

Protest of) Date: December 15, 1992
TODD'S LETTER CARRIERS, INC.)
Solicitation No. 608-50-92) P.S. Protest No. 92-74

ON RECONSIDERATION

Todd's Letter Carriers, Inc., ("Todd") requests reconsideration of various elements of our decision of November 20, 1992, which upheld the contracting officer's determination that Todd was a nonresponsible contractor with respect to a solicitation for highway transportation service.

The request for reconsideration raises the following points:

1. The exclusion of Todd because of TLC's inclusion on the DOT safety list was arbitrary and capricious; there is no legal basis for imputing TLC's listing to Todd. The contracting officer has overstepped the solicitation's requirement that "the contractor may not be rated unsatisfactory" since TLC was not the contractor, but Todd, which was unlisted, was.
2. Todd was not included on the Department of Transportation's Unsatisfactory Safety Ratings Report. The solicitation did not define the term "contractor," for the purpose of excluding from consideration contractors who were on the list, to include entities such as principal officers or shareholders. The decision fails to provide a rationale why Todd was denied the bid on this ground.
3. There is no documentary proof that Todd was included on the DOT list.
4. The decision's reliance on Colorado Piping and Mechanical, Inc., P.S. Protest No. 90-23, June 20, 1990, was misplaced. That decision had to do with a bidder's refusal to provide information about itself, not, as here, to provide information about another entity (TLC).
5. It was inappropriate for the contracting officer to look beyond Todd, the corporation, to determine its responsibility, a conclusion supported by the discussion in Package Express, Inc., P.S. Protests No. 87-57, 87-58, and 87-64, July 27, 1987, which notes that it is inappropriate to look to the principals of the

corporation to determine the corporation's responsibility.

5. At the time the solicitations at issue in this protest were issued, TLC did not have an unsatisfactory DOT listing; that listing came into being prior to bid closing. Citing the decision's discussion of the application to the solicitation of the July 31 Transportation Bulletin, the protester contends that it is the solicitation date, rather than the date of bid opening, which should be controlling.^{1/}

Discussion

Our review of reconsideration requests is very narrow:

Reconsideration is not appropriate where the protester simply wishes us to draw from the arguments and facts considered in the original protest conclusions different from those we reached in that decision. Reassertion of arguments previously considered and rejected by this office does not constitute a ground for reconsideration. Similarly, where information and arguments were known or available to the protester during the development of its protest but were not presented in the original proceeding, such information and arguments may not be considered in a request for reconsideration.

Fort Lincoln New Town Corporation, On Reconsideration, P.S. Protest No. 83-53, November 21, 1983 (citations omitted).

The points raised by the request for reconsideration track similar points made in the protester's earlier request for reconsideration of the decision in Todd's Letter Carriers, Inc., P.S. Protests Nos. 92-39, 92-40, 92-41, October 21, 1992, which was the subject of a decision on reconsideration dated December 11, 1992. The relevant portions of that decision follow.

^{1/} The Transportation Bulletin was dated July 30, 1992, with an effective date of August 1. The solicitation was issued on July 1, and which bids were opened August 5. The solicitation had not been amended to incorporate the changes, and for that reason the decision noted that the policy would not apply to the contract awarded under the solicitation.

Here, much that the protester requests us to reconsider plows old ground, and thus is not available as a basis for reconsideration. We note the following, however, concerning the protester's repetitive contentions:

-- Contrary to protester's several assertions, the previous decision fully and adequately reflected that Todd, the corporation, had not been found to have an unsatisfactory safety record by the Department of Transportation. The decision is clear that it was Todd's President and principal stockholder, Mr. Snyder, who was so listed, and explained why it was appropriate to attribute Mr. Snyder's listing to Todd: "[A]ny other result would allow unsafe operators to continue to obtain new postal contracts by the simple expedient of creating new corporate entities without correcting the underlying problems which occasioned the listing."

* * *

-- While Colorado Piping and Mechanical, Inc., *supra*, did involve a prospective contractor's failure to provide financial information about itself, rather than about a related entity, that difference does not affect the outcome here. Cf. Wallace & Wallace, Inc.; Wallace & Wallace Fuel Oil, Inc.--Reconsideration, Comp. Gen. Decs. B-209859.2, B-209860.2, 83-2 CPD & 142, July 29, 1983 (it was appropriate for the government to investigate the financial condition of bidder's affiliates, and bidder "must suffer the consequences of its inability to establish its financial capabilities").

-- The protester cites Package Express for a principle which differs from the one for which it was cited in the decision. There, the offeror sought to establish the financial responsibility of a corporation by reference to the separate financial assets of the corporate principals. The decision concluded that this was incorrect because it was only to the corporate assets, and not to the individual ones, that the Postal Service could look for contract performance. Package Express thus involves a different proposition than the one which the initial decision advanced, citing other cases which the protester does not here challenge, that it is appropriate for the Postal Service to look to the responsibility of a new corporation's principals when the corporation lacks experience itself.

Finally, the contention that TLC's inclusion on the DOT list should be measured as of the date of the solicitation, and not as of the bid opening date, is a new one, and as such is clearly untimely raised. Procurement Manual 4.5.4 d. In any event, it is also incorrect, since the relevant provision specifically stated that it was at the time of bid opening that bidders' compliance with the DOT listing requirement would be met. We do not understand the decision in [the initial decision] to require a different result.

The initial decision is affirmed.

For the General Counsel:

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Contract Protests and Policies