

Protest of) Date: July 29, 1988
)
 BFI WASTE SYSTEMS,)
 BROWNING-FERRIS INDUSTRIES))
)
 Solicitation No. 269990-88-A-0185) P.S. Protest No. 88-42

DECISION

BFI Waste Systems, Browning-Ferris Industries (BFI), protests award of a contract for rubbish removal from the main post office, stations, and branches in Milwaukee, WI, to Cedar Disposal, Inc. BFI claims that the load estimates were erroneous and that under correct estimates, it should have been awarded the contract.

Solicitation No. 269990-88-A-0185 was issued by the Minneapolis, MN, Procurement and Materiel Management Service Office on February 19, 1988, with an offer due date of March 25. The solicitation required bidders to remove, over a three-year period, an estimated quantity of 474 loads of compacted rubbish and 54 loads of non-compacted rubbish from the main post office and lesser quantities of non-compacted garbage from 23 stations and branches. Three bids were received. Cedar Disposal was low, Economy Disposal, Inc. was second and BFI was third. After evaluating the bids and making a favorable determination of Cedar Disposal's responsibility, the contracting officer made award to Cedar Disposal on May 9. Notice of award was sent to BFI on May 9; who received it May 16.

BFI requested a bid summary upon receipt of the notice of award. After some delay by the contracting officer, it received the summary on May 23. BFI protested the award to the contracting officer by letter dated June 16, which the contracting officer received on June 21. The protest stated that the solicitation's calculation of 54 non-compacted loads for the main post office was erroneous, and that, based on its conversations with postal employees, 474 non-compacted loads would be required. BFI stated that, based on 474 non-compacted loads, its bid was the lowest and it should have received award.

The contracting officer dismissed BFI's protest on June 23 as untimely. He noted that the deficiency of which BFI complained was apparent on the face of the solicitation and, pursuant to section 2-407.8 d. (1) of the Postal Contracting Manual (PCM), had to have been protested prior to bid opening.

BFI has further protested to our office pursuant to PCM2-407.8 d. (4). BFI restates the merits of its protest and argues that it could not have timely protested "because we were unable to get the bid results from [the contracting officer] in a timely fashion." It requests that the award decision be reversed. The contracting officer reaffirms his previous dismissal of BFI's protest, noting that the alleged incorrectness of the number of loads of non-compacted rubbish were clearly apparent on the face of the solicitation. Cedar Disposal has submitted comments which indicate that it bid based on the actual load numbers set forth in the solicitation.

BFI's protest is clearly untimely. PCM 2-407.8 d. (1) requires protests against deficiencies apparent on the face of the solicitation to be filed before bid opening. It is well established that untimely protests cannot be considered on their merits:

The requirement that a protest be timely filed is jurisdictional; we cannot proceed to a discussion of the merits of any issue which has been untimely raised. See Omnicopy, Inc., P.S. Protest No. 84-24, June 25, 1984; Southern California Copico, Inc., P.S. Protest No. 83-2, August 31, 1983. Unlike the Comptroller General, we have no authority to waive or disregard the timeliness issue in a particular case. Cf. Air Transport Association of America, P.S. Protest No. 84-29, May 17, 1984, aff'd on reconsideration, June 1, 1984; James W. and Joan C. Carroll, P.S. Protest No. 82-13, August 27, 1982. CF Air Freight, Inc., P.S. Protest No. 87-43, August 7, 1987.

If the quantity of non-compacted rubbish loads was incorrect, that error was apparent from the solicitation as issued on February 19. Any protest against this number would have had to have been filed by March 25. The contracting officer's delay in furnishing the bid abstract is irrelevant because, even if it had been provided immediately, BFI's protest would still have been too late. As we have no authority to decide untimely protests, we must dismiss this protest as untimely.

The protest is dismissed.

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

[checked against original JLS 2/25/93]