

August 4, 1994

P.S. Protest No. 94-31

H. J. CORBIN

Solicitation Nos. 608-6019-94 and 608-6039-94

DIGEST

Protest against award of highway transportation contracts is dismissed in part and denied in part. Protester lacks standing to challenge award on solicitation for which he is not in line for award. Protester's separate challenge to consideration of bidder's multiple bids and association of misidentified bid with proper solicitation is without merit.

DECISION

Mr. H. J. Corbin protests the award of two mail transportation contracts to Mr. Louis E. Shorter under solicitations 608-6019-94 (solicitation -19) and 608-6039-94 (solicitation -39). The two solicitations were issued by the Great Lakes Distributions Network office. Solicitation -19, issued April 6, 1994, sought bids on service between Flint, MI, and the Detroit, MI, Air Mail Center; Solicitation -39, issued April 20, sought bids for service between Royal Oak, MI, and Oxford, MI. Bids on solicitation -19 were due May 16; bids on solicitation -39 were due May 23.

The following facts are taken from the contracting officer's statement and its accompanying documents. Mr. Shorter submitted four bids in connection with the two solicitations.¹ One of the bids, intended for solicitation -19, was in an envelope which erroneously stated that it was intended for solicitation -39. The following list summarizes the bids and identifies them in chronological order by the date entered on the bid forms:

¹ Mr. Shorter bid under two different names, ART Transportation and L.E.S. Transportation, at a common address. The L.E.S. bids and one of the ART bids use the same taxpayer identification number; the second ART bid contains a different taxpayer identification number. The inconsistency is not explained in the file. Nothing in the file, however, suggests that Mr. Shorter bid on any basis other than as a sole proprietor of an unincorporated business.

Bid One:

Bidder: L.E.S.Transportation
Louis E. Shorter

Date of bid: April 4
Postmark: May 11
Date received: May 16

Solicitation number
on envelope: -39
Solicitation number
on bid: -39

Annual rate bid: \$41,604

Bid Three:

Bidder: ART Transportation
Louis E. Shorter

Date of bid: May 9
Postmark: May 9
Date received: May 12

Solicitation number
on envelope: -39
Solicitation number
on bid: -39

Annual rate bid: \$38,344

Bid Two:

Bidder: L.E.S. Transportation
Louis E. Shorter

Date of bid: May 7
Postmark: May 9
Date received: May 12

Solicitation number
on envelope: -19
Solicitation number
on bid: -19

Annual rate bid: \$27,325

Bid Four:

Bidder: ART Transportation
Louis E. Shorter

Date of bid: May 11
Postmark: May 11
Date received: May 13

Solicitation number
on envelope: -39
Solicitation number
on bid: -19

Annual rate bid: \$38,018

Bid two was opened at the bid opening for solicitation -19; the other three bids were opened at the bid opening for solicitation -39.

When bid four was opened on May 23, it was identified as a bid responding to solicitation -19 because the bid and its attachments all referred to that solicitation number and reflected the Flint and Detroit termini. The contracting officer determined that the misidentification of the solicitation number on the bid envelope was a minor informality, and directed that bid four be considered in connection with and entered on the abstract of bids for solicitation -19.²

As so revised, the abstracts reflected that Mr. Shorter had submitted two bids on each solicitation.³ Bid two and bid four were the lowest and second lowest bids, respectively, on

² No award had yet been made on solicitation -19.

³ Copies of the abstracts of bids on the two solicitations were mailed to the bidders shortly after bids were opened; those copies of the abstracts include information about bid four on the abstract for solicitation -

solicitation -19; Gary A. Peters submitted the third low bid and Mr. Corbin submitted the eleventh low bid. There were eight bids between Mr. Corbin's bid and Mr. Shorter's bid four. Mr. Shorter's bid three was the lowest bid on solicitation -39. Mr. Corbin had submitted the second low bid on that solicitation, and Mr. Shorter's remaining bid (bid one) was the third lowest bid.

