

August 2, 1996

P.S. Protest No. 96-13

FARNHAM SECURITY, INC.

Solicitation Nos. 052684-96-A-V107, -V108, -V109

DIGEST

Protest of decision to award contract for security guard services subsequent to initial protest to contracting officer is dismissed as untimely received more than ten working days after adverse action on initial protest or after basis for protest should have been known.

DECISION

Farnham Security, Inc., protests the award of three contracts for security guards to Eastside Group Corporation, which does business under the name Prudential Security Services.

The Purchasing and Materials Service Center, San Bruno, CA, issued simplified purchase solicitations 052684-96-A-V107, -V108, and -V109 for security guard services at the Santa Clarita, CA, Processing and Distribution Center; the Van Nuys, CA, General Mail Facility; and the Pasadena, CA, Processing and Distribution Center, respectively. Each solicitation sought the services of armed security guards on specific schedules, and provided that "[a]ward will be made to the responsible offeror who submits the lowest price and meets the requirements stated in the solicitation."

Each solicitation was subject to the provisions of the Service Contract Act and incorporated a Service Contract Act wage determination which established the hourly wages and fringe benefits to be paid for the services sought, identified as "Guard II" at a \$14.18 hourly rate.

Offers were received on each solicitation from four firms, and each offered the same hourly rate for each solicitation. As reflected following a telephonic request for best and final offers (BAFOs), Eastside had the lowest hourly rate, \$19.78; Farnham had the second lowest, \$21.50.

The contracting officer sent Eastside letters dated March 13 advising of her intent to award

the three contracts to it once its employees had received clearances from the Postal Inspection Service, and directing Eastside to provide various forms relating to the clearances to the Inspection Service. After Eastside provided that information, by letter dated May 8, the Inspection Service furnished the contracting officer the names of the contractor's employees who had received clearances. On May 20earlier , the contracting officer made award to Eastside. Performance under each contract was to begin June 1.

By letter dated March 28, Farnham protested various aspects of the proposed awards. By letter dated April 15, the contracting officer denied the protest as obviously without merit. (Protests against Postal Service contracting procedures and awards are governed by Procurement Manual (PM) 4.6. PM 4.6.6 deals with protests received by contracting officers, while PM 4.6.7 deals with protests received by the General Counsel. PM 4.6.6 b provides that "a contracting officer's decision on a protest must be issued within ten working days after receipt of the protest." In this case, the contracting officer did not issue her denial in a timely manner, but sought to extend that time by notification to the protester. That extension was not consistent with PM 4.6's requirements.)

By letter dated May 28, received June 3, Farnham again protested the award to the contracting officer, who forwarded it to this office for resolution. That protest raised matters related to those set out in the initial March 28 protest and the contracting officer's April 15 reply to it which we summarize generally as follows:

- Best and final offers were requested improperly; Farnham's efforts to submit a further revision to its proposal should have been accepted.
- The notice advising the other offerors of the contract award to Eastside was deficient, because it did not contain all the information which PM 4.2.5 i. directs be included in such letters.
- Farnham's protest had noted that Eastside had advertised for post office guards offering wages of \$8.00 an hour and that Farnham's inquiry elicited the information that the jobs would be at the Santa Clarita, Van Nuys, and Pasadena offices. Farnham contended that such wages would be less than the Service Contract Act required and that hiring new employees for these jobs would be contrary the contract requirement that personnel assigned to the contract must "[h]ave been employed by the contractor for a minimum of 90 days." The current protest takes exception to parts of the contracting officer's reply to that portion of the protest.
- Farnham has affirmatively demonstrated its responsibility to the Postal Service. (The earlier protest had sought to cast doubt on Eastside's responsibility.)

The contracting officer's statement restates the bases of the denial of the previous protest. In a separate letter to the protester, the contracting officer defended the sufficiency of the notice of award letter, noting that PM 4.2.5 i. is not applicable to purchases under the simplified purchase procedure, but provided the information sought to the protester.

The protester submitted comments on the protest which reiterated points made in its initial

submissions, and a second submission dated July 30 which sought to raise additional issues relating to inconsistencies between portions of the California Business and Professions Code and provisions of the solicitation and Eastlake's uniform practices.

DISCUSSION

We initially discuss the timeliness of the protest. We do so *sua sponte*, even though no party has addressed the issue, because it affects the jurisdiction of our office to adjudicate the matter. *Morganti Incorporated; Giordano Construction Co., Inc.*, P.S. Protest Nos. 94-01; 94-03, March 4, 1994, *citing Coopers & Lybrand*, P.S. Protest No. 89-91, March 21, 1990.

[P]rotests [other than protests based upon alleged deficiencies apparent before the date set for the receipt of proposals] must be 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.

PM 4.6.4 d.

If a protest has been filed initially with the contracting officer, any subsequent protest to the General Counsel received within ten working days of the protester's formal notification of, actual knowledge of, or constructive knowledge of initial adverse action by the contracting officer will be considered, provided the initial protest was received in accordance with the time limits in paragraphs b through d above.

PM 4.6.4 e.

All of the issues presented in the initial submission of this protest, with one exception, were included in the original protest to the contracting officer of March 28, or depended on her response to that protest. Those issues are now untimely raised, because the information on which they were based was known more than ten working days before the protest was received and because the protest was not received by the General Counsel within ten working days of the protester's knowledge or notification of the initial adverse action. Accordingly, those issues must be dismissed.

The additional issues set out in the protester's final submission are also untimely raised more than fifteen working days after contract award. PM 4.6.4 d., *Roadway Services, R&D*, P.S. Protest No. 92-44, August 25, 1992.

The remaining issue has to do with the adequacy of the notice of the contract award. The contracting officer is correct that PM 4.2 is not applicable to awards under simplified purchasing, and her supplying of the information moots any remaining issue which this aspect of the protest may have presented.

The protest is dismissed.

William J. Jones
Senior Counsel
Contract Protests and Policies