

Protest of) Date: March 4, 1988
)
 DAVID GUIDRY, JR. and)
 JOHNNY JACKSON, d/b/a)
 GUIDRY & JACKSON TRUCKING)
)
 Under Solicitation No. 380-151-87) P.S. Protest No. 87-133

DECISION

David Guidry, Jr., and Johnny Jackson, doing business as Guidry & Jackson Trucking, timely protest the contracting officer's determination that Mr. Guidry is a nonresponsible bidder under Solicitation No. 380-151-87.

The solicitation, issued September 1, 1987, by the Memphis Transportation Management Service Center (TMSC), invited bids for the highway transportation of mail from the Nashville, TN, General Mail Facility to New Orleans, LA. Among the bids received was that of David Guidry, Jr.^{1/} Mr. Guidry's bid of \$175,000 was second low of the twenty-three bids received. The low bidder was subsequently determined to be nonresponsible, and Mr. Guidry's bid became eligible for consideration.

The TMSC requested Mr. Guidry to complete a pre-award questionnaire which requested financial information, and to furnish a recent bank statement. In response, Mr. Guidry submitted a filled-out PS Form 5472, Pre-Award Questionnaire.

The questionnaire identified the bidder as David Guidry, Jr., but described the bidder as a partnership of which Mr. Guidry owned 60% and Mr. Johnny Jackson owned 40%. The questionnaire indicated that Mr. Guidry and two employees, but not

^{1/}On the bid, Form 7405, the bidder is identified as David Guidry, Jr. The same name appears on the worksheet, Form 7468-A. On Form 7319-C, Representations and Certifications, the offeror is given as David Guidry, but at the bottom of the form, the box to be completed with the printed name and title of the offeror's representative contains the name Guidry's Trucking.

Mr. Jackson, would have access to the mails during contract performance. The questionnaire indicated checking accounts in Cited the amount of \$7,000, and real property and vehicles valued at an additional \$161,500, and liabilities of \$43,000. The questionnaire was signed "David Guidry, Co-owner". Two checking account statements were submitted with the questionnaire. One was in the name of Johnny Jackson and one was in the names of Johnny or Eva Jackson. Mr. Guidry also submitted a bank letter of credit issued jointly to Mr. Jackson and Mr. Guidry in an amount not to exceed \$12,000.

A staff member of the TMSC contacted the bank and determined that the letter of credit was issued solely on the strength of Mr. Jackson's account.

The TMSC contacted Mr. Guidry and requested him to send information concerning his personal assets. Mr. Guidry declined to do so.

On December 2, the contracting officer declared Mr. Guidry nonresponsible on the basis of inadequate evidence of financial sufficiency. The letter stated the contracting officer's inability to accept evidence of Mr. Jackson's financial responsibility to support Mr. Guidry's bid in his name. The contracting officer advises this office of its view that a potential contractor must have enough cash available to operate the route for 30 days, approximately \$7,250 in this case, in order to demonstrate financial responsibility. He views Mr. Guidry as failing to meet that standard.

By letter dated December 17, counsel for the partnership of Mr. Guidry and Mr. Jackson protested the finding, stating that they planned to operate the route as a partnership, and that their combined financial assets were sufficient. The protest asserted that Mr. Guidry's completed financial questionnaire described his business as a partnership and that the contracting officer should have given Mr. Guidry an opportunity to change his bid to indicate that status, as well as allowing Mr. Jackson to sign the bid.^{1/}

^{2/}The protest characterizes the Form 7319-C submitted with Mr. Guidry's bid as reflecting Mr. Guidry's co-ownership of a small minority business enterprise. While the form identifies the bidder as a small business and a minority business enterprise, it provides no evidence of co-owner status. As noted in footnote 1 supra, the Form 7319-C is inconsistent with the bidder's identity as Guidry and Jackson Trucking.

PCM 1-904.1 provides that "[n]o purchase shall be made from, and no contract shall be awarded to, any person or firm unless the contracting officer first makes an affirmative determination that the prospective contractor is responsible within the meaning of 1-902." PCM 1-903.1 provides minimum standards for a responsible contractor, requiring that "a prospective contractor...(i) Have adequate financial resources, or the ability to obtain such resources as required during performance of the contract."

This office's standard for review of nonresponsibility determinations is well established. As stated in Craft Products Company, P.S. Protest No. 80-41, February 9, 1981:

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. We well recognize the necessity of allowing the contracting officer considerable discretion in making such a subjective evaluation. Accordingly, we will not disturb a contracting officer's determination that a prospective contractor is nonresponsible, unless the decision is arbitrary, capricious, or not reasonably based on substantial information.

(with approval in Marine & Industrial Insulators, Inc., P.S. Protest No. 87-31, July 1, 1987.)

Mr. Guidry's bid gave no indication that he was bidding other than as an individual in his own name. If the Postal Service were to accept the bid, the resulting contract would be with Mr. Guidry alone. The contracting officer was correct in basing his determination of financial responsibility on Mr. Guidry's assets and liabilities, separate from those of Mr. Jackson. See Package Express, Inc., P.S. Protest Nos. 87-57, 87-58, 87-64, July 27, 1987. Mr. Guidry presented no evidence of any cash assets in his own name and, consequently, the contracting officer had no basis to find him financially responsible.

The protest asserts the bidder's intention to bid as a partnership and argues that he should have been given an opportunity to amend the bid to that effect. To do so would be unfair to other bidders because it would allow the bidder the option, in effect, of withdrawing his bid by allowing himself to be declared nonresponsible or substituting his partner's assets if he wished to perform the contract. See

Information Services Industries, Comp. Gen. Dec. B-187536, 77-1 CPD & 425, June 15, 1977 (a bidder, after being found financially not responsible, may not identify itself as a subsidiary of a larger, financially responsible firm and thereby become eligible for an award). Such an option would afford the bidder "a second bite at the apple" to the detriment of other bidders and the competitive process. See Southwood Builders, Inc., P.S. Protest No. 87-44, June 3, 1987.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law
[checked against original JLS 3/22/93]