

Protest of) Date: October 18, 1990
)
WAYNE S. DAVIS)
)
Solicitation No. 369990-90-A-R227) P.S. Protest No. 90-54

DECISION

Wayne S. Davis protests the award of a contract postal unit for the Magnolia Plaza area of Morgantown, NC, to Dwight G. Penley. Mr. Davis alleges that Mr. Penley's offer was unacceptable in accordance with the solicitation requirement.

Solicitation No. 369990-90-A-R227 was issued by the Greensboro Procurement and Materiel Management Service Office on May 7, 1990, with an offer due date of June 5. The solicitation specified that the CPU be located in the "Magnolia Plaza area" and was referred to twice in the solicitation as the "Magnolia Plaza contract station." The solicitation did not contain any description or map of the boundaries of the Magnolia Plaza area. Mr. Davis had held a temporary contract for a contract station which was located in the Magnolia Plaza shopping center.

Two offers were received. Evaluation after receipt of best and final offers resulted in Mr. Penley's offer receiving the highest score. Prior to the award to Mr. Penley, by letter dated July 19, Mr. Davis filed a protest with the contracting officer. In his protest, Mr. Davis stated that the solicitation required the successful offeror to provide a CPU in the Magnolia Plaza Shopping Center and that any location outside the shopping center should be deemed unacceptable. He noted that the solicitation mentioned Magnolia Plaza several times, and that the Postal Service had been told by the shopping center that the name of the CPU would have to be changed if it was not located on the grounds of the shopping center. Mr. Davis further alleged that, when he was awarded the temporary CPU contract, he was told by the local postmaster that the resolicitation of the requirement "was only a formality" and that the solicitation would be written in such a way that only offers inside the shopping center would be acceptable, and that he financed the construction of his facility based on this information. Mr. Davis requested

that the requirement be resolicited with a less ambiguous definition for the acceptable area for the CPU location.

On July 23, 1990, the contracting officer dismissed Mr. Davis' protest as untimely, based on Procurement Manual (PM) 4.5.4 b., which requires that protests based on alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals be received by the date and time set for the receipt of proposals. The contracting officer concluded that the protest, received a month after the request for best and final offers, was, therefore, untimely filed. Mr. Davis subsequently filed a protest with our office by letter dated July 28, 1990 and received in our office on September 4.¹⁴

Mr. Davis' protest restates the allegations made in the protest he filed with the contracting officer. He notes that the contracting officer's response does not alleviate the problem that the solicitation referred throughout to Magnolia Plaza, yet award was made to an offeror outside the shopping center, and that confusion could have been avoided if the solicitation had contained a map or sketch as to the area in which a prospective offeror could locate the CPU.

In his report to our office, the contracting officer restates the factual background of the solicitation and reaffirms the untimeliness of the protest. He further asserts that the Magnolia Plaza area is broader than merely the Magnolia Plaza shopping center and includes the immediate area around the shopping center. The name of the CPU was changed from Magnolia Plaza to Burkemont Avenue at the request of representatives of the shopping center to reduce the possibility of confusion. Mr. Davis responds that he was assured by the local postmaster that the location of the CPU would be restricted to within the confines of the shopping center, and that the basic problem is that the original solicitation was ambiguous.

The contracting officer correctly denied Mr. Davis' protest as untimely, since the deficiency he alleges - ambiguity in the possible locations for the CPU - was readily apparent from the face of the solicitation.²⁴ See, e.g., Colorado Piping &

¹⁴Mr. Davis alleges that his protest was sent by facsimile to our office on July 30. As evidence of this, he submits a bill from AT&T for direct-dialed, long-distance calls which indicates that he contacted our telefax number five times for periods of 1, 1, 4, 3, and 2 minutes on that date.

²⁴We need not reach the issue whether Mr. Davis' protest to our office was timely filed, based on the record of facsimile

Mechanical, Inc., P.S. Protest No. 90-23, June 20, 1990. This office has no authority to rule on protests filed in an untimely manner. Daniel J. Keating Construction Company, P.S. Protest No. 89-92, March 1, 1990.

The protest is dismissed.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law
[checked against original JLS 6/22/93]

(..continued)
transmission to our telefax machine. We note, however, that a protest is not filed with our office until it is received. "A protester must furnish any protest to the contracting officer or the General Counsel in a manner that will ensure its timely receipt." PM 4.5.4 a. Cf. Plattsburgh Laundry and Dry Cleaning Corp.; Nu Art Cleaners Laundry, Comp. Gen. Dec. B-180380, July 15, 1974, 74-2 CPD ? 27. If a protester undertakes to transmit a protest by facsimile, it has the responsibility to ensure that the protest is received in a timely manner.