

Protest of) Date: March 27, 1990
E-Z COPY, INC.)
Solicitation No. 059991-89-A-0135) P.S. Protest No. 90-08

DECISION

E-Z Copy, Inc. protests the extension of several photocopying contracts in the Los Angeles Management Region. E-Z Copy asserts that the Postal Service had no authority to extend these contracts with the incumbent contractors once new contracts for the same services had been awarded.

The Procurement and Material Management Service Office in Bell, California issued Solicitation No. 059991-89-A-0135 on May 2, 1989, to procure coin operated copy machines for public use in post office lobbies in that region. E-Z Copy, the lowest cost, responsible offeror, was awarded a three year contract on August 18, 1989 with contract performance to begin October 1, 1989. This award was challenged by a competitor, whose protest was dismissed in part and denied in part. Applied Copy Technology, Inc., P.S. Protest No. 89-62, October 10, 1989, aff'd on reconsideration, November 7, 1989.

At the same time, E-Z Copy protested the awards of three other photocopy contracts to two other contractors alleging that their bids were unbalanced and therefore nonresponsive. These protests were sustained. E-Z Copy, Inc., P.S. Protest Nos. 89-63, 89-64, 89-68, September 28, 1989. We directed the contracting officer to reject the materially unbalanced bids and to "take further action . . . as appropriate." E-Z Copy, supra. The contracting officer responded by terminating all of the contracts he had recently awarded for photocopy machines under their mutual, 60 day, no-liability termination clauses. The contracting officer declared that he would resolicit offers for these photocopy services using an updated solicitation. E-Z Copy protested the termination of one of its contracts. The protest was dismissed due to this office's lack of jurisdiction over E-Z Copy's allegations. E-Z Copy, Inc., P.S. Protest No. 89-85, December 1, 1989.

E-Z Copy asserts in this protest that it discovered on or about February 5, 1990, that prior vendors) in the region covered by the terminated contracts discussed above were still performing under an extension of their contracts. E-Z Copy contends that this is

improper since the Postal Service does not have the power to a contract once a new contract has been awarded, as the new award terminates the former contract. E-Z Copy declares that the Postal Service was required to allow it, instead of the incumbent contractors, to provide interim service until the new solicitation for photocopying services is issued. The protester finally mentions that this "adverse and improper contract performance" is one in a string of actions by the Postal Service prejudicial to E-Z Copy's interests.

The contracting officer urges that the protest be dismissed as untimely, asserting that extend although E-Z Copy does not discuss how it discovered that prior vendors were continuing to provide interim service, it had constructive notice of this fact months before that since these photocopying services have been publicly provided in the lobbies of 231 post offices.

The contracting officer further states that because the seven contracts were terminated and the new requirements have yet to be issued, the original photocopying contracts have been extended through March 31, 1990.^{1/} According to the contracting officer, during the period of the three bid protests, the prior vendors' contracts were repeatedly extended to prevent interruption of photocopying service to Postal customers. The contracting officer argues that since E-Z Copy never began performance under any of the awarded and then subsequently terminated contracts, it was in the Postal Service's best interests to remain with the incumbent contractors until new awards could be made.^{1/}

Finally, the contracting officer states that the protester's assertion that it should be allowed to provide interim service is essentially a request for relief under its canceled contract. The contracting officer asserts that such relief is a matter of contract administration and therefore, should be dismissed as outside our jurisdiction.

We dismiss the protest as untimely. Postal Contracting Manual (PCM) 2-407.8 d. (3) states that "protests must be received not later than 10 working days after the information on which they are based is known or should have been known, whichever is earlier. . . ." (Emphasis added.) E-Z Copy's performance on the contract it won from Solicitation 059991-89-A-0135 was to begin October 1. The contracting officer terminated all seven contracts after receipt of the September 28, 1989 decision from this office sustaining E-Z Copy's protest concerning unbalanced bidding. The fact that the previous contractors were continuing performance in over 231 public post offices should have been known in October, 1989. If E-Z Copy wished to assert that it and not the incumbents should perform until the new solicitation was issued, that assertion could have been made then. Since E-Z Copy's protest was received by this office on February 12, 1990, much later than 10 days after it should have known that the

^{1/}The original photocopying contracts were extended the first time until September 30, 1989. The second extension was made until December 31, 1989. The third extension is until March 31, 1990.

^{2/}California Copy Service comments that, in its opinion, it is prudent for the Postal Service to continue temporarily with the present vendors and provide uninterrupted service pending the issuance of the new copier requirements.

contracts had been extended, this protest is untimely. Thomas J. Seitz Co., Inc., P.S. Protest 88-49, September 8, 1988; accord Quality Machine Co., Inc., P.S. Protest No. 88-66, October 17, 1988.

The protest is dismissed.

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[checked against original JLS 6/2/93]