

Protest of) Date: August 21, 1987
FRONT PORCH GALLERY & STUDIO)
Solicitation No. 120440-87-B-0011) P.S. Protest No. 87-48

DECISION

Front Porch Gallery & Studio (Front Porch) protests the cancellation of Request for Proposals No. 120440-87-B-0011 (the RFP) for the operation of a contract postal unit (CPU) in the Rockbridge-Trickum, GA, area. The protester asserts various grounds which it claims are sufficient to warrant a reissuance of the RFP and award of a contract to it.

The RFP was issued by the Management Sectional Center, Atlanta, GA, on March 3, 1987, with an offer due date of April 16.^{1/} Two offerors, Front Porch and Parcel Transfer Services, submitted proposals in response to the solicitation. Front Porch also filed a protest against the terms of the solicitation with the contracting officer, asserting that the estimated revenues and required hours of service set out in the RFP were too low in view of the past experience of Front Porch, which had operated a CPU at Stone Mountain, GA (within the Rockbridge-Trickum area) from October 1, 1982 through December 6, 1986. Additionally, Front Porch asserted that the RFP should have stated that the Rockbridge-Trickum area was being considered as a possible site for a branch post office.

By letter dated April 24, the contracting officer denied the protest as obviously without merit under Postal Contracting Manual (PCM) 2-407.8 e., stating that the revenue estimate was based on figures from the previous year, that no decision had been reached concerning the possible classification station (branch office) and that the hours of service required were reasonable.^{1/}

^{1/}A prior Request for Proposals, No. 120440-87-B-0005, for a CPU within the same area as that sought in the subject RFP, was issued on December 17, 1986. All offers received in response to this RFP were rejected on the basis of excessive price or unsatisfactory location, and the RFP was cancelled on February 13, 1987.

^{2/}The contracting officer advises that this protest was hand delivered to the divisional annex rather than

The RFP was canceled on May 12, following a determination by the contracting officer that both offerors' price proposals were excessive. Both offerors were advised of this determination by letters mailed May 12. They were also advised that the solicitation would not be reissued.

By a letter dated May 20,^{1/} Front Porch, through counsel, protested the cancellation of the RFP and raised arguments similar to those presented in its initial protest to the contracting officer. It objected to the failure of the RFP to reference the proposed building of a branch post office and to the estimates used for the revenue and hours of service. It contended further that the evaluation of its proposal was improper and that the location defined under the RFP included an area larger than that set out in prior solicitations.

In his report to this office, the contracting officer states that the subject RFP was canceled because of the excessive prices offered by the two firms and because local postal officials had decided to establish a new classified station or branch post office to service the area. The contracting officer further notes that the Postal Service was not required to state in the RFP that it was considering building a classified station, and that to disclose such information would increase land speculation. Since the subject RFP was substantially the same as the RFP which was issued on December 17, 1986, the contracting officer concludes that the protest against its terms was untimely and should be denied.

In a submission filed in rebuttal to the contracting officer's statement, the protester traces the history of its operation of the CPU at Stone Mountain, noting sales of postage of \$71,535.04 for the fiscal year ending September 30, 1983, rising to \$287,864.89 for the year ending September 30, 1986. Because of the substantial increase in sales, the hours worked per week for 1986 were actually 58, rather than the 46.5 provided for in the contract. The annual payment under the contract was \$32,400 for 1985 and 1986. Contract postal unit contracts are of indefinite term, subject to termination on notice by either party. They are also subject to modification by mutual agreement, but there must be consideration for any increase in payments by the Postal Service.

Unhappy with the contract payment, Front Porch attempted to negotiate an increase in price, initially to \$64,955; however, it subsequently reduced this figure. At least once prior to December 6, 1986, a postal retail specialist advised Front Porch that an offer of \$40,000 would probably be accepted. However, that figure was subsequently rejected by the Postal Service. From about October 1986 through December 1986 Front Porch repeatedly called or met with postal personnel to negotiate price. In a letter dated

to his office, and that he did not receive it until April 17. As a protest against the terms of the solicitation, the protest thus was untimely because it was received by the contracting officer after the date set for the receipt of offers, April 16. PCM 2-407.8 d. (1).

