

Protest of )  
 )  
 A-SUPPLY LINE, INC. ) Date: December 28, 1987  
 )  
 Solicitation No. 489990-88-A-R029 ) P.S. Protest No. 87-131

### DECISION

A-Supply Line, Inc. (A-Supply Line) protests the contracting officer rejection of its bid as nonresponsive because it qualified the delivery time in its bid. A-Supply Line in its protest also states that the awardee of the contract employs the same manufacturer as the protester, and it believes that the awardee cannot meet the requested delivery date.

Solicitation No. 48990-88-A-R029 was issued by the Southern Procurement and Materiel Management Service Office, Dallas, Texas, for the acquisition of a paint spray booth. Upon the opening of the bids, A-Supply Line was the apparent low bidder, but its bid was rejected as nonresponsive, in accordance with Postal Contracting Manual (PCM) 2-404.2(a). A-Supply Line acknowledges in its protest that it qualified its bid by substituting a proposed delivery schedule of six to eight weeks for the thirty days requested by the Postal Service.<sup>1/</sup>

The contracting officer asserts that qualification of A-Line Supply's bid rendered it nonresponsive. In fact, that qualification indicates that A-Line Supply could not agree to perform within the required thirty days and, as such, is requesting a time extension beyond the thirty-day period. Thus, the contracting officer notes that, by accepting the qualification, the Postal Service would be agreeing in advance to afford A-Line Supply a time extension not available to other bidders.

To be responsive, a bid must unequivocally offer to meet the solicitation's material terms. Toledo Scale Corporation, P.S. Protest No. 87-127, December 11, 1987; Southwood Builders, Inc., P.S. Protest No. 87-44, June 3, 1987. The bid of A-Supply Line does not offer to meet the solicitation's delivery terms; as such, it did not offer to perform the contractual obligations, as stated in the solicitation.

In addition, A-Supply Line also alleges that the awardee cannot meet the delivery

<sup>1/</sup>In its protest, A-Supply Line refers to a provision in the solicitation (section J-8(c)) that permits modification of an otherwise successful offer to make its terms more favorable to the Postal Service. That provision is inapposite since it contemplates that a modification by a successful offeror would be permissible, not a modification by an offeror which submitted a qualified bid.

requirements established by the Postal Service. The basis for this assertion is that the awardee uses the same manufacturer as A-Line Supply and that it claims that the manufacturer cannot make delivery to meet the delivery date in the solicitation. In effect, A-Supply Line's contention challenges the contracting officer's affirmative determination of responsibility of E.A.H. Spray Equipment, Inc., the second low bidder. As has been frequently stated by this office, the contracting officer is afforded considerable discretion in determining the responsibility of a contractor. Chicago Transparent Products, Inc., P.S. Protest No. 87-130, December 16, 1987; Pitney-Bowes, Inc., P.S. Protest No. 87-95, November 20, 1987; Lightron of Cornwall, Inc., P.S. Protest No. 84-6, February 27, 1984. Indeed, these determinations will not be overturned absent an allegation of fraud or bad faith on the part of the contracting officer or of claims that responsibility criteria set forth in the solicitation were not applied. Chicago Transparent Products, Inc., *supra*; Pitney-Bowes, Inc., *supra*; EDI Corporation, P.S. Protest No. 83-51, January 26, 1984. These are not alleged nor demonstrated in the instant protest. Therefore, we will not overturn the contracting officer's affirmative determination of responsibility.

The protest is denied.

**[Michael Vandamm for:]**

William J. Jones

Associate General Counsel  
Office of Contracts and Property

Law

**[checked against original JLS 3/22/93]**