

July 21, 1998

P.S. Protest No. 98-14

TLC

HCR 53016

DIGEST

Protest against failure to have existing highway mail transportation contract renewed is dismissed for lack of jurisdiction.

DECISION

TLC¹ protests its failure to have an existing Highway Contract Routes (HCR) renewed.

TLC has various mail transportation contracts, including HCR 53011, Milwaukee – Wausau, WI, and HCR 53026, Milwaukee – Oshkosh, whose terms were to end June 30, 1998. In mid-March, TLC was advised by the Midwest Area transportation contracting officer that the Postal Service was “performing the renewal process in the Milwaukee WI service area,” that the service that TLC performed under these contracts “will be consolidated with other . . . service [to Wausau and Oshkosh],” and that other contractors (three for Wausau; one for Oshkosh) were affected by the consolidations and would be submitting offers for the service. TLC was requested to advise whether it was interested in providing the new service. It indicated that it was.

¹ The protest is signed by Todd Snyder without any indication of his representational capacity as to TLC. A previous decision of this office, *Todd's Letter Carriers, Inc.*, P.S. Protest Nos. 92-39; -40; 41, involved Mr. Snyder's operations under the corporate name in its caption and as a sole proprietor under the name TLC Trucking. The file here does not reflect whether the protester is the corporation or the sole proprietorship.

TLC was subsequently provided the schedule and requirements for the new service and asked to submit its offers. TLC submitted its offers for the service.²

By letter dated April 16, TLC was asked to provide additional information “[t]o conclude the contract renewal process” regarding service to Oshkosh. The contracting officer advises that “tentative renewal is being considered with TLC”, but that “[s]ince this route is under P[ostal] V[ehicle] S[ervice] comparison,” renewal requires Headquarters approval, not yet obtained.

TLC’s offer for the Oshkosh service was the lowest received. However, by letter dated May 12, TLC was advised that “[a]lthough your offer was competitive, it was not accepted because of factors such as quality, business relations, and cost control during the past performance evaluation of your company,” and accordingly that HCR 53026 would not be renewed.

TLC’s protest to this office was captioned “Protest of non-renewal of HCR 53026, and subsequent non-award of HCR 53016.”³ The protest “of . . . the denial . . . of the award in response to the Renewal RFP packet” and “of the rejection of my competitive bid on HCR 53016” contends that the contracting officer’s decision was arbitrary and capricious. It notes its receipt of the award of HCR 531AQ, and of its anticipated award of HCR 53011, contending that “[t]here is no rational explanation for the award of two contracts, and non-award of the third contract.”

The contracting officer’s statement contends that the protest is untimely,⁴ and that it does not present a protestable issue, since it involves the decision to renew an existing contract. The contracting officer notes that contract renewal is accomplished pursuant to the terms of highway transportation contracts which include a provision allowing the contractor to “appeal through the Contracting Officer to the next higher level contracting authority . . . the Contracting Officer’s decision . . . not to renew the contract.”

² On April 8, TLC was also asked to submit its offer to perform a two-year temporary plant load contract between Milwaukee and the Waupaca Publishing Company which was being moved from the Milwaukee – Oshkosh service. On April 28, TLC was advised that it had been awarded HCR 531AQ for that service.

³ HCR 53016 was the lowest numbered of the four HCR routes being consolidated with respect to Oshkosh, and that number was used to refer to the service on which all four contractors were asked to submit their offers.

⁴ Untimeliness is asserted because as Mr. Snyder telephonically advised that HCR 53126 would not be renewed several days before he was furnished the letter containing that advice. While the contracting officer is correct that “oral notification of action adverse to the protester is sufficient to begin the running of the time within which a protest must be filed,” *Carl J. and Betty B. Kollenberg, P.S.* Protest No. 97-06, June 5, 1997, in view of the conclusions reached below, we need not reach the issue of timeliness here.

The protester did not comment on the contracting officer's statement. The contractor whose contract for Milwaukee – Oshkosh service was renewed submitted comments supporting the contracting officer's position.

DISCUSSION

Although the protester phrases its protest in part in terms of the failure to receive award of a new contract for the Milwaukee – Oshkosh service, it is clear that what was involved here involved the contracting officer's decision not to renew the protester's existing Milwaukee – Oshkosh contract.

Renewal of highway transportation contracts with the incumbent contractor or subcontractor by mutual agreement of the parties is authorized by 39 U.S.C. §5005(b)(2) and PM 12.4.10. Under the terms of postal highway contracts, the decision not to review is subject to review by the next higher level contracting authority pursuant to clause 26 of PS Form 7407, Basic Surface Transportation Contract General Provisions. A decision not to renew is subject to that contractual provision,¹ but because it is a matter arising under the contract, it is not subject to our bid protest jurisdiction.

Ruben Luis Rivera Garcia, P.S. Protest No. 91-24, May 20, 1991.

Accordingly, this protest is not properly before this office.⁵ The protest is dismissed for lack of jurisdiction.

William J. Jones
Senior Counsel
Contract Protests and Policies

⁵ An appeal to the next higher level contracting authority "shall be filed [through the contracting officer] in writing . . . within five days after [the contractor's] receipt of [n]otice of . . . [n]on-renewal." Clause 26, Form 2407, *supra*. We leave to the contracting officer and the next higher level contracting authority whether the copy of the protest provided to the contracting officer was effective or timely as such an appeal.