

**August 4, 1994**

**P.on S. Protest No. 94-24**

**DIANE PURYEAR**

**Solicitation No. 948-062-94**

**DIGEST**

Protest against affirmative determination of low bidder's responsibility is denied where protester fails to show fraud, abuse of discretion, or failure to apply definitive criteria of responsibility.

**DECISION**

Ms. Diane Puryear protests the award of a contract for the box delivery of mail out of Arcata, CA. Ms. Puryear, the previous contractor on the route, contends that the award to the low bidder, Mr. Charles L. Krull, was inappropriate.

Solicitation 948-062-94 for the box delivery service was issued January 31, 1994, by the Pacific Area Distribution Network office, seeking sealed bids for service on highway contract route 95562. Bids were due March 9, and service was to start April 30, or a later date. The service involved delivery to approximately 484 boxes. The contractor was to furnish a four-wheel drive vehicle to provide the service, although the solicitation did not prescribe the amount of load space which the vehicle was to contain. The solicitation stated that "[t]he successful bidder may elect to provide a right-hand drive vehicle due to the box delivery feature of this route."

Three bids were received, of which that of Mr. Krull was low, at an annual rate of \$34,500. Ms. Puryear's bid was second low at \$41,863. An inquiry into Mr. Krull's responsibility was conducted, which included review of various financial documentation and information about Mr. Krull's driving record.

Award was made to Mr. Krull on April 19. The vehicle which he proposed to use, a four-wheel drive 1986 Nissan Stanza station wagon, was inspected and found to be satisfactory

on April 25. An undated "Notice of Contract Award" advised the unsuccessful bidders of the award to Mr. Krull.

Ms. Puryear had been providing service on the Arcata route under an emergency contract which she signed on March 8, 1994, and which the Postal Service signed on March 11. That contract's term was stated as "25-Feb-1994" to "30-Jun-94," although the contract also provided that it could be terminated by the Postal Service "upon notice of not less than 24 hours." A "Contract Route Service Order" dated April 20 directed the termination of Ms. Puryear's contract "effective close of business April 29. . . ." A second service order dated April 25 suspended payments under the emergency contract "effective immediately . . . because of apparent abandonment of service on the route." The protest file does not disclose the date of Ms. Puryear's receipt of these service orders.

On May 5 the contracting officer received a copy of a long letter to the Postmaster General dated May 1, which comprises Ms. Puryear's protest. The protest makes a number of points which we reorganize and summarize as follows:

- It was improper and stressful to Ms. Puryear to require her to deliver copies of the solicitation to everyone on her route. That procedure had not been followed on that route in previous years, and no copies were delivered on other routes. Delivery of the solicitation to parties on the bidders' list and its posting in affected post offices should have been sufficient.

- The low bidder "misrepresented himself and falsified the facts that he presented to the contracting committee." He did not familiarize himself with the route, and lacks proper equipment to provide the service. An employee of the Arcata post office is improperly driving him around in another truck because the low bidder lacks an appropriate right hand drive truck. The Arcata employee who was training the low bidder had previously declined to provide any training to Ms. Puryear. Ms. Puryear recounts that she left performance of her route after she returned to the Arcata post office on April 25 and was informed by the Arcata employee that Mr. Krull "had started casing mail and . . . was helping [Ms. Puryear]." The low bidder had written Ms. Puryear's husband a letter dated April 22 which proposed that the Puryears subcontract the route during months when he planned to engage in an ocean fishing business. The protester views the proposed subcontract as illegal.<sup>1</sup>

- In supplemental comments submitted before the receipt of the contracting officer's report, the protester questions the wisdom of contract award at an unrealistically low price to an inexperienced bidder over award at a slightly higher price to an experienced bidder familiar with the route.

The initial report of the contracting officer on the protest did not address the substance of the protest, contending that it was untimely. Noting that the file did not appear to support that contention, this office requested further details from the contracting officer and specific responses to the points raised by the protest. A supplemental contracting officer's

<sup>1</sup> The protest also contains a litany of other complaints arising out MrsPuryear's treatment with respect to previous solicitations for the route, of limited relevance to the instant protest.

statement was belatedly furnished on July 21.

