

Protest of ) Date: August 12, 1992  
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 KATHLEEN ROBERTS )  
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 Solicitation No. 980-4082-92 ) P.S. Protest No. 92-57

### DECISION

Ms. Kathleen Roberts timely protests the decision of the Manager, Seattle Transportation Management Service Center (TMSC), to find her ineligible for a contract for a box delivery service route because she was a postmaster relief at the time her bid was submitted.

On April 20, 1992, the TMSC issued Solicitation No. 980-4082-92 for box delivery service between Castle Rock and Silver Lake, WA. The closing date for submission of bids was May 21. Ms. Roberts submitted the two lowest bids. The low bid of \$17,687.20 was dated May 19, and was accompanied by a note requesting that an earlier \$17,782.60 bid dated May 18, be disregarded. On June 4, the TMSC mailed pre-award forms to Ms. Roberts. Ms. Roberts returned the forms to the TMSC on June 15. Included was a statement by Ms. Roberts that her position as postmaster relief (at an unspecified post office) would terminate as of June 26. On June 19, the contracting officer determined that Ms. Roberts was ineligible for contract award due to the fact that she held a postmaster relief position at the time the bid was submitted. Ms. Roberts was advised of the contracting officer's decision by phone on June 19. Written notice of bidder ineligibility was mailed to Ms. Roberts on June 24, who received it on June 26. On July 6, the Seattle TMSC received Ms. Roberts' protest.

Ms. Roberts states that before she submitted her bid she advised a Postal Service employee at the TMSC that she was a postmaster relief and asked if she needed to quit before submitting a bid. She claims that she was told that since she had no assurance of getting the job she should not quit. The contracting officer notes in his report that this contention cannot be verified.

He does, however, recall that the bidder did seek clarification after the submission of her bid. Ms. Roberts states that after receiving the pre-award paperwork, she spoke to a member of the TMSC staff and concluded from that conversation that she needed to get a car and insurance in order to secure the award. She also states that the TMSC staff member told her to write a letter of resignation from the postmaster relief position, with the date of resignation, and to include a copy of that letter with the pre-award paperwork.

The contracting officer contends that while it is unfortunate that Ms. Roberts relied on incorrect information given by a Postal employee who misinterpreted a regulation, the solicitation clearly states in Section 18, Additional Information, Part B that:

Further information regarding this solicitation may be obtained from the contracting officer or administrative official designated in Section Four or Six of this solicitation. Information obtained from any other sources may be incorrect. Oral explanations or instruction given before the award of the contract will not be binding.

The contracting officer argues that Ms. Roberts' reliance on advice from someone who was not the contracting officer or administrative official designated in section four or six of the solicitation was . misplaced, and that Postal Service regulations do not permit another outcome in this situation.

### Discussion

Procurement Manual (PM) 1.7.2.a states that:

contracts may not be awarded to Postal Service employees .... "Postal Service employee" means all postal officers and employees, whether in full-time and part-time or career and non-career positions, including specifically persons in temporary positions such as postmaster replacements....

Postmaster replacements are considered employees and are therefore ineligible to bid for Postal Service contracts. Duwane R. Engler, P.S. Protest No. 86-52, September 26, 1986. The status of the bidder as an employee must be determined at the time of bid opening. Duwane R. Engler, On Reconsideration, P.S. Protest No. 886-52, November 7, 1986, (citing, James DSandburg, P.S. Protest No. 80-77, January 8, 1981). Since Ms. Roberts was a postmaster relief at the time the bids were opened, she is ineligible for award.

Ms. Roberts' reliance on the erroneous assurances of an unauthorized Postal Service employee, even to the extent of placing an order for a vehicle, while unfortunate, does

not repair her eligibility for award. The applicable legal principle was stated in Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947), as follows:

[A]nyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority.... And this is so even though ... the agent himself may have been unaware of the limitations upon his authority.

See also, Loftin v. United States, 6 Cl. Ct. 596, 609 (1984) ("[T]hose who deal with government agents are charged with knowledge of the regulations which govern their dealings."); ATC Petroleum, Inc. v. Sanders, 661 F. Supp. 182, 188 (D.C.D.C. 1987), aff'd, 860 F.2d 1104 (D.C. Cir. 1988) ("As a general rule, the [G]overnment is not bound by the statements or assurances of its officers where the actual authority to make such statements and assurances is lacking.")

The protest is denied.

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