

Protest of) Date: September 20, 1989
G. L. REUBUSH)
Under Solicitation No. 380-104-89) P.S. Protest No. 89-61

DECISION

G. L. Reubush timely protests the prospective award under solicitation no. 380-104-89 to Baird Ward Publishing (Baird), the low bidder. Solicitation no. 380-104-89 was issued on June 20, 1989 seeking bids for the highway transportation of plant-loaded mail on an "as needed" basis between Baird's plant and the Seaboard Rail Yard in Nashville, TN. Bids were opened on July 20. Baird was low; Mr. Reubush was second low. By letter of July 27 to the contracting officer, Mr. Reubush protested the prospective award to Baird. That protest was forwarded to this office for resolution.

Mr. Reubush alleges that the award of the contract to Baird would constitute a conflict of interest between Baird, as third-class mailer/publisher and trucking contractor, and the Postal Service.^{1/} Mr. Reubush alleges four ways in which Baird, as third-class mailer/publisher, could act to benefit Baird, as trucking contractor, to the detriment of the Postal Service:

- (1) Baird could delay the dispatch of mail so that the transportation would be made under a pending increase in rate;
- (2) Baird could have an effect on the movement of loads by using its own drivers;
- (3) Baird could have delays in transporting the mails and blame the Postal Service for the delays; and
- (4) Baird could try to move trailers that were not full in order to increase its trucking business.

^{1/} The award to Baird would result in Baird being both the mailer placing mailable matter in the mails and the trucking contractor responsible for the transportation of that mail to its further transportation by a railroad contractor.

The contracting officer in his report to this office responds to Mr. Reubush's allegation as follows:

- (1) Any increase afforded to Baird, if awarded the contract, would be the same as afforded any other successful contractor.
- (2) The contractual requirements and specifications would apply to whomever received contract award. Those requirements require the movement of trailers on an "as needed" basis within four hours of notification.
- (3) Any delays in the shipment of mail occur only after the mailable matter is accepted as mail. It is the Postal Service's responsibility to ensure that the trailers arrive at the railyard in time to be dispatched to meet Postal Service service standards.
- (4) At a minimum, a load must be 60% of capacity before it will be shipped.^{1/} It will be the responsibility of the postal clerk on duty to ensure the integrity of the load.

In conclusion, the contracting officer states that it is Postal Service policy to make award to the lowest responsible bidder and that he will make award consistent with that policy.

Mr. Reubush's claim that otherwise qualified third-class plant-load mailers should be excluded from consideration for award amounts to a restriction on eligibility for award. Any such restrictions must be derived from the solicitation, the Procurement Manual, or other regulations. See Sandi Smith, P.S. Protest No. 88-53, October 6, 1988; Gloria H. Canegata and Artie L. Jones, III, P.S. Protest Nos. 87-62, 87-70, September 21, 1987. We find in those sources no basis for excluding from consideration for award an otherwise qualified third-class plant-load mailer. To the contrary, the applicable regulation contemplates the award of highway contracts to plant-load mailers under the same conditions as other contractors. See Handbook PO-512, '544.1.^{1/}

^{2/} The minimum volume required for dispatch of a load is either 60% or 50%. The requirement for the dispatch of interservice area mail is 60%; the volume requirement for intraservice mail is 50%. See generally Plant Loading Authorization and Procedures Guidelines Handbook PO-512, March, 1989, Chapter 2, Plant Load Authorization. Definitions of "interservice area" and "intraservice area" are found in the Domestic Mail Manual (DMM) '154.13et seq., September, 1989.

^{3/} That section states, in pertinent part:

The award of a highway contract to a mailer must be considered separately from the decision to plant load. Mailers who wish to receive payment for transporting their plant-loaded mail must do so pursuant to an issuance of a formal highway contract under the competitive bid process. Whenever a mailer provides transportation under a highway contract, the mailer incurs the same responsibilities as any other highway contractor, and must follow the same procedures in scheduling, dispatching, etc.

As to Mr. Reubush's allegations that problems may occur in the administration of the contract, our bid protest jurisdiction does not extend to issues of contract administration. See National Electro-Sales Corp., P.S. Protest No. 85-46, August 15, 1985.

The protest is denied.

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

[checked against original JLS 5/25/93]