

Protest of	)	Date: December 29, 1987
	)	
CRAIG PATTISON	)	
	)	
Under Solicitation No. 980-60-87	)	P.S. Protest No. 87-115

DECISION

Mr. Craig Pattison protests the award of a contract under Solicitation No. 980-60-87 for highway transportation service on a box delivery route between South Beach and Seal Rock, OR. Mr. Pattison complains that, as the current contractor on the route he should have been, but was not provided with notice of the solicitation. He also alleges that the awarded contract was excessive in price.

Prior to the service to be solicited here, service between South Beach and Seal Rock was provided as part of a larger route from South Beach to Waldport. This route was split into a route from Waldport to Seal Rock and one from South Beach to Seal Rock. Under the solicitation, service was to begin July 1, 1987.

The Seattle Transportation Management Service Center (TMSC) originally advertised the route from South Beach to Seal Rock under Solicitation No. 980-18-87 on April 1, with bid closing set for May 14. Three bids were received:

Carl A. Gregg	\$13,573.25
Craig Pattison	\$17,275.70
Betty Toftum	\$23,264.69

The Seattle TMSC found the low bid to be in error and the bidder was permitted to withdraw on June 11. The Seattle TMSC found the other two bids to be excessive because their average rates per mile were higher than average rates per mile on routes then thought to be comparable.<sup>1/</sup> The two bidders were informed of this finding on June 11.

To provide service from July 1 until a new permanent service could be solicited, the Seattle TMSC, on June 11, issued a solicitation for emergency service, with an offer closing date of June 19. On June 23, following the withdrawal of the low offeror, the Seattle TMSC notified the second low offeror, Ms. Becky Wilson, that she would be awarded the emergency contract. On July 2, Ms. Wilson requested and was granted release from the contract. The TMSC then awarded the emergency contract to Mr. Pattison, effective July 3, at a rate of

<sup>1/</sup>The Seattle TMSC determined that the second low bidder's rate per mile (\$2.64512) was 32% higher than rates then thought to be comparable (\$1.99914).

\$64 per round trip.

Meanwhile, on June 22, the Seattle TMSC had issued Solicitation No. 980-60-87, seeking bids for permanent service on the route. At that time, the TMSC entered this solicitation into the National Bidders List System, and the Postal Data Center sent 44 letters of notification to prospective bidders. In addition, the TMSC sent a copy of the solicitation and instructions for posting to post offices in Portland, Salem and Newport, OR. On June 23, the TMSC sent a copy of the solicitation to Ms. Wilson. Mr. Pattison was not on the National Bidders List and was not separately notified of the solicitation.

On August 12, three bids under Solicitation 980-60-87 were opened:

John A. and Pamela A. Darcy	\$19,597.98
Betty Toftum	\$24,000.00
Daniel Bristow	\$33,310.40

Award was made to the low bidder on October 7. The award was delayed by time consumed in establishing the responsibility of the low bidder.

Mr. Pattison presents two contentions. First, he contends that the Postal Service erred in failing to provide him a copy of the solicitation package for Solicitation No. 980-60-87 or adequate notice of the solicitation while he was serving that route on an emergency basis during the bid solicitation period. Second, he contends that the awarded contract was excessive in price because the contract price on this solicitation was higher than the bid rate he had previously submitted for the same service as advertised in Solicitation No. 980-18-87 which rate the Postal Service rejected as excessive.

Mr. Pattison says that he questioned a staff member at the Seattle TMSC when he was awarded the emergency contract concerning the solicitation for permanent service. The staff member informed him that the service would not likely be solicited until October. Finally, Mr. Pattison states he spoke to the postmasters of Newport and South Beach<sup>1/</sup> and requested them to inform him when a solicitation for the permanent service was issued. According to Mr. Pattison, both postmasters informed him that they never received the solicitation.

The contracting officer states that he made a reasonable effort to notify the public of the issuance of Solicitation No. 980-, 60-87 by sending letters to contractors on the National Bidders List and by sending copies of the solicitation with instructions for posting to Portland, Salem and Newport, OR. The contracting officer points out that Mr. Pattison was not the contractor performing the emergency service at the time Solicitation 980-60-87 was issued; the emergency contractor of record at that time was sent a notice of the solicitation. He further states that he routinely sends notice of a solicitation to contractors performing emergency service and to the bidders on the previous solicitation for the same service. In this case he inadvertently failed to do so.

