

Protest of) Date: October 22, 1992
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T/F TRUCKING)
)
Solicitations No. 010-214-92)
)
010-215-92) P.S. Protest No. 92-65

DECISION

T/F Trucking, a partnership, ("T/F") protests the contracting officer's determinations that it is a nonresponsible bidder on two solicitations for the highway transportation of mail issued by the Springfield, MA, Transportation Management Service Center.

Solicitations 010-214-92 and 010-215-92 called for the transportation of mail between Rochester, NY, and the Pittsburgh, PA, Bulk Mail Center ("BMC"), and between Buffalo, NY, and the Pittsburgh, PA, BMC, respectively. Solicitation 214 called for three round trips daily except holidays or days after holidays, required the contractor to furnish ten forty-five foot trailers and two tandem-axle tractors, and indicated that the contract would involve approximately 619,000 annual schedule miles and 15,400 annual schedule hours. Solicitation 215 called for eight round trips daily except holidays or days after holidays, required the contractor to furnished eighteen forty-five foot trailers and four tandem-axle tractors, and indicated that the contract would involve approximately 1,194,000 annual schedule miles and 29,650 schedule hours.

T/F Trucking submitted the lowest-priced bid on each solicitation. It bid an annual rate of \$501,097 for Solicitation 010-214-92, and an annual rate of \$934,078 for solicitation 010-215-92. The second low bids on each solicitation were \$503,485 and \$994,393, respectively.

The documents submitted with the contracting officer's statement indicate that the TMSC held pre-award conferences with the partnership's principals on each solicitation at which various of the cost elements set out on the worksheets (P.S. Form 7468-A, Highway Transportation Contract - Bid or Renewal Worksheet) were questioned. As the result of these questions, the worksheet for each solicitation was revised twice. The total bid was unchanged. Each of the finally revised worksheets contains a note

which provides: "While we feel we should not have to, in order to help you decide to award to us we are willing to carry a 'performance bond' for the est. 6 mo. service cost difference."

By separate letters dated August 17, the bidder was advised that its bid on each solicitation had been rejected due to a determination of nonresponsibility, "based on your failure to demonstrate affirmatively . . . that you have the financial resources adequate to perform this contract and have the necessary organization, experience, and technical skills needed to operate a contract of this size and scope." T/F's timely protest followed.

The protest contends that the determination of nonresponsibility was arbitrary and not based on the facts. The protester argues that it demonstrated that it had the financial resources, equipment, insurance, and all other resources necessary to perform the contract, and had offered to provide a performance bond. The protest asserts that the principals of T/F "are convinced that their rejection was based on the fact that they are women" and notes that the partnership has had contracts with the Postal Service for some three years.

The contracting officer's statement on the protest notes various concerns which it has with the contractor's breakdown of costs. It questions the low operational costs per mile asserted by the bidder (2.1 cents per mile on solicitation 214; 1.5 cents per mile on solicitation 215, compared with the contracting officer's estimate of 8 to 10 cents per mile for each route); the vehicle costs asserted given each route's annual mileage; the omission of various elements of drivers' time; and the omission of costs for operation during vacations.^{1/} The statement also notes the substantial readjustment of worker's compensation insurance costs on the revised worksheets (for example, the amount allocated for this on solicitation 214 increased from \$1,805 to \$40,000), and contends, contrary to the protester's representations, that it never submitted agreements for equipment purchase, vehicle insurance, or worker's compensation insurance.

The contracting officer's statement denies that the determination was based on the status of the principals as women, noting that there are many women holding contracts with the Springfield TMSC. Finally, the statement acknowledges that the partnership holds several contracts, but notes that none of them are similar to the requirements of the solicitations at issue here, pointing out that two of the routes require the use of pickup trucks, and two others require the use of station wagons.

The protester has replied to the contracting officer's statement, noting that the partners had orally advised the Postal Service that they had obtained a loan commitment for

^{1/} The partners had indicated that they would operate the route to cover at least a portion of the vacation time; the contracting officer notes that the partners lack the commercial driver's licenses necessary to drive the trucks required.

