

Protest of )  
D. V. INDUSTRIES ) Date: August 19, 1987  
Solicitation No. 337100-87-A-0091 ) P.S. Protest No. 87-81

### DECISION

D. V. Industries (D.V.) protests the contracting officer's determination that it was a nonresponsible bidder on Solicitation No. 337100-87-A-0091 for pallet support sets.

Invitation for Bids (IFB) No. 337100-87-A-0091 was issued by the Eastern Area Supply Center, Somerville, NJ, on May 5, 1987, with an offer due date of May 26. Twelve bids were received of which D.V.'s was low. The contracting officer requested the Defense Contract Audit and Supply Management Agency (DCASMA) to undertake a pre-award survey of D.V. DCASMA's recommendation was that no award be made to D.V., based on the following concerns:

1. Lack of understanding of the required proof-load testing procedure;
2. Delinquent performance on six prior contracts due to failure to control production;
3. Insufficient technical knowledge of the specification requirements;
4. Failure to perform quality conformance testing on two prior contracts for pallet support sets;
5. Failure to show in-process inspection on two prior contracts for pallet support sets;
6. Lack of certification for three of the four welders;
7. Failure to respond to requests for corrective action in prior contracts; and
8. Unfavorable financial capability, based on the failure to provide financial

statements and a very weak Dun &Bradstreet report.

Based on these serious shortcomings, the contracting officer told D.V. that it was not eligible for award because it was not a responsible bidder. D.V.'s timely protest followed.

In its submissions, D.V. takes issue, in detail, with each of the grounds on which DCASMA based its unfavorable recommendation. D.V. states that the DCASMA team did not understand the specifications and technical requirements. It alleges that DCASMA did not request the records which D.V. was faulted for not having. D.V. further claims that it had (or would soon be getting) several of the omitted items cited by DCASMA. D.V. also alleges that the Dun &Bradstreet report is false and misleading and that its financial capability is adequate. It asserts that the DCASMA personnel were biased and prejudiced against it and requests a new survey using unbiased personnel.

The contracting officer states that he reviewed the DCASMA reports and found it to be an acceptable basis for his determination. He also notes that past experience with DCASMA pre-award surveys have indicated that they are good indications of the state of a prospective contractor's ability to perform a contract successfully. He states that D.V.'s allegations are insufficient to rebut DCASMA's findings.<sup>1/</sup>

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 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.

Robertson & Penn, Inc., P.S. Protest No. 87-68, July 28, 1987; See also Year-A-Round Corporation, P.S. Protest No. 87-12, June 12, 1987. 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 has the right to rely on negative information given to him by technical personnel conducting a pre-award survey, even if that information conflicts with other, positive information he has about the prospective contractor. Id. Finally, allegations of bias and prejudice must be stated and proven with specificity and not be based on mere supposition and bare assertions. See Penny H. Clusker, P.S. Protest No. 80-37, August 27, 1980; Book Fare, Inc., P.S. Protest No. 80-29, July 3, 1980.

The protest file in this case, when viewed as a whole, evidences nothing more than a

<sup>1/</sup> D.V. was given an opportunity to respond to the contracting officer's report, but failed to do so.

difference of opinion between the DCASMA reviewers and D.V. over the weight and importance to be given to various areas of concern. On the standard of review enunciated above, there are no improprieties which would warrant reversing the contracting officer's position. D.V.'s allegations of bias are not supported in the record, and it has failed to carry its burden of proof as to the contracting officer's determination of its nonresponsibility.

The protest is denied.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[Compared to original 3/12/93 WJJ]**