

Protest of) Date: April 23, 1987
)
 J. FIORITO LEASING, LTD.)
)
 Solicitation No. 161540-86-A-0857) P.S. Protest No. 87-08

DECISION

J. Fiorito Leasing, Ltd., (Fiorito) protests the award of park and loop vehicle hire contracts at five postal facilities in northern Illinois. Fiorito, the incumbent contractor at one of the facilities, alleges that it was unfairly excluded from competition on this solicitation.

The Chicago Procurement Services Office (now the Central Procurement and Materiel Management Center) issued Solicitation No. 161540-86-A-0857 on October 6, 1986, for park and loop services at the Berwyn, Morris, North Riverside, Western Spring, and Decatur IL post offices. The solicitation was circulated to a bidders list of twelve names, a synopsis of the procurement was submitted to the Commerce Business Daily (CBD) on September 26, 1986, and the solicitation was posted in the lobbies of the postal facilities at which the services were required. Bids were received on October 17, from five bidders, and awards were eventually made to three firms in late December or early January. The successful bidder at Berwyn, IL, was the incumbent contractor. The successful bidder for Decatur, One Stop Leasing, had not been on the bidder's list.

On January 7, 1987, Fiorito protested to the contracting officer the award of any contract under the solicitation, claiming that it had been unfairly excluded from competition on the solicitation. Fiorito noted that it had been and continued to be competing on other vehicle hire procurements and that it had been deprived of its "right" to bid on this solicitation. Fiorito claimed that the action had been taken to discriminate against it and prohibit doing further business with the Postal Service.

By letter dated January 14, the contracting officer denied Fiorito's protest as obviously without merit, noting that adequate competition had been obtained in the procurement and that there had been no intent to exclude any prospective offeror from competing on the requirement. She further noted that, because Fiorito was the incumbent contractor

at one of the facilities, it should have been aware that a solicitation covering that facility had been issued. After the contracting officer denied Fiorito's protest, Fiorito referred the protest to our office pursuant to PCM 2-407.8 d.(4).

Fiorito's protest states that it has repeatedly contacted postal personnel regarding its placement on the bidders list for Park & Loop vehicle hire contracts. Fiorito further alleges that it has not received solicitations on other, unspecified procurements, which it interprets as part of a pattern of discriminatory exclusion from competition and consideration. Fiorito requests that it be compensated for its damages and that it be allowed to compete on whatever solicitations it wants.^{1/}

The contracting officer states that because twelve firms were on the bidders list, the procurement was synopsisized in the CBD and publicly displayed at the affected facilities, and five bids were received, adequate competition was received. Since the lowest bids were all substantially under the postal cost estimate for the procurements and were in line with other vehicle hire awards made in the Illinois area, the contracting officer determined that the prices received were fair and reasonable. She denies that Fiorito was deliberately excluded from competition on this procurement, noting that "[d]ue to an oversight, J. Fiorito's firm was inadvertently left off the bidders list." She also rejects Fiorito's accusation of systematic exclusion from postal solicitation, noting that it has bid on at least five solicitations in 1986, including two with a bid opening date after that in the protested solicitation.

CANA Car, Inc., the successful bidder at Morris and North Riverside, has submitted comments on Fiorito's protest. It states that it has a system for ascertaining the status of contracts which it has prior to their termination date and that Fiorito should have had a similar system. CANA also notes that it subscribes to the CBD and reviews it daily. Thus, CANA believes that Fiorito is responsible for its failure to receive the solicitation.

When an incumbent contractor challenges a contracting officer's failure to solicit it for a new procurement, we review the matter from the standpoint of the following factors:

^{1/} The protester raises several issues tangential to its main protest. It states that it is a minority firm, in that it is owned by a woman. It asserts that the only reason an incumbent contractor can be prevented from competing is if the incumbent is terminated for default. Finally, it requests certain information such as the bidders list, abstract of bids, sections of the PCM, a list of the successful offerors, and a copy of the CBD.

A woman-owned business is not entitled to any special treatment because of that status. See Tulsa Diamond Manufacturing Corp., et al., P.S. Protest Nos. 85-18, 85-20, 85-23, June 20, 1985; Le-Gals, Inc., Comp. Gen. Dec. B-212531.2, October 5, 1984, 84-2 CPD | 386. The protester's understanding of the legal standard for exclusion of an offeror from competition is mistaken; the test set out infra is correct. As to the documentation it requested, most are items which the contracting officer should have furnished the protester along with her statement on the protest. PCM 2-407.8 f. (3). The exception is the CBD, to which it is Fiorito's responsibility to subscribe if it wishes to be advised of its contents.

- (1) Whether adequate competition was obtained;
- (2) Whether the offers received were at a reasonable price;
- (3) Whether the failure to comply with requirements intended to secure competition inadvertent.

Shuford Mills, Inc., P.S. Protest No. 83-49, November 8, 1983; See also Fred Austin Trucking, Inc., P.S. Protest No. 85-38, August 7, 1985; ; Gleman Engineering Company, P.S. Protest No. 81-4, February 9, 1981.

Here, adequate competition was obtained, as evidenced by the actual competition among five offerors who submitted bids. While the evidence that the prices received were reasonable is somewhat sketchy, it is sufficient.

As to whether Fiorito was deliberately excluded, we have only a conflict of statements between Fiorito, who alleges that its exclusion was intentional and the contracting officer, who states that it was inadvertent. While it would be better to have had more than the contracting officer's conclusion in this regard, the protestor has the affirmative burden of proving its case, and its bare assertions do not satisfy this burden. See Hoffman Air and Filtration Systems, P.S. Protest No. 86-98, February 20, 1987; CompuCon Security, P.S. Protest No. 86-20, May 9, 1986. Here, the protestor has not carried that burden. In Shuford Mills, Inc., *supra*, an incumbent contractor was excluded from the bidders list and, therefore, did not bid on the solicitation. We cautioned that "[i]n the absence of clear and convincing evidence that the incumbent contractor would not be interested in a subsequent contract, it should be included on the bidders list and mailed a copy of the solicitation." However, in the absence of substantial evidence that the protestor had been deliberately excluded, the protest was denied. A similar result obtains here.^{1/}

The protest is denied.

William J. Jones
Associate General Counsel

^{2/} Fiorito has failed to prove its assertion that it has been systematically excluded from participation in bidding on Postal Service contracts, given the uncontradicted evidence of the contracting officer that Fiorito has bid on numerous postal solicitations over the last year. See generally Fred Austin Trucking, Inc., P.S. Protest No. 86-66, December 10, 1986.

Office of Contracts and Property Law

[Compared to original 2/22/93 WJJ]