

Protest of)
) Date: May 11, 1987
) COBRA SERVICES, INC.)
)
) Solicitation No. 489990-87-C-M296) P.S. Protest No. 87-25

DECISION

Cobra Services, Inc. protests the award of Solicitation No. 489990-87-C-M296 to the low offeror. Cobra Services contends that the contracting officer failed to consider the low offeror's ability to assume liability for potential damage to Postal Service-owned property.

Solicitation No. 489990-87-C-M296 was issued on February 10, 1987 by the Procurement & Materiel Management Service Office, Dallas, TX. The solicitation sought washing services for five categories of postal vehicles. A total of six proposals were received by the February 26, 1987 due date. On March 18, 1987, award was made to the low offeror, Anderson Mobile Cleaning Services. On the same date, Cobra Services filed its protest. Based on the awardee's prices, the estimated value of the two-year contract is \$28,000.

Cobra System's protest stems from the "Damages to Postal Service-Owned Property" clause ("Damages clause") of the specifications. That clause provides:

The contractor assumes total liability for any damage to the building, grounds or other Postal Service-owned property (including vehicles) resulting from negligence of the contractor or the contractor's employees while performing the services required.

Cobra contends that the contracting officer failed to consider the awardee's financial capability by net worth or liability insurance to assume liability for damage to Postal Service-owned property.

In his report to this office, the contracting officer states that the Damages clause does not require contractors to take out responsibility liability insurance, but simply notifies them that they are liable for any damages caused by their negligence. The contracting officer points out that vehicle washing contractors normally would not be able to cause

a great deal of damage to Postal Service-owned property because they do not drive the vehicles, just wash them. Damages incurred by such contractors normally involve relatively small dollar items (e.g., breaking mirrors, taillights). The contracting officer further points out that the awardee carries liability insurance on his own vehicle that would cover damage caused by the contractor backing into a postal vehicle or building.

Prior to awarding the contract, the contracting officer states that he did consider the financial and technical capabilities of the awardee and determined that it was a responsible contractor. The information relied upon by the contracting officer in his determination included the overall financial capability of the offeror in relation to the contract, the number of years the offeror was in business, the offeror's ownership of equipment necessary to perform the contract, the number of the offeror's employees, and the offeror's performance on prior Postal Service contracts.

A contracting officer's affirmative determination of responsibility will not be overturned absent allegations of fraud, bad faith, or failure to apply definitive criteria of responsibility. Southern California Copico, Inc., P.S. Protest No. 84-39, August 15, 1984; EDI Corporation, P.S. Protest No. 83-51, January 26, 1984; National Controls, Inc., P.S. Protest No. 80-32, July 16, 1980. Cobra's challenge of the contracting officer's affirmative responsibility determination does not allege fraud or bad faith. The Damages clause does not require prospective contractors to carry liability insurance and is thus not a definitive responsibility criteria. Cf. Logan Co., P.S. Protest No. 83-1, February 9, 1983 ("regularly engaged in providing the supplies or equipment described" not definitive responsibility criteria). Therefore, there we have no grounds to review the contracting officer's determination.

The protest is denied.

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Office of Contracts and Property Law

[Compared to original 2/23/93 WJJ]