

Protest of) Date: October 6, 1988
)
SANDI SMITH)
Under Solicitation No. 840-23-88) P.S. Protest No. 88-53

DECISION

Ms. Sandi Smith has protested the potential award of a contract to Mr. Bernard Hadden under Solicitation No. 840-23-88, issued May 8, 1988, by the Salt Lake City Transportation Management Service Center, for highway transportation of mail and box delivery service between Duchesne and Hanna, Utah, for a term from July 30, 1988, to June 30, 1991. Ms. Smith is the third low bidder and Mr. Hadden is second low.

Ms. Smith alleges that the proposed award to Mr. Hadden is the result of favoritism for Mr. Hadden and discrimination against the other bidders by the Duchesne, UT, postmaster, who, she asserts, initially refused to release information concerning the route to prospective bidders, only providing the information after bidders complained. Ms. Smith also asserts that Mr. Hadden is the postmaster's "best friend and next door neighbor." Finally, she asserts that because she is a member of a minority and more in need of earnings from this highway contract route than Mr. Hadden, she should be awarded the contract.

The contracting officer found the low bidder, Mr. James E. Toney, nonresponsible and Mr. Toney has protested that determination to this office. Simultaneously with the issuance of this decision, this office has sustained Mr. Toney's protest. James E. Toney, P.S. Protest No. 88-45, October 6, 1988, remanding the matter to the contracting officer for further consideration of Mr. Toney's responsibility. Although the contracting officer's further consideration of Mr. Toney's responsibility may moot some of the points raised by Ms. Smith, that reconsideration need not delay resolution of this protest.^{1/}

The contracting officer states that he has investigated Ms. Smith's allegations of

^{1/} Although the contracting officer has not yet made an award under the solicitation, his report to this office indicates he considers Mr. Hadden to be a responsible bidder.

favoritism, including her allegation that Mr. Hadden would receive award because he is the Duchesne postmaster's "best friend and next door neighbor," and found them meritless.^{1/} Although the Duchesne postmaster initially refused to tell bidders the pay rate of the current contractor, he released that information after being informed that it was subject to public disclosure. In addition, he states that Ms. Smith's assertions concerning her need for funds which she might earn from the contract are not relevant to any potential award decision. Finally, the contracting officer indicates that he has reviewed Mr. Hadden's qualifications, which, he states, support a finding of responsibility. He has ample financial resources, experience as a driver on this route for the current contractor, and proposes to use a relatively new (1985) vehicle as his primary vehicle.

By letter dated August 16, 1988, the second low bidder, Mr. Hadden, has also submitted comments, asserting his qualifications for providing service on the route.

Ms. Smith has offered no evidence to support her contention that the contracting officer will display any favoritism in awarding the contract. Although the Duchesne postmaster erred in initially withholding certain information, that error was corrected. The fact that the postmaster at one of the termini on a highway route is a friend of a bidder does not, of itself, support a claim that there will be favoritism in the award of the contract for that route.

Furthermore, the Duchesne postmaster is not the contracting officer. The contracting officer is at the Salt Lake City Transportation Management Service Center. Ms. Smith has not alleged any improper favoritism by the contracting officer nor indicated how perceived favoritism by the postmaster would affect the contracting officer's decision. The exclusion of friends of termini postmasters from consideration for award would be a restriction on eligibility for award. Any such restrictions must derive from the solidation, the Postal Contracting Manual, or other regulations. Gloria H. Canegata and Artie L. Jones, III, P.S. Protest Nos. 87-62, 87-70, September 21, 1987. We find in those sources no restriction on award of a highway contract route to a friend of a postmaster at one of the termini of that route where there is no showing of impropriety in the award.^{1/}

With regard to Ms. Smith's allegations of greater need, the contracting officer

^{2/}Since the protester has presented no evidence to contradict the contracting officer's finding on this point, we give it great weight, relying upon the "presumption of correctness" which accompanies such findings. Year-A-Round Corporation, P.S. Protest No. 86-94, January 29, 1987.

^{3/} It should be noted that the postmaster of Duchesne is subject to the Postal Service Code of Ethical Conduct, 39 CFR 447. The Code requires, inter alia, that employees avoid "any action which might result in or create the appearance of... Giving preferential treatment to any person...." 39 CFR '447.21(a)(2).

correctly states that such matters are not relevant. Pursuant to PCM 19-130.871, award of advertised sealed bid procurements is made to the lowest responsible bidder submitting a responsive bid.^{4/}

The protest is denied.

[Don Anna for:]
William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original 3/3/93 JLS]

^{4/} PCM 19-130.871 provides in pertinent part:

Unless all bids are rejected, award shall be made by the contracting officer, within the time for acceptance specified, to the responsible bidder whose bid, conforming to the [Invitation For Bids], provides the lowest rate to the Postal Service.