

Protest of)	
)	Date: July 21, 1989
PAUL J. ROCCO d/b/a,)	
PAUL'S TRUCKING)	
)	
Solicitation No. 010-211-89)	P.S. Protest No. 89-40

DECISION

Mr. Paul J. Rocco, d/b/a Paul's Trucking protests the award of an emergency contract under solicitation 010-211-89 for highway transportation service on a scheduled basis between the Airport Mail Facility (AMF) at Bradley Field, Hartford, Waterbury, Danbury, New Haven, and Stamford, CT. Mr. Rocco, the current contractor on the route, complains that he received his copy of the solicitation for the service the day after offers were due.

Service between the AMF and the various points on the route was being provided by Paul's Trucking under emergency contract 060NY, which was awarded November 30, 1988. Because pursuant to their terms the schedules of emergency contracts may not be amended during the contract term, when the need to change the schedule for the service arose, Springfield Transportation Management Service Center (TMSC) issued emergency solicitation 010-211-89 for a new contract to replace the service Mr. Rocco was providing. Although emergency service may be the subject of oral solicitation,^{1/} the TMSC chose to solicit the service in writing because of the complexity of the schedules for which service was sought. The TMSC mailed the solicitation to five prospective offerors, including Mr. Rocco, on Friday, May 5, 1989. The solicitation requested telephone bids on or before 2:00 PM, Monday May 8. The TMSC received no bid from Mr. Rocco, but did receive the following three bids:

Robert DeMagestris	- \$169,300
Clayton Cigil	- \$214,921
Murphy Bros.	- \$257,905

^{1/}Procurement Manual 12.4.5 c.5; Mail Transportation Procurement Handbook 6.2.1A.

The contract was awarded to Robert DeMagestris on May 8, with service to begin May 13. On May 10, Mr. Rocco, protested the award of this emergency contract, contending that as the incumbent contractor he should have been given but was denied an opportunity to bid. Mr. Rocco states that he did not receive the mailed solicitation until Tuesday, May 9, one day after bid opening. Mr. Rocco states that he does not believe the TMSC deliberately excluded him from bidding, but that the problem of his late notification, had occurred before and that he is "distressed over the fact that this happened again."

In his report dated June 1, and received on June 6, the contracting officer avers that no deliberate attempt to exclude Mr. Rocco occurred, that all five solicitations were mailed on the same day, that a sufficient number of offerors were solicited and that award was properly made to the lowest responsible and responsive offeror. A member of the TMSC staff further informed this Office that Mr. Rocco's address, 605 Fifth Avenue, Pelham, New York 10803-1207, is within the second-day delivery area of the TMSC as was Murphy Bros., Mt. Kisco, New York, which submitted a timely offer. The three other potential bidders were within the overnight delivery area of the TMSC, and two of them proposed. Finally, Mr. Rocco was paid at a rate of \$1.01 per mile for his prior service on emergency contract 060NY and that the awardee offered service at a rate of \$.99 per mile.

When a prospective bidder claims to have been excluded from competition, we consider the following elements in determining the appropriateness of corrective action:

1. Whether adequate competition was obtained;
2. Whether the failure to comply with requirements intended to secure competition was inadvertent;
3. Whether the offers received were at a reasonable price.

Fumiye Ninomiya, P.S. Protest No. 88-74, November 22, 1988; Craig Pattison, P.S. Protest No. 87-115, December 29, 1987; Fred Austin Trucking, Inc., P.S. Protest No. 85-38, August 7, 1985; Shuford Mills, Inc., P.S. Protest No. 83-49, November 8, 1983.

In this case, adequate competition was obtained. Three offerors proposed, a result which is within the parameters we have established in past cases. See AJH Transportation, Inc., P.S. Protest No. 89-18, May 4, 1989 (two bids held to be adequate competition); Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986 (three bids held to be adequate competition). Furthermore, we find that no deliberate attempt to exclude Mr. Rocco occurred because the TMSC sent him a solicitation which the TMSC could reasonably expect to have arrived in time for Mr. Rocco to have bid. Moreover, by timely contacting four prospective offerors and soliciting proposals from three, the TMSC complied with all applicable requirements for securing competition for an emergency contract. See Procurement Manual 12.4.4; Mail Transportation Procurement Handbook 6.2.1A. Finally, the fact that the low bidder in this solicitation offered a lower price per mile than the previous contractor had charged for comparable service and that two other comparable bids were secured demonstrates that the offers received were reasonable.

The protest is denied.

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

[checked against original JLS 5/24/93]