\$185,000 which would have funded their initial expenses, that it had adequately demonstrated why its unit costs were lower than other operators, that drivers' hours were low because arrangements had been made to park the vehicles close to the start of the routes, and that other "down time" items would be performed by the partners. With respect to the partners driving during the drivers' vacations, vacation time would not accrue until after the first year of operation, giving the partners ample time to obtain commercial drivers licenses.

Concerning equipment, the protester indicates that the TMSC was advised that bids had been received from a supplier in Buttler, PA, and written estimates could have been submitted. The workers compensation and insurance rates were obtained from the partnership's insurance agent. With respect to the issue of discrimination, the protester inquires how many women contractors have held contracts of this size with the Springfield TMSC.

Finally, the protester concedes that its current contracts are smaller than the ones bid, but contends that the partnership has adequately demonstrated its responsibility.

Discussion

The legal standard by which this office reviews a contracting officer's determination that an offeror 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 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.

Craft Products Company, P.S. Protest No. 80-41, February 9, 1981; see also Lock Corporation of America, P.S. Protest No. 89-14, March 10, 1989; Marshall D. Epps, P.S. Protest No. 88-47, September 15, 1988.

PM Section 3.3.1 a. sets forth general standards for determining whether a prospective contractor is responsible, as follows:

Contracts may be awarded only to responsible prospective contractors. The award of a contract based on price alone can be false economy if there is subsequent default, late delivery, or other unsatisfactory performance. To qualify for award, a prospective contractor must affirmatively demonstrate its responsibility. . . .

Among the elements which must be demonstrated to establish responsibility are "financial resources adequate to perform the contract" (PM 3.3.1 b.1.) and "the necessary organization, experience, . . . technical skills, . . . or the ability to obtain them" (PM 3.3.1 b.6.).

It is evident from the contracting officer's statement and the supporting documentation that the individuals who evaluated the partnership's responsibility were concerned about its ability to perform the service for the price bid. The notes of the preaward conferences express concern about the reasonableness of numerous factors of the partnership's worksheet. The communication of those concerns led the partners to revise their projects of various elements of cost, but did not assuage the TMSC's concerns. We conclude that the contracting officer did not act arbitrarily in reaching the conclusion that the partnership was not responsible with regard to these solicitations.

The record of the preaward conferences indicates that the bidder was uncertain about many of the factors relevant to its ability to perform the contract successfully. For example, and not inclusively, in the course of furnishing information to the TMSC, it changed the sources of its truck tractors (from leased to owned, used); the number of hired drivers to be used (On solicitation 214 that number went from four full-time and two part-time to six full-time and two part-time and finally to four full-time and four part-time; the contracting officer contends that the route requires six full-time, two part-time. Similarly, on solicitation 215, the original number, six full-time, two part-time, became fourteen full time and then ten full-time, four part-time; the contracting officer's figure was fourteen full-time.); as noted above, it also dramatically adjusted workers' compensation costs. These adjustments reasonably occasioned the contracting officer's concern about the partners' understanding of the work required to operate the route and their ability to accomplish it with the funds available.

Given these concerns, the protester's verbal assurances of sources of equipment and funds are not sufficient to overcome the adverse determination, nor is its offer of a performance bond an adequate substitute for affirmative evidence of responsibility. Cimpi Express Lines, Inc., P.S. Protest No. 88-57, December 15, 1988.

T/F's assertion that the determination of nonresponsibility was based on its ownership by women is mere speculation unsupported by evidence. As we noted in an earlier case involving a similar claim of such discrimination:

Speculation is insufficient to support the protester's claim. BWN Contracting Co. Inc., P.S. Protest Nos. 89-38, 89-50 and 89-57, August 31, 1989 ("No factual substantiation of this allegation [of a discriminatory motive] was supplied by the protester, and we may not make such a finding based on speculation"); Hunter L. Todd, d/b/a Courier Express Mail & Package Delivery Service, P.S. Protest No. 85-78, October 18, 1985.

L & J Transportation Inc., P.S. Protest No. 91-42, August 29, 1991.

The protest is denied.

For the General Counsel:

William J. Jones