Protest of	)	Date: September 8, 1988
	)	
THOMAS J. SEITZ CO., INC.	)	
	)	
Under Advertisement for Space	)	P.S. Protest No. 88-49

DECISION

Thomas J. Seitz Co., Inc. (Seitz) protests the contracting officer's consideration of an offer to build and lease a building to the Postal Service which was received after the date set for the receipt of proposals under an Advertisement for Space. Seitz asserts that consideration of a proposal received after the date set for submission in the solicitation is improper.

The Advertisement for Space, issued June 17, 1988, by the Bloomington, MN, Facilities Service Office (FSO), sought offers under open advertising for the lease of a building to be used as a post office in Kansasville, WI. The Advertisement for Space provided that offers would be received at the FSO "not later than July 20, 1988...." It also provided in paragraph 7, that the Postal Service reserved the right, among other things, "TO SECURE OFFERS ON SUITABLE PROPERTIES IN ADDITION TO THOSE OFFERED INITIALLY IN RESPONSE TO THIS INVITATION..."

Seitz' protest, received August 5,[1/] states that the company's vice president telephoned the FSO on July 21 asking the number of offers received and was told that "bids are still coming in." Seitz contends that the consideration of any offer received after July 20 is contrary to regulations and that acceptance for consideration of late offers is unfair to those submitting timely received offers.

The contracting officer states that the open advertising procedure used here is recommended under Postal Contracting Manual (PCM) 18-407.2 to secure offers of existing facilities or those which an owner would modify or construct to meet described requirements. The contracting officer states that an offer received July 22 (postmarked July 20) is eligible for consideration under this advertisement. Award of the contract has not yet been made.

[1/] Seitz' protest was filed with the Postal Service Board of Contract Appeals on August 5. By order dated August 9, the Board noted its lack of jurisdiction over bid protests and its intention to dismiss the filing. Since the Board delivered a copy of the protest to this office on the same day it received the protest, we will treat the protest as received by us on August 5 for purposes of determining its timeliness.

The timeliness provision of our bid protest regulations relevant to this protest, PCM 2-407.8 (d) (3), provides:

> ...protests must be received not later than 10 working days after the information on which they are based is known or should have been known, whichever is earlier;

Seitz was informed on July 21 of the basis for its protest - that bids would continue to be received after July 20. We received Seitz' protest August 5, more than ten working days after the information on which it is based was known. The protest is therefore untimely.[1/] We are without authority to consider a protest which is untimely. Southern California Copico, Inc., P.S. Protest No. 83-2, August 31, 1983.

The protest is dismissed.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 3/3/93]

[2/] Seitz' protest is also untimely under PCM 2-407.8 (d) (1) which requires protests based upon alleged deficiencies in the solicitation to be received by the date and time set for receipt of offers. That the contracting officer reserved the right to consider offers received after the date set for receipt of offers was clearly spelled out in the language from paragraph 7 of the Advertisement for Space quoted above. The time to protest that reservation was before July 20, the date set for receipt of offers.