Protest of	)	Date: March 24, 1989
	)	
AHJ TRANSPORTATION, INC.	)	
	)	
Under Solicitation No. 948-2-89	)	P.S. Protest No. 89-02

DECISION

AHJ Transportation, Inc. (AHJ) timely protests the cancellation of Solicitation No. 948-2-89, issued by the San Francisco Transportation Management Service Center, on which AHJ was the second low bidder.

Solicitation No. 948-2-89, invited bids for drayage service on an "as required" basis within the Reno/Sparks, Nevada Commercial Zone. Service was to operate between the Reno Main Post Office, the Union Pacific and Southern Pacific Rail Yards and two mailers' plants. While the solicitation was pending, NAPZ Drayage (NAPZ), who was providing the service under an emergency contract, advised the contracting officer that based on its experience the route required the use of three tractors. By amendment dated October 21, the solicitation's vehicle requirement was increased.

Three bids were received on November 14, 1988:

Bidder	**Bid Amount**
Transportation Services, Inc. (TSI)	$ 7.12 per mile
AHJ Transportation, Inc.	$50.00 per mile
Traffic Systems of America, Inc.	$246,256.49[1/]

[1/]Although the solicitation required bidders to bid per mile rates, Traffic Systems of America, Inc., bid a lump sum annual amount.

No bid was received from NAPZ Drayage (NPD). Thereafter, NAPZ protested to the contracting officer by letter dated December 13, asserting that it had not received a copy of the October 21 amendment, and had not submitted its bid in anticipation that a copy of the amendment would be received. NAPZ argued that it would have bid upon the solicitation and had not done so only because it was waiting for a copy of the amendment.

The contracting officer forwarded the protest to this office, where it was docketed as P.S. Protest No. 88-84. The contracting officer's statement which accompanied the bid advised that he lacked evidence to substantiate that NAPZ had been furnished a copy of the amendment and suspected, accordingly, that he inadvertently overlooked sending one to NAPZ. The statement indicated that NAPZ may have been "lulled into a false sense of security" by its failure to receive the amendment.

Thereafter, while the protest was pending, the contracting officer canceled the solicitation. The letters to bidders dated December 22 announcing this decision cited inadequate competition and the Postal Service's failure to provide one prospective bidder a copy of the amendment as reasons for the cancellation. Following the cancellation of the solicitation, this office closed our file on NAPZ's protest as moot.

In its protest, AHJ contends that the solicitation should not have been canceled. Specifically, it argues that competition was adequate because three bidders responded; that the failure to provide NAPZ with a copy of the solicitation was not an adequate reason to cancel the solicitation; that by canceling the solicitation the contracting officer denied the General Counsel an opportunity to rule upon NAPZ's protest;[1/] that by canceling the solicitation the contracting officer has effectively turned the bidding process into an auction; and that there may have been a conspiracy among the contracting officer, NAPZ and the General Counsel's office to cancel the solicitation.[1/]

In his report, the contracting officer points out that only three bids were received; that it was fairer to all prospective bidders to cancel the solicitation in light of the failure to send a copy of the amendment to the contractor performing emergency service; that there was no conspiracy, and that to award the contract would merely compound his error in failing to send the solicitation amendment to NAPZ.

In further comments, AHJ asserts that NAPZ should have inquired concerning issuance of the amended solicitation, and identifies three solicitations which were not canceled, in which only four bidders responded. Apparently, AHJ contends that if four bidders

[2/]We are aware of no requirement that this office be allowed to resolve a protest once filed; the remedy available to those parties concerned about the contracting officer's actions is the one AHJ has employed here, the filing of a separate protest.

[3/]As is noted below, both the contracting officer and NAPZ deny any such conspiracy.AHJ's suggestion is no more than conjecture. Conjecture and speculation are insufficient bases for a successful protest. American Airlines, Inc., P.S. Protest No. 84-72, December 14, 1984.

constituted adequate competition, then three should be adequate as well.

TSI, the low bidder, has submitted comments advising this office that it did not object to cancellation of the solicitation, but that it did object to the contracting officer's acceptance of NAPZ's prior protest, because NAPZ did not submit a bid and its protest was submitted after bid opening.[1/]

NAPZ has responded to AHJ's comments, rebutting its theory of conspiracy and pointed out that AHJ's and TSI's bid prices were unreasonably high.

There is an initial question of AHJ's standing to challenge the cancellation of the solicitation here. The basic test whether a protester is an interested party with standing to challenge the contracting officer's actions with regard to a solicitation (PM 4.5.2.a.) is whether the protester would be eligible for award of the contract if the protest was upheld. Strapex Corporation P.S. Protest No. 85-33, July 11, 1985. AHJ fails such a test. It was not the low bidder on the solicitation and nothing in the protest challenges the sufficiency of the low bid or the eligibility of the low bidder. AHJ therefore lacks standing to prosecute this protest. See Data Terminal Service, Inc., Comp. Gen. Dec. B-226320, April 17, 1987, 87-1-CPD &423 (protest of third low bidder to cancellation of solicitation dismissed because of bidder's lack of standing); Charles J. Dispenza & Associates, B-224524, December 3, 1986, 86-2 CPD &636 (protest of second low bidder to cancellation of solicitation dismissed because of bidder's lack of standing).

We note, however, that AHJ's understanding of the extent of competition realized in this instance is seriously flawed. Where, as here, one of the three bidders was nonresponsive for bidding on the basis of an annual rate and another bid at a rate far in excess of a reasonable rate, there was less than full competition for the services sought. As to AHJ's contention that the cancellation presents the potential for an auction, it suffices that the party directly affected by that potential, TSI, did not object.

The protest is dismissed.

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

[checked against original JLS 5/3/93]

[4/]We are not sure that we understandTSI's point. The contracting officer "accepted"NAPZ's protest only to the extent of referring it to this office when he was unable to conclude that it was either meritorious or non-meritorious. See Procurement Manual (PM) 4.5.6. We note, however, that under our precedents, an incumbent contractor has standing to protest a subsequent solicitation from which it has been excluded from bidding. Craig Pattison, P.S. Protest No. 87-115, December 29, 1987.