

Protest of) Date: August 14, 1992
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IMMANUEL DENT)
)
Solicitation No. TMC5-158-92) P.S. Protest No. 92-48

DECISION

Mr. Immanuel Dent timely protests the failure of the Manager, Dallas Transportation Management Service Center (TMSC), to furnish him with a copy of Solicitation No. TMC5-158-92 for highway transportation service on a route between San Antonio and Tilden, TX. As the incumbent contractor on the route, Mr. Dent should have been provided with a copy of the solicitation.^{1/}

The solicitation was issued on May 11, 1992, after unsuccessful negotiations between Mr. Dent and the TMSC over the price of a renewal contract. The contracting officer reports that Mr. Dent is on the bidders' mailing list, and that the TMSC issued proper instructions to the St. Louis Postal Data (PDC) to mail the solicitation to all persons on the list.^{1/} However, because of a computer error at the PDC which was not apparent in

^{1/} The requirement to provide a copy of the solicitation to the incumbent contractor is found in Procurement Manual 4.1.2. d, which provides as follows:

Method of Solicitation. Solicitations must be mailed or otherwise provided to prospective offerors on the mailing list..., including, for a follow-on procurement, the incumbent contractor.

See also 12.4.5 e:

The complete solicitation package must be mailed to ... any incumbent contractor

^{2/} The contracting officer's description of the solicitation process for highway contracts omits a step. As

the TMSC, some of the solicitations were not mailed, apparently including Mr. Dent's copy. Copies of the solicitation were, however, posted for 30 days at the TMSC and at every post office on the route.

At the June 10 bid opening, the TMSC received five bids in response to the solicitation, and a contract was awarded to the low bidder on June 17,^{1/} for a term from July 1, 1992, through June 30, 1996, at an annual rate of \$55,957.00.

The contracting officer has offered the following information bearing on the adequacy of competition, and the reasonableness of the price obtained:

1. The TMSC issued four other solicitations for comparable routes at the same time, and the number of bidders ranged from two to nine. There were five bidders for Mr. Dent's route.
2. Mr. Dent's annual rate for the route was \$40,992.00. However, under the solicitation the minimum required vehicle size was increased from 563 cubic feet to 787 cubic feet, which would have required Mr. Dent to obtain a larger

Mr. Dent's response to the contracting officer's statement is generally consistent with the contracting officer's narrative except that he states that his truck has a 14 foot bed length and meets the new contract size requirements. Mr. Dent also discloses that his proposed price for the renewal contract was \$53,534.

Discussion

Previous decisions of this office establish that in determining whether corrective action is necessary when an incumbent contractor is not directly mailed a solicitation the following factors are considered:

1. Whether adequate competition was obtained;
2. Whether the failure to comply with requirements intended to secure competition was inadvertent; and

we understand the process, the PDC mails only pre-solicitation notices to those on the bidders' list, advising prospective bidders that a solicitation package may be requested from the TMSC. The failure identified by the contracting officer was that of the PDC to mail the pre-solicitation notices to the complete bidders' list. The contracting officer does not address the TMSC's failure to comply with the requirements of PM 4.1.2 d and 12.4.5 e to mail the solicitation to the incumbent contractor.

^{3/} Mr. Dent claims that he was orally advised by the TMSC of the award of the contract on the morning of June 16, and that the contracting officer's statement is therefore in error in stating that award was made on the 17th. The difference is immaterial to our decision here.

3. Whether the bids or offers received Center were at a reasonable price.

Printco Enterprises, Inc. and Dodd Trucking & Leasing Co., P.S. Protests Nos. 90-29 and 90-30, August 28, 1990; Moser Enterprises, P. S. Protest No. 89-31, June 9, 1989; Fumiye Ninomiya, P. S. Protest No. 88-74, November 22, 1988; Craig Pattison, P. S. Protest No. 87-115, December 29, 1987.

Here, the record suggests that the number of bids was about average for highway solicitations in the same general locale. The record also establishes that the failure to send the solicitation to Mr. Dent was inadvertent. On the record before us, we cannot say that the awarded contract price of \$55,957.00 is unreasonable. We note that Mr. Dent's price proposal for the renewal contract was \$53,534, and that the next-low bid under the solicitation was \$62,004.00.

The protest is denied.

William J. Jones
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Office of Contracts and Property Law