

April 29, 1994

P.S. Protest decisions No. 94-09

THOMAS JARDINE

Solicitation No. 060-5025-94

DIGEST

Protest against failure to provide prospective bidders with notice of a solicitation is denied where the failure was inadvertent, adequate competition was obtained, and the offers received were reasonably priced.

DECISION

Mr. Thomas Jardine protests his failure to receive notice of the solicitation of bids for a contract for the highway transportation of mail.

Solicitation 060-5025-94, for the transportation of mail on a route between Manchester and Hillsboro, NH, was issued December 30, 1993, by the Northeast Distribution Network Office (DNO), Windsor, CT. Copies of the solicitation were posted at the four post offices to be served by the route (Manchester, Weare, Henniker, and Hillsboro)¹ and a copy of the solicitation was provided to Delivery Partners Express, which was serving the route under an emergency contract.

The DNO also entered information about the route into the Postal Service's National Bidders List Sub-System, a computerized database maintained at the St. Louis, MO, Information Systems Service Center (ISSC). The database uses the information entered about a specific solicitation to identify prospective bidders who may be interested in competing for it and to generate notices alerting those prospective bidders of the solicitation. The St. Louis computer sends the information to another computer in the San Mateo, CA, ISSC, where the notices are printed and mailed. In this case, records indicate that the information from the DNO was processed in St. Louis on December 28, 875 "matches" for the information were found, and the computer job to create the notices was

¹ The contracting officer notes that it is the practice of the Manchester post office to post two copies of the solicitation; one in the post office lobby and another in the platform area at the back of the post office.

scheduled for the San Mateo computer on that date. However, according to the manager of the ISSC Computer Operations Service Center, "a manual process was required . . . to generate the [notices] once the job has completed," and the San Mateo records suggest that that step was omitted for this solicitation.² There is no record of the receipt of the notices by any of the intended addressees.

Although the Windsor DNO receives a copy of each notice generated with respect to its solicitations to verify the proper operation of the National Bidders List Sub-System, in this case, prior to the bid opening, the DNO did not check to see that the notice had been received. At the bid opening on February 1, 1994, three bids were received and opened.³ One was from the incumbent emergency contractor; the other two were from bidders who had seen the solicitation posted in post offices served by the route.

According to the contracting officer, the DNO first learned of the failure of the National Bidders List Sub-System on February 4, when an established contractor in the area, Dusty's Transport, advised that it had heard from Delivery Partners Express that the solicitation had been issued and bids had been received, but that Dusty's Transport had not been notified of the pending solicitation.⁴

In response to complaints from Dusty's Transport, and subsequently from Mr. Jardine, the contracting officer advised that he believed that he could cancel the solicitation after bids had been opened only if all bids were excessive in cost or if there had been some serious error made in the terms of the solicitation.⁵ Because he did not believe that these

² The manager advises that the ISSC has changed its procedures, eliminating the manual step.

³ An abnormally low number of requests for bid packages would be another indication of a problem with the notification system. In response to this office's inquiry, the DNO advised that information about the number of requests for bid packages was routinely discarded after bid opening, so information about the number of bid packages requested was no longer available. The DNO states that it will retain that information in the future.

⁴ The contracting officer's statement on the protest indicates that Dusty's Trucking was informed by Delivery Partners that Delivery Partners had not been notified of the solicitation, a statement inconsistent with the fact of Delivery Partners' participation in the bidding. The contracting officer suggests that Delivery Partners, which was unsuccessful in the bidding, may have had a motive to seek to have the bidding reopened so that it could have "a second bite at the apple."

We need not draw the inference the contracting officer suggests. The statement attributed to Delivery Partners might have meant only that it had learned of the solicitation by a means other than a presolicitation notice. In any event, there is no indication in the protest file that Delivery Partners motivated Mr. Jardine's protest.

⁵ We understand the contracting officer to be referring to constraints imposed by Procurement Manual (PM) 12.7.7 e.1., which provides in part as follows:

To preserve the integrity of the advertised sealed bidding system, award must be made to the responsible bidder submitting the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the solicitation. . . . Consistent with this, a solicitation may be canceled after the opening of bids only when the contracting officer with the concurrence of the next higher level of contracting authority determines in writing that:

conditions existed, he declined to cancel the solicitation. Mr. Jardine's protest followed.

