

July 25, 1996

P.S. Protest No. 96-14

LEWIS F. RICE

Solicitation No. 980-75-96

DIGEST

Protest against rejection of all mail transportation bids as excessive in price is denied; contracting officer could properly determine that offers more than twice those of comparable routes were excessive.

DECISION

Mr. Lewis F. Rice protests the rejection of his bid for a highway mail transportation contract in Fairbanks, AK, because it was excessive in price.

On April 4, 1996, the Seattle Branch, Western Distribution Network Office, issued solicitation 980-75-96 for a contract for the delivery of mail to approximately 339 mail boxes on a 33 mile route out of the Fairbanks, AK, post office. The solicitation contemplated an estimated 1,818 annual schedule hours and 9,880 annual schedule miles. Two bids were received on the route; Mr. Lewis F. Rice bid an annual rate of \$63,336, and Mr. Dale Robert Rice bid \$59,691.¹

By letter dated May 12, Mr. Rice was advised that the solicitation was being cancelled because "[a]ll bids received were considered excessive," and that the requirement was being resolicited; a new solicitation was enclosed with the letter.²

Mr. Rice's undated protest in response to the May 12 letter contends that his bid was not excessive. He notes, *inter alia*, that his truck cost \$60,000; that produce, fish, and gasoline are more expensive in Alaska than elsewhere; that because "[t]he roadways of Alaska are

¹ The Messrs. Rice share the same address on Palace Circle in Fairbanks.

² The revised solicitation differed from the first in calling for service to 317 mail boxes, with an estimated 2,273 annual schedule hours. The stated mileage remained the same.

so bad" a contract carrier can expect to use a set of tires per year and "[f]our wheel drive and . . . a winch are normal winter driving tools"; that the carrier must perform in some of the worst weather in the country, and much of the year in darkness; that customers may have "not only one dog, . . . but twenty or thirty"; and that the carrier must face "moose and other critters." Mr. Rice feels his bid is reasonable in view of these items. Further, he contends that to have the route served by a city carrier would cost "well in excess of" \$1 million per year. Mr. Rice concludes by suggesting that the Fairbanks postmaster will agree with his contentions, and that the contracting officer "must stop trying to run Alaska post offices with out dated standards, prices and lower forty eight ideas. . . ."

The contracting officer's statement replies that the Rices' bids were significantly higher than the contracting officer's projected cost and price estimate,³ and the low bid was "218.0% higher than the average of comparable routes" and Mr. Lewis Rice's bid was "231.6 higher."⁴

The contracting officer notes further that four bids were received on the replacement solicitation, of which the two lowest were \$34,977 and \$38,000, respectively.⁵ The contracting officer views these bids as affirming his conclusion.

Mr. Rice has not responded to the contracting officer's statement, but the protest file contains a copy of a May 24 letter he directed to the lower bidders on the replacement solicitation which justifies Mr. Rice's price while contending that the lower priced bidders cannot perform profitably at the prices offered.

DISCUSSION

The cancellation of a transportation solicitation after bids have been opened is governed by [Procurement Manual (PM)] 12.7.7 e., which provides, in

³ The contracting officer's projected cost and price estimate shows a \$25,415 annual rate with owner/operator wages (as the protester bid).

⁴ These percentages are overstated. If 218 is the percentage arrived at by dividing the lower bid by the estimate, that bid is 118% higher than the estimate.

The comparison was based on the following routes:

Route No.	99767	99740	99756
Annual Miles	11,607	10,940	6,737
Annual Hours	2,273	2,222	1692
Boxes Served	427	383	303
Annual Rate	\$30,498	\$26,329	\$21,800
Adjusted Rate/Mile	\$2.6964	\$2.5381	\$3.2845

The Rices' rates per mile were \$6.041 and \$6.410.

⁵ Mr. Dale Robert Rice bid \$62,702 and Mr. Lewis F. Rice bid \$65,000.

pertinent part:

e. Cancellation of Solicitation After Opening

1. 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. . . . [A] solicitation may be canceled after the opening of bids only when the contracting officer determines in writing that:

* * *

- (d) All otherwise acceptable bids received are excessive in amount (see subparagraph d.3 above);

The referenced section of PM 12.7.7 d.3. reads as follows:

d. Rejection of Individual Bids

* * *

3. Any bid that is excessive in amount must be rejected. For a bid to [be] considered excessive, it must state a rate that is unreasonably high for the service called for in the solicitation. Rate reasonableness should be determined by comparison with prevailing rates for similar service in the same area, and with the cost of the service currently being operated on the route, all as adjusted to reflect any unique or changed circumstances.

The contracting officer has considerable discretion to determine whether to cancel a solicitation when offers are excessive in price, and this office will not overturn that decision unless the contracting officer has clearly abused his authority. A decision to reject excessive bids will not be overturned absent a showing that the decision was arbitrary, capricious, or not supported by substantial evidence.

Russell L. Kingston, P.S. Protest No. 93-13, August 27, 1993 (citations omitted).

Nothing in the protest or in Mr. Rice's subsequent letter to the other bidders provides any basis on which to conclude that there was any error in the contracting officer's comparison of prices. It was within his discretion to find the Rices' bids excessive when they were more

than twice the average of the comparable bids.⁶ Further, "[w]hile the decision to reject bids as unreasonably high must be measured from the information available when the decision is made, the results of a subsequent resolicitation may be used to support the decision." *Id.*

The protest is denied.

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⁶ In *Russell L. Kingston, supra*, we upheld the rejection of all bids when the \$53,226 low bid was 55% higher than the cost of the \$34,181 comparable route, and noted that in other cases we had upheld the rejection of bids 16.5% and 18% higher than the postal estimate, and that the Comptroller General has upheld rejection of all bids when the low bid was 7.2% higher than the government estimate.