



The contracting officer's statement on the protest includes the observation that neither King County, in which Mr. Moss resides, nor Pierce County, in which Mr. McCluskey resides, has been identified as a labor surplus area for purposes of the policy reflected in Clause 22.

In supplemental comments, Mr. McCluskey alleges that the Postal Service's acceptance of Mr. Moss' bid subject to a June 30, 1990, contract ending date was deliberate, and that, but for Mr. McCluskey's protest, the notice of acceptance would not have been corrected to conform to the solicitation. Mr. McCluskey also points to references to the term "bid" or "bid/proposal" in the singular in the solicitation as evidence that a bidder may submit only one bid, so that Mr. Moss' second bid must be construed as a revocation of his first. (Mr. Moss apparently believes that the higher of Mr. Moss' bids was the later submission.) On the matter of the labor surplus area preference, Mr. McCluskey argues that the relevant area is "the area served by the postal route, not the county it is contained in." Finally, Mr. McCluskey bolsters his contention that his bid is more advantageous with a side-by-side comparison purportedly showing that his vehicles, insurance and "public relations" are superior to those of Mr. Moss.

### Discussion

Although there is nothing inherently improper in a bidder submitting multiple bids, Fred Austin Trucking, Inc., P.S. Protest No. 86-66, December 10, 1986, in this case we conclude that Mr. Moss' initial bid of \$41,740.64 was not a valid bid and thus its submission had no impact on the contracting officer's consideration and acceptance of Mr. Moss' later bid, which was valid. To be valid, a bid must be responsive, that is, it must offer to perform, without exception, the exact thing called for in the invitation for bids and, upon acceptance, bind the contractor to perform all the terms and conditions of the invitation. Tompkins & Associates, P.S. Protest No. 88-58, December 30, 1988. Mr. Moss' initial "bid," which was received before the solicitation for the route was issued, could not have been responsive to the solicitation's terms, and should not have been considered.

We accept the contracting officer's characterization of the error in the first notice of acceptance as accidental. Statements of the contracting officer are entitled to a "presumption of correctness". Data Flow Corporation, P.S. Protest No. 83-54, October 28, 1983. Regardless of the circumstances of its occurrence, however, Mr. McCluskey was not prejudiced by the irregularity since the contracting officer had no authority to accept Mr. Moss' bid on any terms other than those on which it was offered, that is, for the full four year term. The erroneous action accordingly provides no basis for protest. Artech Corporation, P.S. Protest No. 84-58, October 5, 1984.

Mr. McCluskey's claim that his bid is more advantageous to the Postal Service because of his superior knowledge of local road conditions, and his superior equipment and qualifications is unavailing. Where, as here, award is to be made to the lowest responsible, responsive bidder on the basis of price, it is unavailing for a protester to assert that its offer is more satisfactory than a lower one. See Procurement Manual (PM) 12.7.3; Sandi Smith, P.S. Protest No. 88-53, October 6, 1988. To the extent that the protest calls into question Mr. Moss' responsibility as a prospective contractor, the challenge also fails. We can overturn affirmative determinations of responsibility only in the presence of fraud, bad faith or failure to adhere to definitive responsibility criteria, Southern Air Transport, P.S. Protest

No. 89-56, October 3, 1989, none of which are alleged here. Mr. McCluskey's general claim of superior qualifications does not carry his burden of proof.

Mr. McCluskey's claim of preference based on his residence in an area of high unemployment also fails. Clause 22 is a term of the contract, set out in its General Provisions and governing the participation in the contract of subcontractors from labor surplus areas. It is not a factor in the evaluation of competing offers. In any event, the contracting officer is correct in noting that neither the low bidder nor the protester is located within a labor surplus area as defined by the Department of Labor.<sup>1/</sup> See 53 Fed. Reg. 39367.

The protest is denied.

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**[checked against original JLS 5/25/93]**

<sup>2/</sup>Were the provision applicable to bid evaluation, it would have to relate to the location of the bidder, since its application to the site of performance would make it equally applicable to all bidders.