

Protest of)	Date: September 21, 1987
)	
GLORIA H. CANEGATA AND)	
ARTIE P. JONES, III)	
)	
Under Solicitation Nos. PR 9-87;)	P.S. Protest Nos. 87-62,
PR 10-87; PR 16-87.)	87-70

DECISION

Ms. Gloria H. Canegata protests proposed awards to Mr. Craig Davis (d/b/a Mercury Courier Service), the low bidder on three mail transportation solicitations, PR 9-87, PR 10-87 and PR 16-87. Ms. Canegata asserts Mr. Craig Davis is ineligible to receive award because he is the son of Mr. Alvin Davis, the postmaster of Charlotte Amalie, St. Thomas, VI. Mr. Artie L. Jones, II, makes similar assertions with regard to two of the solicitations, Nos. PR 9-87 and 16-87.

Solicitation Nos. PR 9-87, PR 10-87, and PR 16-87 were issued March 31, 1987, by the San Juan, PR, Transportation Management Service Center for highway transportation of mail between Kingshill and Frederiksted, Kingshill, S. Isles and Christiansted, and Kingshill and Alexander Hamilton Airport, all in St. Croix, VI. When bids were opened, Mr. Davis was second low bidder on the Frederiksted and Christiansted routes; she was third low on the airport route. Mr. Jones was the highest bidder of four on the Frederiksted and airport solicitations; he did not bid on the Christiansted solicitation.

On May 25, Ms. Canegata sent a protest to the contracting officer asserting "that it is improper, unethical and probably illegal for immediate family members to participate in contractual matters involving management employees of the [P]ostal [S]ervice in that area." The protest further states that as postmaster of Charlotte Amalie, Mr. Alan Davis "has oversight responsibilities for all postal facilities on ST. Croix and is the spokesperson for the territorial officers."

On June 26, Mr. Artie Jones, III, filed with the General Counsel similar objections to award to Mr. Davis concerning the two solicitations on which he bid. Although Mr. Jones' letter office, since the letter was furnished in response to the contracting officer's notifications (of Ms. Canegata's protest) to the on other bidders, it appears more appropriate to consider it as comments to that protest.

The contracting officer's statement on the protest of Ms. Canegata asserts that the protest has merit. He asserts that because of the small populations of the Virgin Islands and their proximity, which is such "that local residents know each [other] by first name," "the United States Postal Service could be lending itself to some strong criticism by local residents" if it made award to Mr. Davis. However, the statement is accompanied by a legal memorandum prepared by the Assistant General Counsel, Transportation Division, which concludes that Mr. Craig Davis is not ineligible for award under the applicable provisions of the Postal Contracting Manual, which we discuss below.^{1/} The memorandum continues:

I understand your concern about nepotism in the administration of this contract. I can only advise that the father be directed to recuse himself from administration of the son's contracts, [that] the administrative officials be counseled to treat Mr. Craig Davis like any other contractor, and [that] any complaints about special treatment of Mr. Davis be referred to the Inspection Service for investigation.

The contracting officer has not yet awarded the contract to Mr. Davis. Service on these routes is being provided by emergency contract.

Mr. Craig Davis has commented on the protest, as has counsel for Mr. Davis and some citizens of the Virgin Islands. Mr. Craig Davis notes the absence of any connection between his father and Mercury Courier Service, Mr. Craig Davis' majority, and his separation from his father's household.

There is an initial question of Ms. Canegata's standing to protest the airport solicitation, on which she was the third low bidder. For a protest to be considered its merits the protester must have standing to raise the issues. The basic test is whether the protester could be eligible for award if the protest were upheld. Safety Technology, Inc., P.S. Protest No. 86-13, March 21, 1986; Strapex Corporation, P.S. Protest 85-33, July 11, 1985; Electrocraft Industries, Pluribus Products, Inc., Comp. Gen. Dec. B-210444, March 7, 1983, 83-1 CPD | 226. Because Ms. Canegata has interposed no objection to the intervening bidder on the third solicitation, she lacks standing to protest award to Mr. Davis thereunder.^{1/}

P.S. Form 7469, Highway or Domestic Water Transportation Contract Information and Instructions, included in each solicitation, provides at Section II, A. 1. as follows:

^{1/}The memorandum was sent in response to the contracting officer's request for legal assistance after he received Ms. Canegata's May 25 protest.

^{2/}For similar reasons, Mr. Jones lacks standing to protest the two awards on which he has commented.

A. Eligibility of Bidder of Offerors

1. Persons ineligible to become Contractors:

- a. Employees of the U. S. Postal service or members of their immediate families. "Immediate family" means spouse, minor child or children, and other individuals related to the employee by blood who are residents of the employee's household.
- b. Business organizations substantially owned or controlled by Postal Service employees or their immediate families.
- c. Any individual or firm not meeting the minimum standards for responsible prospective contractors in accordance with Section 1, part Contracting Manual.

Subparagraphs a. and b. implement PCM 19-110.2, which prohibits award of transportation to postal employees and their immediate families and PCM 1-302.3(a) which defines the term "immediate families" (a definition referenced in PCM 19-110.2).

Mr. Craig Davis has submitted information that he is over 21 years of age and has not lived with his father for the last 2-1/2 years and that his father has no involvement with his delivery service. There is no allegation or evidence to the contrary. Accordingly, paragraphs II. A. 1. a. and b. do not preclude Mr. Davis's eligibility under these solicitations. The solicitation and the contracting officer having established a standard in this regard, the contacting officer may not, attempt to establish a more stringent one.^{1/}

We do not understand the contracting officer to have made a determination of Mr. Davis' responsibility, a necessary prerequisite to his eligibility for award. Such a determination must be made without regard to the circumstance of Mr. Davis's status as the adult son of a postal employee.

^{3/}The concerns expressed by the protesters and others should be assuaged by the approach suggested by the Assistant General Counsel. It should also be noted that the Postal Service Code of Ethical Conduct, 39 CFR Part 447 is applicable to the postmaster of St. Thomas. The Code requires inter alia, that employees avoid "any action ... which might result in or create the appearance of : ... Giving preferential treatment to any person...." 39 CFR ' 447.21.

The protests are dismissed in part and denied in part.

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

[Compared to original 3/5/93 WJJ]