^{3/}Although addressed to the General Counsel, the address used was that of the Office of Field Legal Services in Atlanta. The protest was received in this office on May 29, 1987.

November 5, a postal official advised Front Porch that the Postal Service was "prepared to offer an increase to \$34,800 annually." This was apparently unacceptable to Front Porch and it gave notice of its termination of the contract. The CPU closed on December 6.

The protester asserts that on December 10, it was advised by the Director of Field Operations that the CPU was "reopening Friday the 12th". Front Porch called its employees back to work, all of whom met with the Director and another postal official on December 11. The protester states that the Postal Service's offer at this meeting was \$36,400. Front Porch rejected this offer. In a letter dated December 15, apparently confirming this meeting, the Director states that he regretted "that we were unable to come to terms as to the monetary rate to be paid for your services."

In summary, Front Porch asserts three improprieties concerning the solicitation: (1) it objects to the terms of the solicitation, e.g., the failure to mention the proposed branch post office, the reasonableness of the estimated revenue and hours of operation, etc.; (2) it challenges the cancellation of the solicitation; and (post 3) it urges that the contracting officer and other postal personnel made certain misrepresentations to it and did not otherwise deal fairly with it. Alternatively, it asserts that its CPU at Stone Mountain should not have been closed or that it should have been awarded a contract under the subject RFP.

We are unable to reach the merits of the protest because it was untimely filed. As to the objection to the terms of the solicitation, our timeliness standards, set out at PCM 2-407.8 d. (4), provide that if a protest has been filed initially with the contracting officer, any subsequent protest to the General Counsel must be received within ten working days of the protester's formal notification, actual knowledge, or constructive knowledge of the adverse action by the contracting officer. The file reflects that the protester was aware of the contracting officer's denial of its protest by April 30. Its subsequent protest was received in this office 21 working days after April 30.^{4/} (The cancellation also rendered the objections to the terms of the solicitation academic. See The Wheelabrator Corporation, Comp. Gen. Dec. B-219419, July 29, 1985, 85-2 CPD &107. Where, as here, no award will be made, there is no need to reach the merits of a protest where resolution would be an academic exercise. Strapex Corporation, P.S. Protest No. 85-33, July 11, 1985.)

The other improprieties raised by the protester were also untimely presented. PCM 2-407.8 d. (3) requires protests to be filed within ten working days after the information on which the protest is based was known or should have been known. The protester states that it received notice of the cancellation of the subject RFP on May 12. Its protest against the cancellation was received in this office twelve working days after May 12. As to the assertions raised by the protester in its submission filed in response to the contracting officer's statement, all negotiations with the various postal officials

^{4/}The requirement that a protest must be timely filed is not waived by delay in receipt caused by its direction to an incorrect address. Rogelio Herrera, P.S. Protest No. 86-34, June 2, 1986. It is the protester's burden to comply with the applicable PCM provisions regarding filing procedure. Improper addressing with consequential delay will not be treated as an excuse. Don L. Peterson, P.S. Protest No. 85-16, May 3, 1985.

occurred at least prior to about January 1, more than three months earlier than even the initial protest dated April 15. (The negotiations with postal officials were also matters of contract administration, which will not be considered under our bid protest regulations. Cf. M.L. Halle Oil Service, Inc., P.S. Protest No. 85-76, November 26, 1985; Jack Yanks Construction Co., P.S. Protest No. 75-56, August 13, 1975.)

We have consistently held that late protests may not be considered, this office being without authority to give relief when protests are filed in an untimely fashion. E. Trailer Maintenance Ltd., P.S. Protest No. 83-68, November 8, 1983. See also Trailer Marine Transport Corporation, P.S. Protest No. 83-71, February 9, 1984. Moreover, delay in seeking or obtaining information relevant to the procedure for filing a protest does not extend the time in which a protest must be filed. Don L. Peterson, supra.

The protest is dismissed.

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

[Compared to original 3/4/93 WJJ]