

Protest of ) Date: November 20, 1987  
 )  
PITNEY-BOWES, INC. )  
 )  
Solicitation No. 38990-87-A-0370 ) P.S. Protest No. 87-95

### DECISION

Pitney-Bowes, Inc., timely protests the award of a contract to provide photocopy machines to numerous postal facilities in Kentucky, Ohio and Indiana, to Better Business Machines, Inc. (BBM). The protester asserts that BBM is not a responsible contractor and that a full scale pre-award survey should be conducted by the Postal Service to determine BBM's responsibility before permitting BBM to perform this contract.<sup>1/</sup>

Solicitation No. 38990-87-A-0370 was issued on June 10, 1987, by the Procurement and Materiel Management Service Office, Columbus, Ohio, with an offer due date of July 9, 1987. Five bids were received. The bids were evaluated by multiplying the commission of the Postal Service, times the copy price, times the number of estimated copies, to obtain the income to be derived by the Postal Service. As so evaluated, BBM was the low bidder.

In determining BBM's responsibility, the contracting officer reviewed the financial capabilities of BBM. He ascertained that BBM's financial situation during the first six months of 1987 showed improvement from the previous year's financial position.

<sup>1/</sup> To the extent that a portion of the protest asserts a violation of the Walsh-Healy Public Contracts Act, it is not for consideration by this office, but must be handled by the Department of Labor, in accordance with the Postal Contracting Manual (PCM) 12-604(a)(7). See, e.g., Government Marketing Services, Inc. and New Vision Industries P.S. Protest No. 84-85, January 24, 1985.

Moreover, Savin Corporation had agreed to arrange a line of credit of \$600,000.00 to BBM and reserved five hundred copiers for delivery to it. Based upon these findings, the contracting officer determined, pursuant to PCM 1-903, that BBM was a responsible prospective contractor and was eligible for the contract award. Award was made on September 9, 1987.

Pitney-Bowes asserts in its protest that BBM does not appear to have the necessary resources to perform the contract. Specifically, the contract requires BBM to deliver within one-hundred eighty days of the award, to install and maintain approximately four hundred thirty coin-operated copiers. Pitney-Bowes asserts that BBM cannot satisfy the contractual requirements because it possesses insufficient capital to fulfill the contract, it lacks the requisite experience concerning the installation and maintenance of coin-operated copiers, and it does not possess an adequate inventory of copiers to complete the contract. In light of the protester's perception, its protest seeks, in the alternative, that the Postal Service make a full scale pre-award survey of BBM's responsibility to perform the contract. The contracting officer rebuts these allegations by stating the various factors which were utilized to determine that BBM is a responsible contractor.

Pitney-Bowes also contends that it would be virtually impossible for the seven employees of BBM to service the tri-state region. The contracting officer responds that BBM will service all the copiers under contract in Northeastern and Northwestern Ohio. The remaining areas will be serviced by the network of Savin dealers. Moreover, BBM has established two toll-free numbers to report service interruption, and will monitor maintenance and supplies to such coin-operated copiers.

Finally, Pitney-Bowes argues that it is impermissible for Savin to vouch for the responsibility of BBM, and that it is, in fact, Savin who is performing the contract, and the Postal Service has not contracted with Savin. The contracting officer notes, "[t]he determination of responsibility was made on BBM and they were [sic] found to be responsible. Savin is not standing in the shoes of BBM, but rather giving support when needed." The contracting officer contends that his finding of responsibility was proper; he recommends that the protest be denied.

A conference was held with representatives of Pitney-Bowes concerning its pending protest, at which they reiterated the position that that the award of the contract violates the provisions of the Walsh-Healy Public Contracts Act and that the determination of the contracting officer that BBM is a responsible contractor is unreasonable. At the protest conference, it was suggested that Pitney-Bowes was improperly treating the contract as a supply contract for the furnishing of copiers, whereas, in fact, that contract is one for the provision of copier services on a commission basis. Pitney-Bowes filed supplemental comments which expanded upon the arguments described above. The only new point raised consisted of assertions that any distinction between BBM's "responsibility" as a copy vendor or copy machine supplier is irrelevant.

In effect, Pitney-Bowes' contentions challenge the contracting officer's affirmative determination of BBM's responsibility. As our decisions have frequently stated, the contracting officer is afforded considerable discretion in determining a prospective contractor's responsibility. Lightron of Cornwall, Inc., P.S. Protest No. 84-6, February 27, 1984; Mesa Constructors, P.S. Protest No. 83-39, September 20, 1983; Techno

Truck Manufacturing Co., P.S. Protest No. 83-13, May 6, 1983. Such determinations will not be overturned unless the protest falls within the very narrow standard of review employed by this office.

[I]n the absence of allegation of fraud or bad faith on the part of the contracting officer, or of claims that definitive responsibility criteria set forth in the solicitation were not applied, we will not review a protest against an affirmative determination of responsibility.

EDI Corporation, P.S. Protest No. 83-51, January 26, 1984. See also Sentinel Foam Products, P.S. Protest No. 85-94, January 16, 1986; Southern California Copico, Inc., P.S. Protest No. 84-39, August 15, 1984; Lightron of Cornwall, Inc., *supra*.

That the protester has a different view of BBM's financial responsibility or ability to perform than the contracting officer does not suffice to show that the contracting officer acted fraudulently or in bad faith. Keyes Fibre Company, B-225509, April 7, 1987, 87-1 CPD &383; Nations, Inc., B-220935.2, February 26, 1986, 86-1 CPD &203. In any event, pursuant to PCM 1-903.2(ii), the contracting officer may properly look at the financial arrangements between BBM and Savin, whereby Savin arranged a line of credit for BBM and Savin reserved a substantial number of copiers for delivery to BBM, in assessing the bidder's ability to perform.<sup>1/</sup>

The protest is denied.

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**[Compared to original 3/15/93 WJJ]**

<sup>2/</sup> Similarly, to the extent that Pitney-Bowes seeks the conducting of a pre-award survey, it is dealing with a matter committed to the contracting officer's discretion. See PCM 1-905.4. No abuse of that discretion has been shown, and in any event no purpose would be served by a post-award survey of BBM's capacity.