

Protest of )  
C.L. SWANSON CORPORATION ) Date: April 15, 1988  
Solicitation No. 269990-88-A-0151 ) P.S. Protest No. 88-20

### DECISION

C. L. Swanson Corporation (Swanson) protests the award of a contract for food vending services at the Madison, Wisconsin, post office to Sletten Vending Service, Inc. (Sletten), on the grounds that Sletten's bid is non-responsive because Sletten bid two different products (milk and orange drink) and a range of prices for these products dispensed through the milk vending machine.<sup>1/</sup>

On February 8, 1988, Solicitation No. 269990-88-A-0151 was issued by the Procurement & Materiel Service Office, Bloomington, Minnesota. When bids were opened on March 10, Sletten's bid was the lowest of five bids received; Swanson's was the second low. Sletten was found by the contracting officer to be a responsible bidder, and was awarded the contract on March 17. Swanson's protest was received on March 29.

There is an initial question concerning the timeliness of the protest. Swanson acknowledges in its protest that "it was [its] impression at the bid opening that Sletten Vending was non-responsive." Swanson thus admits that it was aware of the discrepancies of which it now complains as early as March 10. In order to be timely, pursuant to Section 2-407.8 d. (3) of the Postal Contracting Manual, a protest must have been received by the General Counsel or the contracting officer no later than ten working days after the information on which the protest is based is known or should have been known. This protest was not received by the contracting officer until March 29, more than ten working days after the bid opening.

<sup>1/</sup>The contracting officer states in his report that the solicitation was ambiguous in that a milk machine was specified, and a space for one price was provided. However, under "Vending Requirements" (page 1 of 7 of Enclosure I), three items were specified to be vended under milk: "regular", "chocolate", and "orange". This discrepancy was not recognized prior to bid opening. Sletten offered three different products on the vending machine: regular milk and chocolate milk (at a price of \$0.25 per serving) and orange drink (at a price of \$0.15 per serving); Swanson submitted a price for "milk" only. The prices offered by Sletten and Swanson for milk were equal. In evaluating the offers submitted by Sletten and Swanson, the contracting officer determined, in view of the solicitation, that he would consider only the prices offered for milk. As so calculated, Sletten's bid was the lowest priced overall.

The timeliness requirement imposed by the regulations is jurisdictional. We cannot consider the merits of any issue which has been untimely raised. Service America Corporation, P.S. Protest No. 87-119, December 15, 1987; K-D Engineering, Inc., P.S. Protest No. 87-114, November 27, 1987; Bessemer Products Corporation, P.S. Protest No. 86-5, March 26, 1986; POVECO, Inc., et al., P.S. Protest No. 85-43, October 30, 1985. This office has no 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  
Associate General Counsel  
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**[checked against original JLS 2/24/93]**