The contracting officer proceeded to determine Mr. Shorter's responsibility with respect to each solicitation. With respect to solicitation -19, he determined, *inter alia*, that Mr. Shorter, an unsophisticated bidder, had intended to replace bid two with bid four, which he had mailed in a misidentified envelope; that bid two was out of line with the other bids received for solicitation -19; that award at that rate would be unfair to the bidder and would endanger performance; and that accordingly bid two could be rejected in accordance with Procurement Manual (PM) 12.7.6 b.3.(d).⁴ On the other hand, the contracting officer determined that Mr. Shorter was a responsible bidder with regard to bid four, based primarily on Mr. Shorter's successful operation of the same route under a previous temporary contract. Similarly, the contracting officer found that Mr. Shorter was a responsible bidder with respect to his low bid (bid three) on solicitation -39. Accordingly, awards of contracts under solicitations -19 and -39 were made to Mr. Shorter on June 23. The other bidders on those solicitations were notified of the awards by letters dated June 22.

Mr. Corbin's protest, dated June 28, was received by this office on June 30. In addition to making general assertions of impropriety in the process of bidding and awarding the contract, the protest objects specifically to the bidder's submission of multiple bids, which he contends is inconsistent with a provision of Form 7469;⁵ the bidder's possible deliberate

39, but not on the abstract for solicitation -39. Copies of the amended abstract including bid four apparently were not sent to the bidders.

⁴ That section provides that when a bidder fails or refuses to furnish evidence in support of a suspected mistake, the bid is to be considered as submitted,

except that the bid must be rejected if:

- (1) The amount is so far out of line with the amounts of other bids received, with the Postal Service estimate, or an amount determined by the contracting officer to be reasonable, that award would be unfair to the bidder or to other bidders; or
- (2) There are other indications of error so clear as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bidders, or that the price is so unrealistic as to endanger performance.

⁵ The protester cites to provision I.A.4.b. of P.S. Form 7469, Highway or Domestic Water Transportation Contract Information and Instructions, which states, in part:

No contract shall be made with any bidder/offeror who has entered into or proposed any combination to prevent the making of any bid or proposal for carrying mail or who has agreed, or given or promised any consideration, to induce another potential bidder/offeror not to submit a bid or offer for such a contract.

misidentification of the solicitation on the envelope of bid four; and the failure to award to the bidder's lowest bid on either solicitation.⁶

In his statement on the protest, the contracting officer contends that the various actions taken were correct. In addition, he asserts that Mr. Corbin lacks standing to contest the award to Mr. Shorter on solicitation -19, since he was not next in line for award. The contracting officer concedes Mr. Corbin's standing with respect to solicitation -39.

Subsequent to the receipt of Mr. Corbin's protest, a similar protest with respect to solicitation -19 was received from Gary Peters, the bidder next in line for award on that solicitation after Mr. Shorter. Mr. Peters' protest was dated July 14 and received July 19 by this office and the contracting officer. The contracting officer contends that Mr. Peters' protest is untimely, since it was received more than 15 working days after contract award.⁷

Mr. Corbin has submitted comments on the contracting officer's report, in which he restates his concerns about the award. He contends that Mr. Shorter's lower bid on solicitation -19 should not have been rejected since, as the previous operator of the route, Mr. Shorter should have known the costs associated with the route. His bid, accordingly, should not have been considered a mistake.

On the other hand, Mr. Corbin contends that the contracting officer should have acted consistently with respect to Mr. Shorter's multiple bids on the two solicitations; that is, having rejected Mr. Shorter's first bid on solicitation -19, he should also have rejected Mr. Shorter's first bid on solicitation -39.

DISCUSSION

We agree with the contracting officer that Mr. Corbin lacks standing to challenge the award to Mr. Shorter on solicitation -19 because his objections to the award, if sustained, would not entitle him to the award. *Compu-Copy*, P.S. Protest No. 90-21, July 5, 1990. We also agree with the contracting officer that Mr. Peters, who would have standing with respect to that award, has submitted an untimely protest. *C E W Manufacturing Co., Inc.*, P.S. Protest No. 93-08, June 8, 1993. Mr. Corbin does have standing to challenge the award to Mr. Shorter on solicitation -39, and we consider the issues raised in connection with that award.

