

Protest of) Date: March 16, 1989
AHJ TRANSPORTATION, INC.)
Under Solicitation No. JAX:03:89) P.S. Protest No. 89-03

DECISION

AHJ Transportation, Inc., (AHJ) protests the contracting officer's determination that it is a nonresponsible bidder under solicitation JAX:03:89 for highway transportation of mail between Lakeland, FL, and Haines City, FL, and protests award pursuant to the solicitation to anyone but itself.

The solicitation was issued by the Jacksonville, FL, Transportation Management Service Center. AHJ submitted the second lowest bid,^{1/} and was asked to provide financial and other information from which the contracting officer could determine its responsibility. During this period the Jacksonville TMSC was also considering AHJ's responsibility with regard to a second solicitation, JAX:159:88. By one letter dated December 13, 1988, which AHJ received on December 16, the contracting officer advised AHJ of his decision that AHJ was not a responsible bidder on either solicitation because AHJ had "failed to provide sufficient information for us to make an affirmative determination of responsibility and are therefore declared non-responsible relative to the award of the subject solicitation."

On December 16, AHJ protested the finding of nonresponsibility, introducing its protest letter with "Re: Solicitation No. JAX:159:88." The letter contained no mention of any other solicitation. The December 16 protest was eventually the subject of this office's decision, AHJ Transportation, Inc., P. S. Protest No. 88-85, February 2, 1989, which denied the protest.

The contracting officer notified the unsuccessful bidders of the award to Gerald E. Fry under solicitation JAX:03:89 by letter dated January 9. By an undated letter received by the contracting officer on January 17, 1989, AHJ recognized that it had not protested the contracting officer's determination of its nonresponsibility as to solicitation JAX:03:89, and attempted to correct that error. AHJ also protested the award of the contract prior to this office's resolution of its protests under other solicitations, contending that favorable rulings in those protests would entitle it to this award.

^{1/}The low bidder was declared nonresponsible.

The contracting officer's report on the protest contends that it is untimely, noting that it was received 19 working days after AHJ became aware of the contracting officer's determination of nonresponsibility.

We find that the protest is untimely. Procurement Manual (PM) 4.5.4.d provides that a protest may be considered only if it is 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." This requirement is jurisdictional, and we cannot consider the merits of matters untimely raised. C. L. Swanson Corporation, P.S. Protest No. 88-20, April 15, 1988; Service America Corporation, P.S. Protest No. 87-119, December 15, 1987.^{1/}

The protest is dismissed.

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

against original JLS 5/3/93]

^{2/}AHJ may view the protest as one against award, although it asserts no ground separate from its untimely challenge. Considered as a protest against the award, AHJ's protest would be timely, since it was filed within 10 working days of award. However, as a nonresponsible bidder, AHJ is not an "interested party" and, therefore, lacks standing to challenge the award. (PM) 4.5.2.a. The test whether a protester is an "interested party" is whether it could be eligible for award of the contract if the protest were upheld. Strapex Corporation, P.S. Protest No. 85-33, July 11, 1985. AHJ fails such a test. AHJ was found to be a nonresponsible bidder, and did not challenge that determination in a timely manner. It therefore lacks standing to challenge the award to another.