

**October 1, 1997**

**P.S. Protest No. 97-25**

**L.P. CONSULTING GROUP, LTD.**

**Solicitation No. 161550-97-A-0074**

**DIGEST**

Protest against award of contract for construction of a handicap ramp is dismissed; protest was untimely received more than three months after contracting officer advised that protester's late proposal for the work would not be considered.

**DECISION**

L.P. Consulting Group, Ltd. (Consulting) protests award of a contract for the construction of a ramp for the handicapped at the Postal Service facility in Hoopeston, Illinois.

On August 12, 1996, in response to an oral request from the contracting officer, the Architect/Engineer firm of A. M. Fernandez and Associates, which held a Basic A/E Indefinite Quantity Contract with the Postal Service, wrote the contracting officer confirming that it would determine the best location for an accessibility ramp, prepare design drawings, and obtain at least three estimates from prospective contractors to enable the contracting officer to award a contract for the construction of a ramp at the Hoopeston postal facility by September 4. Four timely offers were received by the Postal Service, and on September 5 and 6, an acting contract technician solicited best and final offers which ranged between \$85,000 and \$97,854. Consulting was not among the firms solicited for the project.

For reasons which the record does not explain, no immediate action was taken on these offers. In late April 1997, Mr. Battaglin of Consulting visited the contracting officer and saw a drawing of the Hoopeston ramp which the contracting officer permitted

him to take, admonishing him, however, that it was too late to propose on the project. Notwithstanding that admonition, on May 19, Consulting submitted a proposal in the amount of \$62,752 to the contracting officer. Consulting was again told that its offer was too late.

By letter dated May 28, 1997, the low offeror, Ulbrich and Associates, was advised of the Postal Service's intention to award to it Contract No. 161550-96-B-5146<sup>1</sup> for the Hoopeston handicap ramp.<sup>2</sup> The contract was signed on July 25.<sup>3</sup>

In a letter to the "Chief Field General Counselor [sic]," Chicago, IL, dated July 25, and received in this office on August 19, Consulting, through counsel, protested the contracting officer's refusal to consider Consulting's proposal to perform the work at the Hoopeston facility, contending that Consulting had not been treated fairly and that the Postal Service was not obtaining the best value. The protest letter also raised collateral issues concerning the contracting officer and the administration of an indefinite quantity contract held by Consulting, and a Freedom of Information request, all of which are outside the scope of bid protest procedure.

## DISCUSSION

Although the issue of timeliness has not been raised by any party to this proceeding, we may do so *sua sponte* because the failure to file a timely protest in accordance with our regulations constitutes a jurisdictional defect which requires that the protest be dismissed. See *Holmes Construction Co., Inc.*, P.S. Protest No. 92-02, February 25, 1992, and decisions cited therein. Purchasing Manual (PM) 3.6.4.d requires that a protest be received not later than ten days after the basis of protest is known or should have been known. The contracting officer advised Consulting both in April and on May 19 that its proposal would not be accepted. That advice established the basis for Consulting's protest and began the time period within which a protest could be lodged. *Ibid.* Consulting's protest, received three months after it knew of the basis for its protest, is clearly untimely.

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<sup>1</sup>This contract number had been manually assigned in fiscal 1996. When the contract document was generated in fiscal 1997, the system also generated and assigned the 1997 solicitation number which appears in the caption.

<sup>2</sup>Such a letter transmits the proposed contract to the prospective contractor and recites the Postal Service's intention to award the contract upon the receipt within a specified time of a signed copy of the contract and the required payment and performance bonds. Procurement Manual 11.5.1.a

<sup>3</sup>The delay between May 28 and July 25 is also not explained on this record.

Had Consulting's protest been timely it would have been denied. Best and final offers to construct the Hoopston handicap ramp were received by the Postal Service on September 5 and 6, 1996. Consulting's proposal to construct the ramp was submitted over eight months later. While Procurement Manual 4.2.3.d.2 provides that it is normally in the interest of the Postal Service to consider a late proposal when it offers a significant cost benefit, the regulation also states that “[i]t is not in the interest of the Postal Service to consider any proposal received so late that consideration of the proposal would jeopardize, or give the appearance of jeopardizing, the integrity of the competitive process.” It was well within the contracting officer’s discretion to conclude that consideration of Consulting’s late proposal would give the appearance of jeopardizing the integrity of the competitive process. *Ibid.*

The protest is dismissed.

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Contract Protests and Policies