There is nothing inherently improper in the submission of multiple bids by related entities. In *Pioneer Recovery Systems, Inc.*, Comp. Gen. Dec. B-214878, November 13, 1984, 84-2 CPD 520, the Comptroller General . . . noted:

⁶ This last point apparently refers to the fact that bid four, which the contracting officer subsequently determined was intended to be for solicitation -19, had been entered on the bid abstract for solicitation -39, where it was lower than either of Mr. Shorter's other bids on that solicitation. It was not error to exclude bid four from the competition for solicitation -39 since it was clearly nonresponsive to that solicitation.

⁷ PM 4.5.4 d. provides, in part, "that no protest will be considered if received more than 15 working days after award of the contract in question." July 15 was the fifteenth working day after June 23.

It is not unusual for an individual or individuals to submit multiple bids on behalf of more than one commonly owned and/or controlled company where legitimate business reasons for such multiple bidding exist. ... The general rule is that multiple bids may be accepted unless such multiple bidding is prejudicial to the interests of the government or other bidders in which case it is clear that the reason for multiple bidding was not legitimate.

* * *

Since [the protester] . . . had a fair opportunity to submit a lower bid, we are unable to discern any prejudice to [him] from the contracting officer's consideration of the [other bidder's multiple] bids.

Fred Austin Trucking, Inc., P.S. Protest No. 86-66, December 10, 1986.

A bidder's submission of multiple bids does not create a "combination to prevent the making of any bid," nor does it "induce another potential bidder ... not to submit a bid." Form 7469, footnote 5, *supra*. Accordingly, Mr. Shorter's bids on solicitation -39 may be considered.

The exclusion of the misidentified bid four from the competition for solicitation -39 was correct, as was its inclusion in the competition for solicitation -19. When a bid is in the hands of the government before the time set for bid opening, but is not opened at the proper time because the envelope misidentifies the bid, the bid, when eventually opened, may be associated with the bid opening for which it was intended. 46 Comp. Gen. 859. Because it was timely received before the bid opening for solicitation -19, bid four was not a "late bid," and the procedures for considering late bids did not apply to it. *Leland & Melvin Hopp, Partners*, Comp. Gen. Dec. B-211128, 84-1 CPD 204, February 15, 1984. The improper identification of the solicitation on the bid envelope was a minor informality which the contracting officer properly could waive. *Continental Service Company*, Comp. Gen. Dec. B-164602, 187 WL 3454 (C.G.), July 11, 1968, noting that "the risks involved in a deliberate scheme to gain an advantage by retaining an option to either withdraw the bid after opening or to bring the bid to the contracting officer's attention and thereby assure its consideration were too great to indicate that the mislabeling was anything other than a bona fide error."

Contrary to the suggestion in the protester's further submission, we do not understand that the contracting officer rejected bid two because Mr. Shorter had intended to withdraw that bid, and to substitute bid four for it. Rather, he rejected bid two because he believed that the bid contained a mistake as to its price, and that, in the words of the applicable regulation, "award would be unfair to the bidder." Bid one on solicitation -39, unlike bid two on solicitation -19, was not out of line with the other bids received,⁸ and the contracting

⁸ The first four bids on each solicitation and the percentage differences between the low bid and each of the next three bids are as follows:

officer reasonably could conclude that it contained

Solicitation -19		Solicitation -39	
\$27,325		\$38,344	
\$38,018	39%	\$39,858	2%
\$38,353	40%	\$41,604	10%
\$39,069	42%	\$45,752	19%

no suspected mistake and that award on the basis of the bid would not be unfair to the bidder. Because that determination had a reasonable basis we will not disturb it. *D.F.&L. Construction, Inc.*, P.S. Protest No. 78-40, September 15, 1978.

The protest is dismissed in part and denied in part.

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