

Protest of ) Date: July 24, 1989  
JON BREWIS )  
Under Solicitation No. 980-61-89 ) P.S. Protest No. 89-43

DECISION

Mr. Jon Brewis protests the potential award of solicitation 980-61-89 to any person other than one who resides in a county traversed by, or adjacent to, the solicited service.<sup>1/</sup>

Solicitation 980-61-89 was issued by the Seattle Transportation Management Service Center (TMSC) seeking bids for the highway transportation of mail between the Fairbanks General Mail Facility and Delta Junction, AK. In part, the solicitation calls for contractor casing and box delivery of mail to 26 boxes. Bid opening was held May 4, 1989, and Mr. Brewis was the sixth low bidder. Award has not been made.

By letter of June 5 to the contracting officer, Mr. Brewis protested any prospective Postal Service award to a bidder who fails to meet the special responsibility criteria of the solicitation.<sup>1/</sup> Specifically, Mr. Brewis notes that the solicitation incorporates P.S. Form 7469T, Highway or Domestic Water Transportation Contract Information and Instructions (March 1989), and P.S. Form 7407T, Basic Surface Transportation Services Contract General Provisions (March 1989), which both state the same special residency requirement for awardees of box delivery contracts.<sup>1/</sup> In light of the cited requirements, Mr. Brewis requests the

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Postal Service to award the contract under solicitation 980-61-89 only to a bidder who meets those requirements. The contracting officer has forwarded the protest to this office for resolution.

In his report, the contracting officer admits that the solicitation requires the box delivery of mail but indicates that box delivery was only incidental to the primary transportation service which involves the hauling of mail in a straight body truck with a minimum payload weight of 14,400 pounds. The contracting officer states that it is the policy of the TMSO to list residency requirements for box delivery routes (in addition to the inclusion of the above-referenced clauses) by listing the specific allowable counties of residence of prospective awardees in clause 17 of the solicitation. Solicitation 980-61-89 does not include such a listing since the solicited transportation service included only an insignificant number of box deliveries as a minor addendum. The abstract of bids, submitted with the contracting officer's report, indicates that five of the ten bidders reside outside of Alaska, including the second low bidder who is now in line for award due to the contracting officer's determination that the low bidder was nonresponsible.

There is an initial question of the timing of this protest. As of yet, there has been no action which has harmed Mr. Brewis. Mr. Brewis is not alleging any specific

harmful action, but rather a possible action which at some point in the future may harm him. "A speculative protest which anticipates agency action is premature and will be dismissed." DHL Airways, Inc., P.S. Protest No. 89-36, July 7, 1989, quoting Kahn Industries, Inc., P.S. Protest No. 85-56, August 26, 1985; Dennison Manufacturing Company, P.S. Protest No. 85-51, August 8, 1985. Thus, this protest must be dismissed.

We observe, however, that the inclusion of the special residency requirement in the solicitation will require award to a bidder meeting the requirement. Geographic restrictions, when included as special criteria of responsibility, must be enforced. To waive such standards "would be misleading and prejudicial to other bidders which have a right to rely on the wording of the solicitation and thus reasonably to anticipate the scope of the competition for award." Compo Corporation, P.S. Protest No. 88-22, May 3, 1988, citing Haughton Elevator Division, Reliance Electric Company, Comp. Gen. Dec. B-184865, May 3, 1976, 55 Comp. Gen. 1051, 76-1 CPD & 294.

The protest is dismissed.

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

**[checked against original JLS 5/24/93]**