

Protest of)
E-Z COPY, INC.) Date: May 11, 1988
Solicitation Nos. 489990-88-A-R156-R163) P.S. Protest No. 88-17

DECISION

E-Z Copy, Inc. of California protests the failure of the contracting officer to notify it of Solicitation Nos. 489990-88-A-R156 to R163 for coin-operated photocopying services in eight management sectional centers in Texas and Oklahoma.

Solicitation Nos. 489990-87-A-0622, -0624, -Z625, -0626, -0627, -0633, -0634, and -0635 were issued by the Dallas Procurement and Materiel Management Service Office between July 15 and 17, 1987, with an offer due date, as amended, of August 21. The solicitations provided that bids would be accepted for only plain paper copiers, and that bids would be evaluated by multiplying the commission offered by the vendor by the copy price (\$0.25) times the estimated number of copies. The solicitations provided a breakdown of the total estimated number of copies, and left it up to the vendor to bid the amount of commission for a particular number of copies.

Two protests were received on these solicitations. Before bid opening, E-Z Copy protested the terms of the solicitations, arguing that the requirement that the copiers use only plain paper, rather than chemically-treated paper, was unduly restrictive and not in the best interest of the Postal Service. Bids were opened while the E-Z Copy protest was pending. After bid opening, Pitney-Bowes, Inc., protested award to the low bidders on the solicitations (VNP Vending Corp. and E-Z Copy of Texas), stating that neither bidder met the three-year experience criteria set out in the solicitations and that both bids represented "buy-ins", which would not represent the highest revenue to the Postal Service.

The contracting officer canceled the solicitations on September 28, 1987. After the cancellations, the protests of E-Z Copy and Pitney-Bowes were dismissed as moot on October 7, 1987, and the companies were notified accordingly. However, VNP Vending Corp. protested the cancellations, asserting that the basis of the cancellations was impermissible and that resolicitation would be an unfair auction. VNP's protest was denied. VNP Vending Corporation, P.S. Protest No. 87-107, February 4, 1988, aff'd on reconsideration, March 31, 1988.

The contracting officer issued the resolicitation IFB's on January 11, 1988. Bid opening took place on February 11, 1988, and award was made to VNP Vending, Corp. on March 1. E-Z Copy's protest was received by our office on March 29.

E-Z Copy alleges that it has been unfairly excluded from competition on these contracts. It alleges that the Postal Service was aware of its interest in these solicitations, as evidenced by its previous protest, and that it had requested to be put on the bidders list for them. However, it was not notified of the solicitation issuance or contract awards, learning of them only on March 25. E-Z Copy states that it has been deprived of "procedural and substantive due process rights" and unfairly excluded from "valuable contract rights."

The contracting officer states that E-Z Copy was sent a copy of the original solicitations and that it protested instead of submitting a bid. The resolicitation was sent only to those offerors who had bid on the original solicitations. Since E-Z Copy had not submitted a bid, it was taken off the bidders list. She denies that any correspondence was ever received from E-Z Copy requesting that they be placed on the bidders list for the resolicitations. Although the solicitations were not synopsisized in the Commerce Business Daily, (because they were revenue-producing contracts), they were publicly displayed in the contracting office in Dallas and in each of the management offices where the machines were to be deployed. The contracting officer concludes that E-Z Copy was not improperly excluded from competition.^{1/}

There is an initial question concerning the timeliness of this protest. While there is no evidence that E-Z Copy learned of the resolicitation effort earlier than its stated date of March 25, the protest was filed more than 15 working days after award of the contracts, March 1. As a result, the issues raised by E-Z Copy are untimely and not for consideration by our office. See Postal Contracting Manual (PCM) 2-407.8 d. (3); Service America Corporation, P.S. Protest No. 87-119, December 15, 1987.

Were we to reach the merits of E-Z Copy's protest, it would be denied. The standard of review of a protest alleging that a potential competitor was not solicited for a requirement is well established; we consider the following factors:

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

^{1/}The contracting officer also alleges, alternatively, that E-Z was inadvertently left off the bidders list and that the failure to place it on the list was due to an administrative oversight.

See J. Fiorito Leasing, Ltd., P.S. Protest No. 87-08, April 23, 1987; Fred Austin Trucking Company, P.S. Protest No. 85-38, August 7, 1985; Shuford Mills, Inc., P.S. Protest No. 83-49, November 8, 1983; Gleman Engineering Company, P.S. Protest No. 81-4, February 9, 1981.

Here, adequate competition was obtained, as evidenced by the actual competition among several bidders. There is no evidence before us that the revenues offered by these bidders are not reasonable.

E-Z Copy asserts that its exclusion from competition on these solicitations was unfair. The solicitations were, however, publicly posted on many postal facilities in the areas to be served. Indeed, E-Z Copy was on notice of the possibility of a resolicitation effort as early as October 18, 1987, when its protest against the initial solicitation was dismissed as moot because of the cancellation of those solicitations. There is no indication in the protest file that E-Z Copy took any action whatsoever to follow up on the status of this procurement.^{1/} The contracting officer's action in taking E-Z Copy off the bidders list after the initial solicitation was consistent with postal regulations. PCM 2-205.2 (a) expressly permits the contracting officer to remove the name of a bidder who fails to respond to an IFB from the bidders list for that particular item.

The protest is dismissed.

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[checked against original JLS 2/24/93]

^{2/}Its assertion that it requested to be placed on the bidders list is adequately rebutted by the contracting officer's denial, given the "presumption of correctness" which accompanies her statements. See Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986 and cases cited therein.