The supplemental statement concedes that the protest is timely, but contends that it is without merit. The contracting officer states that Mr. Krull was asked to, and did, verify his bid; details the basis of his determination of Mr. Krull's responsibility; notes that Mr. Krull's vehicle meets the requirements of the solicitation since the solicitation allows, but does not require, the use of a right-hand drive vehicle; and rebuts the contention that any favoritism was involved in the award.<sup>2</sup> Further, the contracting officer states that Mr. Krull supplied no false information in the course of the pre-award process, and explains that the initial assistance which Mr. Krull received with respect to sorting the mail and driving the route was normal training which ceased when it was complete.

## **DISCUSSION**

Although the contracting officer did not comment on the protester's complaint about the publicizing of the solicitation through its distribution on the route, we can perceive no ground which to sustain the complaint. While distribution along the route is not a method of publicizing specifically provided for in the applicable section of the regulation, Procurement Manual (PM) 12.4.5, that section does not preclude such distribution, and no prospective bidder would appear to have a right to complain that excess publicity incurred too much competition.

The remainder of the protest involves the contentions that the award to the low bidder was improper, either because the bid was too low, the bidder was not responsible, the award was otherwise tainted with favoritism, or award to the protester at a higher price would be more favorable to the Postal Service.

When the possibility of a mistake in a bid is suspected, the bidder may be asked to verify his bid. Where, as here, if the bidder verifies the bid, it is to be considered as submitted. PM 12.7.6 b.3.(b);(c). Award to Mr. Krull on the basis of the verified bid was proper.

It is well settled that:

An affirmative determination of responsibility is a matter within the broad discretion of the contracting officer and is not subject to being overturned by this office in the course of a protest absent fraud, abuse of discretion, or failure to apply definitive responsibility criteria.

*C.R. Daniels, Inc.*, P.S. Protest No. 90-62, December 21, 1990; *Georgia Power Company*, P.S. Protest No. 90-01, February 14, 1990. This protest presents no claim of failure to apply definitive responsibility criteria or of fraud. To the extent that the protest contends

<sup>2</sup> The supplemental statement also refers to a contention of the protest that nepotism may have played a part in the award, and notes the lack of any family connection of Mr. Krull to anyone involved in the award. It appears that the contracting officer has misread the protest, which referred to "nepotism" in connection with a previous award of the route to a former postmaster relief employee at the Kneeland, CA, post office.

that the award was made on the basis of favoritism, however, it raises a claim of abuse of discretion or bias.

Prejudicial motives will not be attributed to [procurement] officials on the basis of inference or supposition. . . . Inferences or suppositions[] are not sufficient to defeat the strong presumption that contracting officers act in good faith. The level of proof required to overcome the presumption of good faith has been described as "well-nigh irrefragable" and will not be sustained by inferences or speculation.

*Cimpi Express Lines, Inc.*, P.S. Protest No. 88-57, December 15, 1988 (citations omitted). Here, the allegations of disparate previous treatment of the protester by local postal officials who are not directly involved in the contracting process, *vis a vis* the low bidder here, are not sufficient to overcome the presumption of good faith.

Similarly, we find no other problems with the determination of responsibility. The contracting officer asserts that Mr. Krull did not misrepresent himself in the course of the determination, and the file does not reflect any obvious misrepresentations.<sup>3</sup>

Contrary to the protester's understanding, subcontracting of a route is not, *per se*, improper; some subcontracting is proscribed by postal regulations, but some may be permissible with the contracting officer's approval, and other arrangements for the provision of service by employees does not constitute subcontracting. PM 12.4.13. Mr. Krull's offer to subcontract the route to Ms. Puryear for some portion of the year is not persuasive evidence of his inability to perform the route.

Under the Postal Service's scheme for advertised contracts, "[u]nless all bids are rejected, award must be made . . . to the responsible bidder whose bid, conforming to the solicitation, provides the lowest rate to the Postal Service." PM 12.7.7 a.1.

[The protester's] claim that his bid is more advantageous to the Postal Service because of his superior knowledge of local road conditions[] and his superior equipment and qualifications is unavailing. Where, as here, award is to be made to the lowest responsible, responsive bidder on the basis of price, it is unavailing for a protester to assert that its offer is more satisfactory than a lower one. . . . [The protester's] general claim of superior qualifications does not carry his burden of proof.

*Brian McCluskey*, P.S. Protest No. 89-72, October 20, 1989 (citations omitted).

The protest is denied.

<sup>3</sup> The protester's contention appears to involve the bidder's assertions concerning his familiarity with the route. Such familiarity was not a requirement, although a bidder may not use a lack of familiarity with the route to justify a subsequent request for relief from the contract's requirements. *Carol Johnson*, P.S. Protest No. 92-46, August 3, 1992.

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