

Protest of) Date: July 13, 1989
)
 RUTH RIVARD)
)
 Under Solicitation NO. 632-034-9) P.S. Protest No. 89-37

DECISION

Ms. Ruth Rivard timely protests the contracting officer's determination that she is ineligible for award under solicitation 632-034-9 issued by the St. Louis Transportation Management Service Center (TMSC) for the box delivery of mail between Lebanon and Eldridge, MO. Bid opening was held on May 2, 1989 and Ms. Rivard was the low bidder.

During the process of establishing Ms. Rivard's eligibility for award, a TMSC staff member contacted the postmaster at Bucyrus, MO, to verify whether Ms. Rivard met the residency requirement for award of a box delivery route.^{1/} The Bucyrus postmaster indicated that Ms. Rivard had filed a permanent address change requesting her mail to be sent to an address in

^{1/} P.S. Form 7469T, "Highway or Domestic Water Transportation Contract Information and Instructions, Special Requirements for Box Delivery Contracts" (included in the solicitation package) states:

In addition to meeting the other requirements set out herein, bidders or offerors on contracts requiring box delivery service must meet the eligibility requirements of this paragraph.

a. An individual bidder or offeror must reside in a county traversed by the route or an adjoining county on the date and time set for bid closing, and must continue to so reside during the term of the contract and any renewal thereof.

P.S. Form 7469T at page 3.

Social Circle, GA, effective January 9, 1989. Based on that information, the contracting officer determined Ms. Rivard ineligible for award and so notified her by letter of May 12.

Ms. Rivard wrote to the Postmaster General on May 27 alleging that the contracting officer determination was inaccurate and that she is, in fact, a resident of Texas County, MO (the county traversed by the route). That letter was considered a protest and forwarded to this office for resolution, where it was received June 6. Award had been made to the third low bidder on May 31 after the second low bidder was found nonresponsible.

In his report to this office, the contracting officer provided copies of correspondence from the postmasters of Bucyrus, MO, and Social Circle, GA, which indicate that at the time of bid closing Ms. Rivard was not a resident of a county traversed by the solicited service nor of an adjacent county but in fact resided in Social Circle, GA.^{2/} The Social Circle postmaster indicates that to her knowledge Ms. Rivard has resided in Social Circle since 1977. The Bucyrus postmaster indicates that to the best of his knowledge Ms. Rivard did not reside in Bucyrus at the time of bid closing and that the Postal Service has been forwarding her mail to Social Circle pursuant to her permanent address change request since January of 1989. The contracting officer's report also contains a copy of a P.S. Form 5472, "Assets and Liabilities Statement," submitted by Ms. Rivard which lists a residence in Social Circle, GA, and which was sent in an envelope with a printed adhesive return address sticker in her name at that residence.

The requirement that a box delivery contractor must reside in a county traversed by the route or an adjacent county constitutes a special responsibility criterion. See Procurement Manual 3.3.1.c. and 12.5.1.c.; DHL Airways, Inc., P.S. Protest No. 89-36, July 7, 1989. This office's review of a contracting officer's finding of nonresponsibility is limited. Such a determination will not be disturbed unless the decision is arbitrary, capricious, or not reasonably based on substantial information. AHJ Transportation, Inc., P.S. Protest No. 88-85, February 2, 1989.

Here, the information before the contracting officer indicated that Ms. Rivard did not meet the solicitation's residency

^{2/} Ms. Rivard did not submit comments to rebut the contracting officer on this point.

requirement. Based on that information, the contractor had to determine Ms. Rivard nonresponsible. Such a decision is not arbitrary or capricious and was based on substantial information.

The protest is denied.

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

Law

[checked against original JLS 5/24/93]