

Protest of) Date: September 29, 1987
LEEWAY TRAVEL, INC.)
Solicitation No. 380-60-87) P.S. Protest No. 87-84

DECISION

Leeway Travel, Inc. (Leeway), timely protests the contracting officer's determination that it is a nonresponsible bidder in response to Solicitation No. 380-60-87, for the highway transportation of mail between the Bulk Mail Centers (BMC) at Memphis, TN, and New York, NY using at least seven tandem- axle tractors and fifteen 48-foot tandem-axle trailers. Bids were opened on May 22, 1987. Twenty-four bids were received, and Leeway's bid of \$827,154.87 was low.

Following bid opening, on June 23, the contracting officer requested Leeway provide financial background data to aid in his determination of responsibility, which data were provided on July 8. The financial statement supplied by Leeway showed that its current liabilities exceeded its current assets. On July 10, a member of the contracting officer's staff called Mr. Curtis Lee, the president of Leeway Travel, Inc., and requested a contact at the Meridian Bank in Philadelphia, PA, to confirm credit status and cash availability. Instead, Mr. Lee provided the name and phone number of his accountant, Mr. Leonard Prince. Mr. Lee also referred the contracting officer to Mr. Michael DePaulo, a businessman otherwise unknown to the contracting officer, who stated a willingness to lend Mr. Lee \$50,000 to \$100,000 if the contract were awarded to Leeway. Mr. Prince explained that Leeway was in the process of closing out its account at Meridian Bank and did not have a bank at that time. He estimated that Mr. Curtis Lee, the president of Leeway Travel, had cash available in the amount of \$3,000 to \$50,000, depending upon the time of the month. In addition, a member of the contracting officer's staff contacted Meridian Bank of Philadelphia, and was informed that Leeway had no bank account at that time, but had made overdrafts in August, 1985, resulting in two outstanding loans.

During the same afternoon, July 10, the contracting officer explained his conclusion that Leeway lacked financial responsibility to Mr. Lee. Mr. Lee then requested and received additional time, until July 13, to obtain approval for a \$100,000 line of credit for which he had previously applied. When Mr. Lee failed to obtain the credit by July 13, the contracting officer extended the period for demonstrating financial responsibility until July 15. The contracting officer received no further evidence of financial ability to perform the work.

On July 20, the contracting officer found Leeway nonresponsible for its lack of financial resources to acquire the vehicles and maintenance services to perform the contract. In his report on the protest, the contracting officer also states that his determination was based in part on Leeway's lack of previous experience in tractor-trailer truck operation.^{1/}

On July 30, Leeway protested the determination stating that it had "entered into a conditional agreement for sufficient financing to purchase, support, and implement the contract in question" and has indicated that it plans to lease the necessary tractor-trailer equipment. However, it has provided no details of the lease arrangements or any bank letters or other evidence of any further financial assets.

The standard governing our review of a contracting officer's determination of nonresponsibility is well settled:

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.

Leon Aldridge, P.S. Protest No. 87-69, September 4, 1987; Marine & Industrial Insulators, Inc., P.S. Protest No. 87-31, July 1,

^{1/} Leeway's previous contract transportation experience is apparently limited to bus operations. Leeway identified contracts for bus services with Consolidated Rail Corporation (Conrail) and National Bus Services-Troop Transports (National Bus). Contacted as references, Conrail reported "some problems" under a contract to carry train crews, and National Bus reported good current service, although there had been problems in the past with "sorry equipment," under a contract to carry troops.

1987; Pines Trailer Corporation, P.S. Protest No.86-85, October 22, 1986. The standards for responsible prospective contractors require that they have "adequate financial resources". Postal Contracting Manual (PCM) 1-903.1(i).

The contracting officer determined that Leeway lacked the financial ability to provide the service on Solicitation No. 380-60-87 or to procure the necessary equipment. Leeway possessed neither tractor-trailer equipment nor garage facilities. Although Leeway may lease the necessary equipment, as Mr. Lee proposes to do, such efforts require financial assets which Leeway lacks. Although Leeway was given an opportunity to obtain an adequate line of credit, it has failed to demonstrate by either bank letter or other credible evidence that it has obtained such credit. Although Leeway contends that it can obtain a loan from Mr. DePaulo, Leeway has provided no letter or statement from Mr. DePaulo confirming such credit. The contracting officer was within his authority to give little weight to a financial commitment which was not in writing. See Currency Technology Corporation, P.S. Protest No. 85-22, July 8, 1985. Leeway's bare allegation that it has now obtained adequate financing does not carry its burden of establishing that the contracting officer's determination was arbitrary, capricious, or not supported by substantial evidence.

The significance attached by the contracting officer to Leeway's lack of experience in tractor-trailer operations is not clear. However, in view of our decision as to financial responsibility we find it unnecessary to consider whether Leeway's lack of relevant prior business experience would constitute an independent basis for a finding of nonresponsibility.

The protest is denied.

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

[Compared to original 3/12/93 WJJ]