

Protest of) Date: October 3, 1988
FRANKLIN E. SKEPTON)
GMF/VMF Facility, Lehigh Valley, PA) P.S. Protest No. 88-59

DECISION

Franklin E. Skepton, individual owner of a general contracting firm, protests the decision of the contractor evaluation committee not to select him for the prequalified contractors list for construction of a new General Mail Facility and Vehicle Maintenance Facility (GMF/VMF) in Lehigh Valley, PA. The protester states that his rejection was improper because he meets the qualification requirements established for the project.

On June 27, 1988, the Eastern Region Facilities Service Center advertised in Commerce Business Daily (CBD), soliciting statements from contractors interested in being placed on the prequalified contractors list for construction of the Lehigh Valley GMF/VMF facility. The advertisement contained a general description of the required construction and listed nine categories of information required in the prequalification statements. One requirement was that the contractor demonstrate successful completion within the last five years of at least five projects comparable in size and complexity to the proposed project. To be comparable, the advertisement stated that a qualifying project must be valued at \$16 million. Prequalification statements were to be submitted by July 21, 1988.

Twenty-two responses were received by the closing date, and a committee met to evaluate them. Of the 22 received, 8 met the criteria in the CBD advertisement.

By certified letter dated August 22, 1988, Mr. Skepton was notified that he did not meet the criterion relating to successful completion of projects comparable in size and complexity to the proposed facility, and therefore was not selected. His prequalification statement indicated completion of one project of \$21 million, but the four next largest were each under \$5 million. The protester received the letter on August 23, 1988, as indicated by the signature and date on the return receipt.

In the protest, counsel for Mr. Skepton states that he has the required number of successfully completed projects of comparable sizes, has an excellent and successful record of completing public construction work within bid and ahead of schedule and, in

addition, has bonding capacity in excess of that required on the project in question. The protester contends firms with no greater experience than Mr. Skepton were found to be qualified. As additional grounds for the protest, Mr. Skepton states in a letter dated September 16, 1988, his belief, acknowledged to be unsubstantiated, that only union contractors have been approved for the Lehigh Valley project.

The initial question is that of the timeliness of the protest. Under our protest regulations, Procurement Manual (PM) 4.5.4, protests, other than those based on alleged deficiencies in a solicitation, "must be received not later than ten working days after the information on which they are based is known or should have been known, whichever is earlier." PM 4.5.4.d. The contracting officer's statement on this protest sets out the terms of the advertisement, Mr. Skepton's submission, and notes his failure to meet the comparable project requirement. The contracting officer also contends that the protest was untimely filed, noting that notification that the Skepton firm was not among those prequalified for the facility was received by the protester on August 23, 1988. In order to be timely, the protest of that determination must have been received by the General Counsel or the contracting officer not later than ten working days after that date. However, the protest was received by the contracting officer September 9 and by the General Counsel September 12, each more than ten working days after notification of the protester's nonselection. Although not part of the contracting officer's written statement, it was learned upon further inquiry that all of the contractors selected for the Lehigh Valley project have successfully completed the requisite number of comparable projects. Moreover whether a contractor was or was not a union contractor played no part in the prequalification process.

The timeliness requirement imposed by the Procurement Manual regulations is jurisdictional. We cannot consider the merits of any issue that has been untimely raised. See Service America Corporation, P.S. Protest No. 87-119, December 15, 1987; Bessemer Products Corporation, P.S. Protest No. 86-5, March 26, 1986; Poveco, Inc., P.S. Protest No. 85-43, October 30, 1985. This office lacks authority to waive or disregard untimeliness. Air Transport Association of America, P.S. Protest No. 84-29, May 17, 1984, aff'd on reconsideration, June 1, 1984.

The protest is dismissed as untimely.

William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 3/4/93]