The contracting officer agrees that Mr. Pattison's rejected bid for the same service in response to Solicitation No. 980-18-87 was less (\$17,275.70) than the contract price on

<sup>2/</sup>South Beach is a contract post office. Its operator is not a postal employee, nor is the title "postmaster" strictly correct to refer to the operator.

Solicitation No. 980-60-87 (\$19,597.98). He explains this discrepancy as caused by the Seattle TMSA's inability to evaluate costs properly on the higher-density, lower mileage route when bids were first solicited. The contracting officer further states that the current emergency contractor was receiving a rate (calculated to be \$19,306.48 annually by the contracting officer) which, on an annual basis, was comparable to that of the winning bidder on Solicitation No. 980-60-87 (\$19,597.98).

When a bidder claims to have been excluded from competition, the following elements are considered by this office in determining the appropriateness of corrective action:

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

Fred Austin Trucking, Inc., P.S. Protest No. 85-38, August 7, 1985; Shuford Mills, Inc., P.S. Protest No. 83-49, November 8, 1983.

In this case adequate competition was obtained on Solicitation No. 980-60-87. See Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986 (three bids held to be adequate competition); Shuford Mills, Inc., P.S. Protest No. 83-49, supra, (one bid can be adequate competition if there is a significant effort to obtain competition, a reasonably priced bid is received, and there is no deliberate attempt to exclude a particular firm). Moreover, there is no evidence which points to the deliberate exclusion of Mr. Pattison in this case. Postal Service regulations require that Invitations for Bids for transportation contracts be advertised in the following manner:

(a) Each IFB shall be posted in post offices along the route to be served at which deposits and/or collections are to be made. IFB's requiring transportation related services to be performed at a single location or multiple locations, shall be posted in the principal post office serving such location or locations.

(b) the contracting officer shall distribute copies of the IFB to such potential bidders as may indicate an interest in acquiring contracts for the types of service involved, and such other prospective bidders as may be appropriate.

Postal Contracting Manual (PCM) 19-130.3 (a) and (b). The contracting officer complied by sending copies of the solicitation to be posted at Portland, Salem and Newport and by sending letters describing the solicitation to contractors on the National Bidders List.<sup>1/</sup> See Chas. Levy Transportation Co., P.S. Protest No. 85-79, October 31, 1985 (protest of incumbent contractor who did not receive notice of solicitation and was not on the National Bidders List denied where contracting officer sent notices of solicitation to contractors on National Bidders List and posted the solicitation in at least one post office on the route).

The contracting officer informs us that he routinely sends copies of the solicitation to contractors performing emergency service on the route and to contractors who have bid upon prior solicitations for the same service. There is no reason to suspect that the failure to solicit Mr. Pattison, a bidder on the previous regular and emergency contracts, was other than inadvertent.

The record does not support Mr. Pattison's assertion that the contracting officer should have rejected all bids under Solicitation 980-60-87 as excessive in amount. Although, but for a misjudgement, the contracting officer could have had a contract at a somewhat lower price under the first solicitation than under the second (\$17,275.70 vs. \$19,597.98), the magnitude of that difference (13%) is plainly not so great as to oblige the contracting officer to reject the bids as excessive in amount.<sup>1/</sup>

<sup>3/</sup>Mr. Pattison's bare assertions that the solicitation was not posted at the Newport Post Office is not sufficient to overcome the "presumption of correctness" which accompanies the statements of a contracting officer. Year-A-Round Corporation, P.S. Protest No. 86-94, January 29, 1987; Graphic Technology, Inc., P.S. Protest No. 85-66, December 30, 1985.

<sup>4/</sup>The contracting officer is authorized to reject all bids as excessive in amount under PCM 19-130.882(b), which provides as follows:

The contracting officer may reject all bids under the following circumstances:

...

(b) When all otherwise acceptable bids are excessive in amount. In order for a bid to be considered excessive, it must state a rate which is unreasonably high for the service called for in the advertisement. Basically, whether a bid rate is reasonable should be determined by such things as a comparison with prevailing rates for similar service in the same area, and with the cost of the service currently being operated on the route, all as adjusted so as to reflect any unique or changed circumstances.

Since the authority to reject all bids is permissive, this office will not substitute its judgment for that of the contracting officer.

Moreover, the fact that in two subsequent solicitations offerors have submitted generally comparable bids demonstrates that the bids received were reasonable.

The protest is denied.

**[Norman Menegat for:]**

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[checked against original JLS 3/22/93]**