Protest of	)	Date: January 26, 1989
	)	
LUROBARTE INCORPORATED	)	
	)	
Solicitation No. 059986-88-A-0044	)	P.S. Protest No. 88-73

DECISION

Lurobarte Incorporated (Lurobarte) protests that it was not afforded an opportunity to compete on Solicitation No. 05998688-A-0044. The basis for the protest is that the protester did not receive a prequalification package, was not included on the pre-qualified contractors list and failed to receive a Request for Proposals (RFP) package for the construction of a post office in Palos Verdes Peninsula, CA.

On July 14, 1988, the Los Angeles Facilities Service Office (FSO), advertised in the Commerce Business Daily (CBD), soliciting qualification statements from contractors interested in being placed on the pre-qualified contractors list for construction of a new Palos Verdes Peninsula Main Post Office. On September 22, 1988, Lurobarte contacted the FSO and stated that it had received information that contractors had been pre-qualified and had received RFPs. The protester inquired as to why it had not been notified that the Postal Service sought proposals for the project.[1/] On that same date, Lurobarte sent a letter to the FSO requesting that it be given a "complete construction bid package," an opportunity to complete the bid, and to have its bid considered along with the other pre-qualified contractors'. Lurobarte further indicated that, absent a satisfactory response to its protest, it would "take this matter before the Postal Service Board Of Contract Appeals."

By letter dated October 6, 1988, the contracting officer explained to Lurobarte that the Postal Service had replaced the Postal Contracting Manual (PCM) with the Procurement Manual (PM). He stated that the PM contained new procedures for procuring construction services and that only pre-qualified contractors were permitted to submit proposals. The contracting officer further stated that it was never the intent of Postal Service employees to mislead the protester, and that the FSO was only complying with the PM requirement that contractors be notified of construction projects through a synopsis of the procurement in the CBD. He noted his appreciation for Lurobarte's past assistance and stated that efforts to accommodate the protester's request for participation had proved unsuccessful. In a letter dated October 14, 1988, Lurobarte requested information regarding procedures for filing a protest with this office. Its protest was received by this office November 2.

[1/]The record suggests that the protester provided assistance that proved financially beneficial to the Postal Service in the temporary relocation of postal operations from the Palos Verdes Main Post Office. As a result, two Postal Service employees apparently advised Lurobarte that it would be placed on the bidders list and permitted to bid on the new post office project.

Lurobarte's protest repeats arguments raised in its September 22 letter to the contracting officer. Specifically, Lurobarte asserts that it earlier provided temporary space for the post office resulting in financial savings to the Postal Service: that it was advised that it would be placed on a bidders list and permitted to bid; and that it was not considered for the prequalified contractors list.

In his report to this office, the contracting officer states that the protest to the General Counsel was untimely since Lurobarte had knowledge of the pre-qualification of contractors, at least by September 22, while its protest was dated October 24. The contracting officer also addresses the allegation that Postal Service employees failed to place the protester on the bidders list. He argues that under the PCM, bidders lists "were sometimes developed although there was no requirement to do so." The contracting officer admits that Postal Service officials should have told Lurobarte to review the CBD for notice of upcoming projects, but asserts that past business dealings with the Postal Service put the protester on notice that only a contracting officer has authority "to commit the Postal Service in matters of a contractual nature." He states that the protester should not have "based his business decisions on 'advice' from two postal employees, neither in a position of authority in the construction area."

By letter dated November 30, 1988, Lurobarte submitted comments in rebuttal to the contracting officer's report. In addition to repetition of earlier points, the rebuttal states that the protester considers its letter dated September 22 to be a protest. Thus, Lurobarte claims that the contracting officer is incorrect in his determination that the protest to the General Counsel was untimely. The protester argues that it was not advised by the Postal Service to subscribe to the CBD, nor was it advised that pre-qualification of contractors was required, or that new procurement regulations were in effect.

Discussion

The initial question is that of the timeliness of the protest. Although Lurobarte's September 22 letter to the contracting officer was not treated as a protest by the contracting officer or in Lurobarte's protest to this office, we find that it was sufficient to constitute a protest.[1/] Lurobarte timely filed the September 22 protest, because the contracting officer acknowledged its receipt in a letter dated October 6, which indicates that the protest was filed within 10 working days of September 22, when Lurobarte evidently first had knowledge of the facts on which its protest was based.[1/] See PM 4.5.4.d. The contracting officer's October 6 letter provided notification of adverse action taken by the contracting officer regarding Lurobarte's request that it be afforded an opportunity to compete for the Palos Verdes project.

We are not persuaded that Lurobarte's protest to this office following that adverse decision is timely. Our regulations governing bid protests, at PM 4.5.4.e, provide:

> 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.

Lurobarte acknowledged receipt of the contracting officer's October 6 letter in its letter dated October 14. Thus, more than ten working days elapsed between Lurobarte's receipt of the contracting officer's letter notifying Lurobarte of the adverse action on its protest and receipt of its subsequent protest by this office on November 2. It is the responsibility of the protester to comply with the timeliness standards to ensure that its protest will be considered on its merits. Electric Power Systems, supra, September 25, 1985. The timeliness requirement imposed by this regulation is jurisdictional, and we cannot consider the merits of any issue which has been untimely raised. Savioa Corporation, P.S. Protest No. 87-126, April 5, 1988: K-D Engineering, Inc., P.S. Protest No. 87-114, November 27, 1987; Bessemer Products Corporation, P.S. Protest No. 86-5, March 26, 1986.

[2/] A protest need not contain the word "protest, n but need only clearly contain an expression of dissatisfaction and request for corrective action. Electric Power Systems, P.S. Protest No. 85-44, September 25, 1985; International Mailing Systems, P.S. Protest No. 84-13, April 27, 1984. Although Lurobarte's protest to this office does not refer to an earlier protest, its September 22 letter arguably met that standard.

[3/] In view of our decision, we need not consider whether the information on which Lurobarte's protest is based should have been known, for purposes of PM 4.5.4.d, on the publication date of the CBD announcement.

The protest is dismissed.[1/]

[Signed "Norman DMenegat for"]

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

[Reconstructed from hard copy original 4/15/94 WJJ]

[4/]The protest would likewise be untimely if the September 22 letter were not deemed a protest, as the protester clearly had the information on which the protest was based on the date of that letter. See PM 4.5.4.d.