

October 21, 1994
P.S. Protest No. 94-40

STEPHEN DUPUY

Solicitation No. 300-5143-94

DIGEST

Protest against failure of contracting officer to send protester a solicitation package in time for bid opening is denied where the protester waited until three days before bid opening to request the solicitation by number and the contracting office mailed the package the same day.

DECISION

Mr. Stephen DuPuy timely protests the failure of the contracting officer at the Southeast Area Distribution Networks office (DNO) to furnish him with a copy of Solicitation No. 300-5143-94 in time for the bid opening on July 21, 1994. The solicitation was issued June 21, seeking bids for the highway transportation of mail between the Nashville AMC and Columbia, TN.

Notice of the solicitation was published through the Postal Service's National Bidders List Sub-System, a computerized database maintained at the St.

Louis, MO, Information Systems Service Center. 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. In this case, 72 prospective bidders responded by requesting a solicitation package, and 23 bids subsequently were received. Award has been suspended pending the decision on this protest, which was received by the contracting officer on July 28 but not forwarded to this office until September 6.

In his protest, Mr. DuPuy states that he requested information "concerning this bid" on July 12th. On July 19 and 20, he called "to inquire about the bid package's whereabouts, only to get a recording both times." He complains that he did not receive the package until July 22, one day past the opening date. He asks that the solicitation be rebid.

The contracting officer replies that the DNO maintains a message log of requests for solicitation packages which identifies the name and address of the requestor, the date of the request and the date the package was mailed. The contracting officer states that on

July 15, Mr. DuPuy "left a telephone message" in which he requested a solicitation package but failed to identify the specific solicitation that he desired. The DNO returned the call on July 15 and left a message for Mr. DuPuy to the effect that it needed a solicitation number in order to fulfill the request. The contracting officer states that on July 18 "we again called Mr. DuPuy and indicated that he had not responded to our call of July 15, 1994. Mr. DuPuy responded via that call with the solicitation number. The solicitation package was sent to Mr. DuPuy on July 18 . . . via [F]irst [-C]lass [M]ail."¹ The contracting officer concludes:

[T]hat Solicitation 300-5143-94 was issued on June 21. . . and closed at 3:00 p.m. EST on July 21. . . provides proof that sufficient time for consideration was allowed all offerors . . . witnessed by the fact that 72 requests for this solicitation were [answered] by this office and 23 offerors responded.

The protester did not reply to the contracting officer's statement.

DISCUSSION

We are unable to offer the protester any relief. The contracting officer has indicated that his personnel did their best to accommodate Mr. DuPuy once they knew what he wanted. Mr. DuPuy has not adequately refuted the contracting officer's version of these facts, and in the absence of such refutation we accept the contracting officer's statements as correct. See, e.g., *Federal Properties of R.I., Inc.*, P.S. Protest No. 93-02, May 20, 1993; *J. Fiorito Leasing, Ltd.*, P.S. Protest No. 87-08, April 23, 1987. The record indicates that the correct notification procedures for advertised highway transportation procurements were followed in this case. Bidders on the National Bidders List Sub-System had one month to request solicitation packages. Since Mr. DuPuy was not the incumbent contractor, the contracting officer was not required to send him the solicitation package until he requested it.² See Procurement Manual 12.4.5 e. Unlike 70 other prospective bidders who had requested the solicitation by number by July 13, Mr. DuPuy did not attempt to order a package until July 15, a Friday, and, despite the DNO's attempt to reach him that day, did not provide a solicitation number until Monday, July 18, on which date the solicitation was mailed out to him. That he received it July 22 is more properly attributable to his own failure to request

¹ The DNO employee who received the July 15 voice mail message from Mr. DuPuy requesting a solicitation package stated in a memo for the record that Mr. DuPuy did not specify the number of the solicitation he was requesting. She wrote that she called him back the same day and asked to speak to him, but he was absent, "so I left a detailed message with a woman who answered the phone and asked that he call me back. On . . . July 18, I still did not hear from Mr. DuPuy so I called again and finally spoke to [him]. He gave me his address and the solicitation number . . . and I sent out the package." She concluded: "As information, I check voice mail for messages every 1-2 hours regularly each day."

² Even if the protester had been the incumbent contractor, we could not offer him relief under these circumstances because adequate competition was obtained (72 requests; 23 bids); there was no deliberate attempt to exclude the protester; and there is no indication on this record that the bids being considered are unreasonably priced. *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.

the solicitation by number sooner than to any dilatory conduct on the part of the contracting officer. The protester has not met his burden of proof of showing that the DNO acted improperly. *J. Fiorito Leasing, supra*.

The protest is denied.

William J. Jones
Senior Counsel
Contract Protests and Policies