

Protest of ) Date: August 19, 1987  
JACK TYRA )  
Solicitation No. 483-106-86 ) P.S. Protest No. 87-60

### DECISION

Mr. Jack Tyra, of Longmont, CO, timely protests the contracting officer's determination that he is a nonresponsible bidder with regard to Solicitation 483-106-87 for highway transportation between Adrian and Clinton, MI. The solicitation was issued on May 18, 1987 by the Detroit Transportation Management Service Center (TMSC). Of the eight bids received, Mr. Tyra's was the second lowest.<sup>1/</sup>

Instead of sending Mr. Tyra the usual questionnaire forms which are used as a basis for a responsibility determination, the contracting officer relied on information he had gathered the previous month in his evaluation of Mr. Tyra under Solicitation 483-67-87 (Indianapolis - Advance, IN). For that solicitation the contracting officer sent Mr. Tyra a pre-award questionnaire form which Mr. Tyra returned with substantial portions left blank. Following a telephone conversation with Mr. Tyra, the contracting officer concluded that Mr. Tyra had neither sufficient experience in trucking nor sufficient knowledge of the route to provide the standard of service required. Mr. Tyra protested the contracting officer's decision in that case, providing additional references explaining some of his replies. We upheld the contracting officer's determination of nonresponsibility, holding that even where there is little information on which to base a nonresponsibility determination, the determination will not be if the contracting officer has made a reasonable effort to obtain the relevant data. Jack Tyra, P.S. Protest No. 87-50, July 1, 1987. We upheld the earlier

decision on reconsideration, Jack Tyra, P.S. Protest No. 87-50, On Reconsideration, July 31, 1987.

Mr. Tyra states, as he did in his earlier protest, that his 37 years' experience as a

<sup>1/</sup>The low bidder was permitted to withdraw his bid under Postal Contracting Manual 2-406.3(a) when the existence of a mistake in bid was established.

supervisor of a shipping and receiving operation qualify him for a highway transportation contract. He also states that his son, who has 15-18 years of professional trucking experience, will help him with the route.

The contracting officer voices the same concerns that he expressed in his report concerning the earlier solicitation. The contracting officer concludes here, as there, that Mr. Tyra has not demonstrated his responsibility to handle a Postal Service highway mail contract. He questions Mr. Tyra's lack of trucking experience, and notes that Mr. Tyra bid as an owner-operator. In view of this, the contracting officer declares that Mr. Tyra's son's trucking experience is irrelevant to Mr. Tyra's capability to perform the contract. The contracting officer concludes that Mr. Tyra's lack of trucking and contracting experience means that he could not handle fuel purchases, labor and safety regulations, and administrative duties associated with the Corporation performance of a highway contract. The contracting officer includes in the file a summary of his telephone conversation with Mr. Tyra of May 28, 1987, in which Mr. Tyra indicated that he would move to Dearborn, MI (from Colorado, where he presently lives) in order to handle the Indianapolis route under Solicitation 483-67-87.

The standard of review of responsibility determinations by this office is well-established. Contracting officers are allowed considerable discretion in making such a determination, and their decisions will not be set aside unless it is arbitrary, capricious, or not reasonably based on substantial information. Craft Products Company, P.S. Protest 80-41, February 9, 1981; see also Vinyl Technology Inc., P.S. Protest No. 86-40, June 11, 1986.

Where there is substantial information in a previous record as to the contractor's responsibility or when the agency has experience with the contractor's level of performance on prior contracts, a contracting officer may forego a pre-award investigation or survey for that particular solicitation and rely solely on information already known about the contractor. Orlotronics Corp., B-180467 Comp. Gen. Dec., May 13, 1974, 74-1 CPD & 245; see also Struthers Electronic, B-182967, Comp. Gen. Dec., May 23, 1975, 75-1 CPD & 309. Generally, when to use a pre-award survey is a

matter for the contracting officer's judgment. S.A.F.E. Export Corporation, B-209491, B-209492, Comp. Gen. Dec., August 2, 1983, 83-2 CPD & 153; PAE GmbH, B-212403.3, B-213020, B-212043, Comp. Gen. Dec., July 24, 1984, disturbed 84-2 CPD & 94. However, a contractor should be given adequate opportunity to establish its qualifications. McAlister and McQuinn Construction Company, Inc., B-185518, Comp. Gen. Dec., April 15, 1976, 76-1 CPD & 255. The contracting officer cannot place the entire burden of establishing responsibility on the bidder. See Government Products Corporation, P.S. Protest 84-58, December 10, 1984; M.L. Hatcher Pickup and Delivery Services, Inc., P.S. Protest No. 80-69, December 10, 1980.

While the contracting officer's report presents us with the same information and conclusions which justified the earlier finding of nonresponsibility concerning Mr. Tyra, it indicates no new effort to follow up on references presented by Mr. Tyra in his protest on the earlier solicitation or to obtain additional information from Mr. Tyra concerning the present solicitation.

In Jack Tyra, P.S. Protest No. 87-50, July 1, 1987, we stated:

While the contracting officer might have tried other sources of information to gauge Mr. Tyra's responsibility, we cannot say that his failure to do so in the facts of this case is based on an unreasonable effort to obtain data from Mr. Tyra.

Our decision considered the small amount of information possessed by the contracting officer, despite his reasonable efforts, regarding Mr. Tyra's responsibility. He was not obligated to consider new information presented by Mr. Tyra in his protest, we concluded, because it was not presented to him in a timely and proper manner.

The circumstances in the present case differ in several important respects from those of the prior case. First, the contracting officer seeks to rely upon the earlier record, which, while current, is manifestly incomplete. Second, Mr. Tyra has been given no opportunity to present his qualifications to perform with regard to this solicitation. Third, in his earlier determination, the contracting officer placed heavy reliance on Mr. Tyra's purported lack of knowledge of the route, a conclusion reached in part because of Mr. Tyra's statement that he would move to Dearborn, MI, to operate the route, which was in Indiana. This statement by Mr. Tyra is less damaging in the current evaluation, as Dearborn is more proximate to this route than the earlier one.

In the context of this evaluation, Mr. Tyra's protest of the earlier determination, expressing his willingness to present additional information should have alerted the contracting officer to afford the bidder that opportunity. Since the contracting officer did not make a reasonable effort to give Mr. Tyra adequate opportunity to present his qualifications, we are unable to uphold his determination.

We remand the case to the contracting officer for a proper determination of Mr.

Tyra's responsibility. Mr. Tyra should be allowed to complete a fresh pre-award questionnaire and submit additional evidence to establish his responsibility. In his responsibility determination the contracting officer should consider any newly-submitted evidence, together with the evidence gathered for the previous determinations and submitted in the course of these protests.

The protest is sustained.

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**[Compared to original 3/5/93 WJJ]**