

Protest of)
AAA MOVING & STORAGE COMPANY) Date: January 17, 1992
Solicitation No. 190-04-92) P.S. Protest No. 91-90

DECISION

AAA Moving & Storage Company ("AAA") protests the selection process and the basis for award of a contract under Solicitation No. 190-04-92. That solicitation was issued on September 27, 1991, by the Philadelphia Transportation Management Service Center for highway transportation service between Lehigh Valley, PA, and Kresgeville, PA. The closing date for the submission of sealed bids was October 28, 1991, and AAA submitted the fourteenth-low bid. Contract award has been stayed pending resolution of this protest.

AAA argues that it is not fair or equitable that in bidding it must take into consideration taxes, insurance and vacation time for a salaried employee, while a "single person working alone" does not have to make allowance for such expenses. We take AAA's concern to relate to the administrative exemption from the Service Contract Act ("the Act") for mail transportation contracts performed by owner-operators.

Discussion

Administration and enforcement of the Act is the responsibility of the Secretary of Labor. Procurement Manual (PM) 10.2.10 a.5. The Secretary's regulations implementing the Act include an administrative exemption for:

[a]ny contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident....

29 C.F.R. 4.123(d)(2).^{1/}

^{1/} The exemption is repeated in substantially similar language at PM 10.2.10 b.1.i., which lists among the types of contract exempt from the Act:

We view AAA's protest as being against the terms of the solicitation, which incorporates by operation of law the regulations quoted above. See 41 U.S.C. 353(b).

A threshold question in every protest is whether it was received by the contracting officer or the General Counsel within the time limits prescribed by the Procurement Manual. PM 4.5.4 b provides that:

[p]rotests based upon alleged deficiencies in a solicitation that are apparent before the date set for receipt of proposals must be received by the date and time set for receipt of proposals.

The protest was not timely filed under the regulation, and we are without authority to consider a protest which is untimely. American Telephone Distributors, Inc., P.S. Protest No. 87-117, February 23, 1988. Further, we are without jurisdiction to review the Secretary of Labor's regulations administering and enforcing the Act. See Consultants & Designers, Inc., P.S. Protest No. 90-11, May 18, 1990, n.4.

The protest is dismissed.

[Signed]

William J. Jones
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Office of Contracts and Property Law

[Compared to original 5/18/95 WJJ]

[c]ontracts for mail service with an individual owner/operator, when it is not believed that the contractor will hire service employees under the contract except for short vacations or unexpected contingencies or emergencies.