The protest asserts that Mr. Jardine is on the bidder's list, that he depends on the receipt of the mailed notice for notification of solicitations, and that he failed to receive notification of this solicitation and believes that others on the bidders list similarly were not notified. He also asserts that he has been wronged by the failure to receive the notice.⁶ Mr. Jardine requests that no award be made on the solicitation and that the bidding be reopened.

The contracting officer's report and a supplemental statement furnished in response to this office's inquiries set out the facts recited above. The contracting officer confirms that Mr. Jardine should have received the notice. He further indicates that the offers received were within the range estimated for the solicitation, and thus he believes them to be competitive.⁷

Commenting on the contracting officer's statement, Mr. Jardine contends that the omission of the notices is an error serious enough to justify cancellation of the solicitation. Mr. Jardine also raises various issues about the posting of the solicitation in the post offices along the route. He asserts that posting in a post office lobby is not an effective way of alerting contractors who use the dock and that he was unaware that notices were posted in the dock area at the Manchester post office. He also questions the reasonableness of posting to alert individuals other than current contractors or their drivers and inquires why, if solicitation posting is a common practice, only this solicitation was so posted. The protester also questions the reasonableness of the process by which the ISSC generated the solicitation notices, since its failure, whether inadvertent or not, precluded him from participating in the solicitation.

DISCUSSION

On the record before us, we are unable to grant any relief. Previous of this office establish that in determining whether corrective action is necessary when bidders are not advised of a pending solicitation, the following factors are considered:

1. Whether adequate competition was obtained;⁸
 - (a) Inadequate or ambiguous specifications were cited in the solicitation;
 - (b) Specifications have been revised;
 - (c) The services being procured are no longer required;
 - (d) All otherwise acceptable bids received are excessive in amount . . . ;
 - (e) There are indications that the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith . . . ; or
 - (f) For other reasons, cancellation is clearly in the interest of the Postal Service.

⁶ Mr. Jardine points to PM 12.4.5 d. as evidence that he was wronged. That section, however, relates to the posting of the solicitation at points served by the route, something which did occur in this case and which is unrelated to Mr. Jardine's complaint. PM 12.4.4 d. deals with presolicitation notices, and may have been the protester's intended reference.

⁷ According to the contracting officer, the annual rate for the previous emergency contract was \$67,861 per annum, and the anticipated bids for the route were expected to range between \$47,541 and \$65,684. The actual bids ranged from \$51,292 to \$68,282.

⁸ As few as two bids may establish adequate competition. *AHJ Transportation, Inc.*, P.S. Protest No. 89-

2. Whether the failure to comply with requirements intended to secure competition was inadvertent;

3. Whether the offers received were at a reasonable price.

See, e.g., *Moser Enterprises*, P.S. Protest No. 89-31, June 9, 1989; *Fumiye Ninomiya*, P.S. Protest No. 88-74, November 22, 1988; *Craig Pattison*, P.S. Protest No. 87-115, December 29, 1987; *Fred Austin Trucking, Inc.*, Protest No. 85-38, August 7, 1985.

In this case, each of these conditions has been met. Three bids were received, the failure which occurred with respect to the distribution of the presolicitation notices was unintended, and the bids received were reasonably priced.

While we are sympathetic to the fact that Mr. Jardine and other prospective bidders did not have the opportunity to participate in the competition, once bids have been exposed there is no practical way to recreate a competition without substantial detriment to the initial bidders. We agree with the contracting officer that none of the circumstances existed under which PM 12.7.7 would allow the solicitation to be canceled.⁹

The protest is denied.

William J. Jones
Senior Counsel
Contract Protests and Policies

18, May 4, 1989.

⁹ Mr. Jardine's questions about the posting of the solicitation notices appear to arise, in part, from a misunderstanding. We do not understand the contracting officer's statement to suggest that the posting of this solicitation was an isolated occurrence; PM 12.4.5 d.2. directs the posting of solicitation notices for highway contracts "at the route termini, and at any intermediate points." While the regulation does not specify where the notices are to be posted, a post office lobby is not an unusual place for such posting, and posting an additional copy on the platform provides additional exposure.