

Protest of)
Lock Corporation of America) Date: March 10, 1989
Solicitation No.)
337100-89-A-0017) P.S. Protest No. 89-14

DECISION

Lock Corporation of America (LCA) timely protests its rejection as a nonresponsible bidder under Solicitation No. 337100-89-A-0017, issued by the Materiel Distribution Center Somerville, NJ, for 62,400 Lock, Cash and Stamp Drawers, PS Item 0933L. The solicitation was issued on December 9, 1988 with an offer due date of January 10, 1989.

The solicitation contained in Section I, General Provisions, an Inspection clause, (August 1979) which states at subclause 17 (e) that: "The Contractor shall provide and maintain an inspection system acceptable to the Postal Service covering the supplies hereunder....The right is reserved to the Postal Service to evaluate the acceptability and effectiveness of the Contractor's inspection system prior to award...." The provision continues at subclause (f) stating: "...the Contractor's inspection system shall be in accordance with Specification MIL-I-45208, Inspection System Requirements....Failure of Contractor to maintain an acceptable inspection system as provided in this clause may result in termination of the contract...."

LCA was the lowest bidder of the three received. It is the current supplier of the identical item under Contract No. 337100-88-V-0244. In connection with its current contract, an in-house Quality Audit was performed on January 11 which revealed that LCA had no written manufacturing procedures, lacked quality controls in accordance with MIL-I-45208, and did not calibrate its instruments on a regular basis. On the same day, a shipment of 6471 locks delivered to Topeka, KS was rejected. On January 18, a show cause letter was sent to LCA with respect to these performance deficiencies. On January 20, the contracting officer informed LCA that it had been found to be non-responsible under Solicitation No. 337100-89-A-0017 due to its failure to maintain and follow the inspection system requirements of Contract No. 337100-88-V-0244.

In its protest, LCA alleges that the contracting officer's determination was premature, as the current contract was still in production and would be completed satisfactorily. It also claims that it does have the proper manufacturing and inspection procedures, and

has performed satisfactorily in the past, as evidenced by the fact that the Postal Service had accepted several shipments. LCA requested a copy of the audit report which outlined the manufacturing and inspection deficiencies reported by the contracting officer. It also requested that no action be taken for thirty days so that it could submit evidence of compliance.

In his report, the contracting officer states that LCA has failed to meet the minimum standards for responsibility pursuant to the Postal Contracting Manual (PCM), due to an unsatisfactory performance record on Contract No. 337100-88-V-0244. He disagrees with LCA's contention that because the Postal Service accepted prior shipments, the supplies offered met the contract requirements. He contends that defects existed that could not have been discovered prior to acceptance. He states that many of the locks supplied by LCA can be defeated easily with paper clips and that many of the keys are interchangeable, creating security problems. He maintains that these defects were caused by noncompliance with the inspection system requirements.

LCA has timely filed additional comments in response to the contracting officer's report. It listed several Postal Service contracts since 1984 which it claims it performed satisfactorily. It enclosed an updated Quality Control Procedures manual and organization chart, dated January, 1989. It states further that it has completed corrective actions recommended by the January 11 audit report.^{1/}

Discussion

The legal standard by which we review a contracting officer's determination that a bidder is nonresponsible 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.

Craft Products Company, P.S. Protest No. 80-41, Feb. 9, 1981; see also Marshall D. Epps, P.S. Protest No. 88-47, September 15, 1988; Fairfield Stamping Corporation, P.S. Protest No. 88-04, June 3, 1988.

LCA asserts that it has procedures which conform to MIL-I-45208, that it has performed

^{1/}National Cabinet Lock, the second low offeror, also submitted comments as an interested party. It contends that the torsion tumbler design lock manufactured by LCA, although an approved alternative design, is more vulnerable to picking than its pin tumbler design.

satisfactorily in the past and that any difficulties encountered in the present contract have been resolved. LCA does not present any evidence that it had acceptable inspection/manufacturing procedures in place at the time the contracting officer made his determination. PCM 1-905.1 (b) states that in making his determination of responsibility, the contracting officer shall make maximum practicable use of "currently valid information on file or within the knowledge of purchasing personnel." PCM 1-905.2 states that the information regarding responsibility of a prospective contractor "shall be obtained promptly after bid opening...." If the information obtained pursuant to PCM 1-905 does not clearly indicate that the prospective contractor is responsible, the contracting officer must make a determination of nonresponsibility. PCM 1-902. If there is doubt as to past performance which cannot be resolved affirmatively, the contractor must be found nonresponsible. Graphic Technology, Inc., P.S. Protest No. 85-66, December 30, 1985; Currency Technology Corporation, P.S. Protest No. 85-22, July 8, 1985; Spectral Data, Inc., P.S. Protest No. 82-58, November 11, 1982. See also Universal American Enterprises, Inc., Comp. Gen. Dec. B-185430, November 1, 1976, 76-2 CPD & 373; Contract Maintenance, Inc; Merchants Building Maintenance Company, Comp. Gen Dec. B-181581, October 8, 1974, 74-2 CPD & 193.

The contracting officer used "currently valid" information as a basis for his determination. The principal support for his determination was the Quality Audit conducted on January 11, one day after bid opening. That report stated that LCA had no written manufacturing procedures, no quality controls in accordance with contract requirements, and its instruments were not calibrated on a regular basis. Shortly before the contracting officer made his determination, an entire shipment of identical locks had been rejected. Based on these facts, it cannot be said that the contracting officer's determination was premature, that he had no doubts as to LCA's past performance, or that his determination of nonresponsibility was arbitrary, capricious, or not reasonably based on substantial information.

This protest is denied.

William J. Jones
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