribe any particular form which a bid protest must take, other than requiring that the protest be in writing, and "identify the solicitation or contract protested and set forth a complete statement of the alleged defects or grounds which make the solicitation terms or the award or proposed award defective." PCM 2-407.8 c. Here, Mr. Hicks' November 9 letter, while denominated as a protest, failed to set out the basis for the protest. Looked at another way, the protest fails to meet the standard of information which must be presented to overturn the contracting officer's determination. As we stated in Craft Products Company, P.S. Protest No. 80-41, February 9, 1981:

> A responsibility determination is a business judgment which involves balancing the contracting officer's conception of the requirement with available information about the contractor's resources and record. We well recognize the necessity of allowing the contracting officer considerable discretion in making such a subjective evaluation. Accordingly, we will not disturb a contracting officer's determination that a prospective contractor is nonresponsible, unless the decision is arbitrary, capricious, or not reasonably based on substantial information.

The protester has failed to demonstrate the unreasonableness of the contracting officer's determination. Accordingly, the protest is denied.

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

[checked against original JLS 3/22/93]