

Protest of) Date: February 25, 1987
DON L. PETERSON)
Under Solicitation No. 608-82-86) P.S. Protest No. 87-03

DECISION

Don L. Peterson timely protests the contracting officer's determination that he is a nonresponsible bidder on a solicitation for the transportation of mail. Solicitation No. 608-82-86 was issued on October 31, 1986, by the Chicago Transportation Management Service Center, requesting bids for highway transportation service between Rockford and Harmon, IL. When the bids were opened on December 2, Mr. Peterson's bid was the lowest of the nine bids received.^{1/}

Mr. Peterson lives in Pinconning, MI. On December 4, the contracting officer requested information by which Mr. Peterson's responsibility could be determined, raising several points. First, he noted that two previous contracts held by Mr. Peterson had been terminated for default in 1982 and 1984, and asked for a written explanation "what you would do different [sic] this time to operate the ... service." Second, he pointed out several minor errors in the cost statement submitted with Mr. Peterson's bid, and requested verification of the bid and correction of the statement. Third, he requested various items of information relating to responsibility, including a pre-award questionnaire and a statement of assets and liabilities, three current business references, and a statement of previous experience in conducting services of a similar nature, scope, and complexity.

Mr. Peterson replied on December 7. With respect to the first inquiry, he indicated that the 1982 termination had occurred because he "did not have sufficient funds and could not borrow at the time," and that the 1984 termination had occurred because the vehicle he had been operating lacked air vents. He

^{1/} Mr. Peterson's bid was \$29,458; the other bids ranged from \$41,315 to \$50,000. The second through fourth bids were grouped at roughly \$1,000 intervals between \$41,315 and \$44,243.

offered no explanation how he expected to perform differently under the current solicitation.

Concerning the second request, Mr. Peterson did not verify his bid nor reform his worksheet, but noted that the costs set out in the worksheet were estimates based on inquiries to others in the area.

As to the third inquiry, Mr. Peterson completed a worksheet indicating total assets of \$21,505 and liabilities of \$75.00. The assets included small amounts identified as being "funds in Sterling, Mich. area", and "funds in safe in home." The assets listed included three trucks, two with milk tanks and one with a "van body." Instead of three current business references, Mr. Peterson furnished a photocopy of a letter dated October 3, 1983, from an individual unknown to the contracting officer, stating that the individual and his wife would make \$2,700 to \$3,000 available for operation or repairs if Mr. Peterson received a contract and a photocopy of a 1984 letter of recommendation from another individual. With respect to previous experience, Mr. Peterson noted his operation of milk routes in Michigan "for a number of years."

The contracting officer determined that Mr. Peterson had not submitted adequate evidence that he was a responsible bidder. He found that Mr. Peterson's liquid assets were not verifiable.^{1/} He had serious doubts that Mr. Peterson would be able to relocate to the Rockford, IL area and still have sufficient capital to operate the contract.^{1/} His concerns about the two previous default terminations had not been allayed. On December 29, the contracting officer found Mr. Peterson nonresponsible. Mr. Peterson protested to this office on January 12, 1987. Mr. Peterson's protest challenges no particular aspect of the determination, and he has not responded to the contracting officer's statement on the protest.

The standard of our review of a contracting officer's determination that an offeror is nonresponsible is well established:

A responsibility determination is a business judgment which involves balancing the contracting officer's conception of the requirement with available information about the contractor's resources and record. Accordingly, we will not disturb a contracting officer's

^{2/} The statement of assets and liabilities includes the bidder's permission for the contracting officer "to make such inquiries as necessary to determine [the bidder's] financial responsibility. ..."

^{3/} In this regard, the contracting officer was aware that Mr. Peterson had bid on three other routes in Illinois in 1986: Solicitation 608-31-86, Rockford to Harmon, 608-62-86, Champaign to Deland; and 608-80-86, Rockford to Nachusa. Mr. Peterson had been found nonresponsible as to each route after he either alleged mistakes in his bid or admitted that he lacked sufficient capital to operate the route.

determination that a prospective contractor is not responsible unless the decision is arbitrary, capricious, or not reasonably based on substantial information.

Vinyl Technology, Inc., P.S. Protest No. 86-40, June 11, 1986.

Here, there is no evidence that the contracting officer's determination of nonresponsibility was arbitrary or capricious. On the record before him, and in the absence of current sources who could be used to verify the limited information which the bidder had provided, the contracting officer had little information from which to draw the affirmative determination of responsibility which is the predicate of contract award. Postal Contracting Manual 1-902. Lack of adequate financial resources is itself sufficient to justify a finding of non-responsibility. PCM 1-903.1(i); Currency Technology Corporation, P.S. Protest No. 85-22, July 8, 1985. The protester failed to demonstrate that he had adequate capital to operate the contract. Further, the bidder failed to respond to the request for current business references, affording the contracting officer no opportunity to establish his responsibility from outside sources.

As noted above, the protest has set out no particular ground on which the finding of non-responsibility is challenged. If the intended ground is the improper reliance on the previous terminations, it is the case that the previous default terminations could not, standing alone, support a nonresponsibility determination.^{4/} However, there is no evidence before us that the contracting officer relied on the terminations improperly. The contracting officer, aware of those terminations, did consider them circumstances requiring a heightened degree of inquiry concerning the bidder's present ability to perform. The contracting officer could properly consider the bidder's failure to respond meaningfully to his inquiries in making his determination.

The protest is denied.

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

[Checked against original 2/17/93 WJJ]

^{4/} The default terminations of 1982 and 1984 are too remote in time to justify a current determination of nonresponsibility. Don L. Peterson, P.S. Protest No. 84-56, August 10, 1984.