

Protest of) Date: March 9, 1988
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 ASHAWAY VILLAGE ASSOCIATES)
)
 Advertisement for Bids for Space) P.S. Protest No. 88-8
 Ashaway, RI)

DECISION

Ashaway Village Associates (Ashaway) protests award of a contract for construction and lease of the main post office at Ashaway, RI to A & U Realty (A & U). Ashaway contends that its proposal is more advantageous to the Postal Service, price and other factors considered, than that of A & U.

The Burlington, MA, Facilities Service Office issued an Advertisement for Bids for Space August 18, 1987, seeking proposals for construction of a main post office at Ashaway, RI, for lease to the Postal Service. The Advertisement noted that award would be made to the proposal most advantageous to the Postal Service, price and other enumerated factors considered, that offers would not be publicly opened and that information as to the identity of offerors and the contents of their offers would not be revealed to anyone whose official postal duties do not require such knowledge.

Award was made, December 10, 1987, to A & U, and Ashaway was notified by a letter of that date, which it received December 11, that it would not receive award. Ashaway made a request, December 23, under the Freedom of Information Act (FOIA), for the entity, terms and location of the proposal determined to be more advantageous to the Postal Service than its own proposal, which request was complied with December 30 by letter identifying A & U as the successful bidder and stating the annual rental for A & U's 10 year term.

Ashaway submitted a protest to the contracting officer dated January 11, 1988, and received January 13. The protester contends that the property proposed by A & U is not zoned in accordance with the requirements of the Advertisement for use as a post office, that no petition is pending for rezoning and that the change necessary for the

site to comply could not be made under zoning laws as they currently exist. Ashaway further alleges that its proposed site is more conveniently located than that of A & U and, consequently, is more advantageous to the Postal Service. Ashaway contends, therefore, that its proposal was improperly evaluated. Ashaway acknowledges that its proposed price was higher than that of A & U but complains that no negotiations were conducted in which its price could have been lowered.

The contracting officer dismissed the protest by letter dated January 15, 1988, on the ground that the protest was untimely submitted pursuant to Postal Contracting Manual (PCM) 2-407.8 d (3) which provides that, to be timely, protests must be received not later than 10 working days after the information on which they are based is known or should have been known. The contracting officer concluded that since the protest was received 19 working days after Ashaway received notification of award to A & U, the protest would not be considered.^{1/}

The protester, by letter of January 19, requested reconsideration of the decision of the contracting officer.^{1/} Ashaway there contends that although it did receive notice that it was not the successful offeror on December 11, it was not notified that A & U was the successful offeror until its FOIA request was answered on December 30. The protester contends that it therefore submitted its protest within 10 days of receipt of the information upon which the protest is based, and thus the protest is not untimely under PCM 2-407.8 d (3).

The contracting officer, on January 28, reaffirmed its earlier denial of Ashaway's protest. The contracting officer notes that the protester based its request for reconsideration upon the first clause of PCM 2-407.8 d (3) but did not address the second clause of that provision, which states that no protest will be considered if received more than 15 working days after award of the contract in question. As award was made December 10 and Ashaway's protest was received January 13, the contracting officer considers the protest obviously untimely. The protester has not responded to the January 28 letter.

The relevant jurisdictional provision of the PCM, 2-407.8 d (3), states:

[P]rotests must be received not later than 10 working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question.

^{1/}Our calculations indicate that 22 working days elapsed between the date Ashaway received notice of its rejection and the date the protest was received.

^{2/}Ashaway also filed its original protest and supporting documents with this office, concurrently with its reconsideration request to the contracting officer, on January 19.

Award was made to A & U on December 10, 1987, Ashaway received notice thereof on December 11, and its protest was received by the contracting officer January 13, 1988, a total of 23 working days after award. Ashaway has not disputed these dates. The protest is therefore dismissed as untimely, pursuant to the second clause of PCM 2-407.8 d (3), as having been received more than 15 days after award.^{1/} Gould Electronics, P.S. Protest No. 86-11, April 24, 1986; Minnesota Vikings Food Service, Inc., P.S. Protest No. 85-87, December 2, 1985.

The protest is dismissed.

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

[checked against original JLS 2/23/93]

^{3/}Postal Service protest procedures are not suspended during a pending Freedom of Information Act request. Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984; Edward B. Friel, Inc., P.S. Protest No. 82-8, May 4, 1982.