

Protest of ) Date: July 28, 1987  
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ROBERTSON & PENN, INC. )  
 )  
Solicitation No. 489990-87-A-0253 ) P.S. Protest No. 87-68

### DECISION

Robertson & Penn, Inc., (R&P) protests the contracting officer's determination that it was a nonresponsible bidder on Solicitation No. 489990-87-A-0253 for laundry services in Norman, Oklahoma.

Invitation for Bids (IFB) No. 489990-87-A-0253 was issued on March 5, 1987, with an offer due date of March 27. R&P was the low bidder. While the initial information received concerning R&P was favorable, comments provided by the contract administrator at Fort Sell indicated that past performance at R&P's Chickasha plant (at which R&P proposed to perform the postal contract) had been deficient. Based on this information, the contracting officer ordered a pre-award survey of R&P.

The Defense Contract Audit and Supply Management Agency (DCASMA) performed the pre-award survey on May 21. DCASMA recommended that no contract be awarded to R&P because of deficiencies as to R&P's technical and production capabilities. R&P's capability was stated to be inadequate because of several deficiencies in compliance with specification FM 10-17. Specifically, the mix criteria of the wash formula and the biodegradability of the waste water could not be guaranteed within the specifications. The production problems included malfunctioning thermostats, failure to conduct operations in a clean environment, lack of an adequate quality control plan, and failure to implement fully those quality control procedures which were stated. The survey team also discovered, while contacting a sampling of R&P's present customers, that there was substantial dissatisfaction with R&P's present performance. Based on these findings, the contracting officer found R&P to be nonresponsible and award was made on June 18 to Nuway Services, the second low bidder. This timely protest followed.

R&P's letter of protest expressed disbelief that it could be found a nonresponsible bidder on this solicitation. However, its protest did not specifically rebut the contracting officer's findings because it claimed it had not been told the basis for her determination. It filed a Freedom of Information Act request for further information concurrent with its protest filing.<sup>1/</sup>

<sup>1/</sup> The contracting officer promptly disclosed the documents requested by R&P, and R&P's supplemental

In her report to this office, the contracting officer sets forth the facts as described above. She concludes that the judgment of DCASMA's pre-award survey team, upon which she based her determination of R&P's nonresponsibility, was reasonable and unprejudiced. She states that since her determination was supported by the available information, it should be upheld.

R&P has submitted supplemental comments which take issue in detail with each of the reasons found by DCASMA to justify its finding of no award. It states that operating thermostats in the manual mode and folding sheets manually are usual laundry practices and are not in violation of the solicitation requirements. It states that the wash formula was posted and that the mix criteria are in accordance with the relevant specifications. As to biodegradability, R&P states that its waste water meets state and federal environmental requirements, and that it is unfair to expect a bidder to meet the requirements of a contract before it is awarded the contract. It states that its quality control plan is adequate, and that the DCASMA reviewer overemphasized the unfavorable customer comments to the exclusion of the favorable customer comments. R&P states that it has been subjected to a more strict level of scrutiny than that given to the successful bidder, and that if the latter were reviewed with the same scrutiny, similar complaints could be made about its service.

The contracting officer's determination of a bidder's nonresponsibility is subject to limited review by our office:

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 will 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.

Year-A-Round Corporation, technical P.S. Protest No. 87-12, June 12, 1987; see also Kingsway Cranes & Conveyors et al, P.S. Protest No. 86-01, April 14, 1986; Craft Products Company, P.S. Protest No. 80-41, February 9, 1981. Where a factual conflict occurs between the statements of the contracting officer and those of the protestor, the "presumption of correctness" which attaches to the contracting officer's statements indicates that we must accept such statements as true. See Multigraphics, P.S. Protest No. 87-24, June 12, 1987; Lancom, Inc., P.S. Protest No. 85-48, October 9, 1985. The determinations of technical personnel will not be overturned in the absence of fraud, prejudice, or arbitrary and capricious action. See Hi-Line Machine, Inc. and Gardner Industries, Inc., P.S. Protest No. 85-6, March 7, 1985. The contracting officer specifically has the right to rely on negative information given to her by technical personnel conducting a pre-award survey, even if that information conflicts with other, positive information she has about the prospective contractor. Id.

comments were based upon these documents, as well as the contracting officer's statement.

None of the arguments made by R&P suffice to carry its burden of proof. The pre-award survey does not appear to have been improperly conducted. The findings of the DCASMA team provides ample basis for the contracting officer's determination of R&P's nonresponsibility. See Year-A-Round Corporation, supra, Kingsway Cranes & Conveyors, et al., supra. Here, the record evidences nothing more than a factual conflict between R&P and the contracting officer. This is not enough to overturn the contracting officer's determination of nonresponsibility.

As to R&P's protestations that the successful contractor could not pass the same evaluation under which it was found inadequate, affirmative determinations of responsibility are within the broad discretion of the contracting officer and will not be overturned in the absence of fraud, abuse of discretion, or failure to apply definitive responsibility criteria. Gage Constructors, P.S. Protest No. 87-11, July 13, 1987; Logan Co., P.S. Protest No. 83-1, February 9, 1983. R&P has neither alleged nor proven the existence of any of these forms of impropriety.

The protest is denied.

William J. Jones  
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**[Compared to original 3/8/93 WJJ]**