

Protest of ) Date: September 23, 1988  
TODD CRISSMAN )  
Solicitation No. 010-270-88 ) P.S. Protest No. 88-55

### DECISION

Mr. Todd Crissman timely protests the contracting officer's determination that he is a nonresponsible bidder under Solicitation No. 010-270-88, issued June 15, 1988, by the Springfield Transportation Management Service Center (TMSC), for highway transportation of mail between Syracuse, NY, and Pittsburgh, PA, for a term from October 1, 1988, to June 30, 1991. Bid opening was held July 14, and Mr. Crissman was low bidder with an annual rate of \$491,000.

After bid opening, a pre-award conference was held between Mr. Crissman and members of the Springfield TMSC staff. At that meeting, specific aspects of Mr. Crissman's plans for operation of the contract were discussed. Based on information obtained at the pre-award conference, the TMSC staff determined the following relevant to Mr. Crissman's responsibility:

- (1) His only previous mail contracting experience was working for another contractor on a contract with an annual rate of \$11,695.78;
- (2) He is presently in the undertaking and funeral home business;
- (3) He did not understand the advertised schedule;
- (4) He was not aware that the service required the contractor to furnish tandem-axle trailers and tandem-axle tractors, and to use toll roads.<sup>1/</sup>

Through consideration of the information with Mr. Crissman's bid, and the information acquired during the pre-award conference, Mr. Crissman was determined to be a nonresponsible bidder. The finding of nonresponsibility was based on the determination that Mr. Crissman lacked the necessary organization, experience and technical skills to be awarded a contract of the size and scope of Solicitation No. 010-270-88.

The contracting officer's decision was conveyed to Mr. Crissman after the pre-award conference on August 1. By an undated letter received by the contracting officer on August 11, Mr. Crissman protested the nonresponsibility determination.

Mr. Crissman raises two issues in his protest-- (1) that the cost of required tolls on the New York Thruway was lower than the amount discussed at the pre-award conference and that the lower amount would make him financially able to perform the work; and (2) that the total estimated miles on the solicitation were in error and that the error would require an upward adjustment in his bid.<sup>1/</sup>

The standard of review of a contracting officer's finding of nonresponsibility is well established:

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. Craft Products Company, P.S. Protest No. 80-41, February 9, 1981; David Guidry, Jr. and Johnny Jackson, d/b/a Guidry and Jackson Trucking, P.S. Protest No. 87-133, March 4, 1988; Pamela J. Sutton, P.S. Protest No. 87-110, February 9, 1988.

The policy underlying responsibility determinations and the requirement that such a determination be made are clearly stated in the Postal Contracting Manual (PCM):

The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional procurement or administrative costs. While it is important that purchases be made at the lowest price, this does not require an award to a supplier solely because he submits the lowest bid or offer. A prospective contractor must demonstrate affirmatively his responsibility....

PCM 1-902.<sup>1/</sup> PCM 1-903.2(i) further specifies that to be determined responsible, a prospective contractor must "[h]ave the necessary organization, experience, operational controls and technical skills, or the ability to obtain them...."

Mr. Crissman's first point of error, which suggests that his financial status played a role in the rejection of his bid, is incorrect. While Mr. Crissman was found to be a nonresponsible bidder, the basis of that determination was the contracting officer's judgment that Mr. Crissman lacked the necessary organization, experience and technical skills to operate a contract of the magnitude contemplated under Solicitation No. 010-270-88 and not his financial capability.<sup>1/</sup> Mr. Crissman has not contested the contracting officer's conclusions in this regard. A finding that a prospective contractor lacks adequate business resources is sufficient to sustain a finding of nonresponsibility. Westpac Airlines, Inc., P.S. Protest No. 87-04, February 24, 1987.

Mr. Crissman's second point also fails. If, in fact, there was an error in the estimated mileage stated in the solicitation, such an error amounts to a deficiency in the solicitation. A protest based on such a deficiency may only be considered if it is timely raised. BFI Waste Systems, Browning-Ferris Industries, P.S. Protest No. 88-42, July 29, 1988. This office does not have authority to waive or disregard untimeliness. Federal Systems Group, Inc., P.S. Protest No. 88-12, April 26, 1988. PCM 2-407.8d(1) provides that protests against alleged

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deficiencies in a solicitation must be received by the date and time set for the receipt of offers which, in this case, was July 14, at 3:00 P.M. Since the protest was not received until August 11, it is untimely as to allegations based on deficiencies in the solicitation.

The protest is denied in part and dismissed in part.

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

**[checked against original JLS 3/3/93]**