

Protest of )  
 ) Date: June 12, 1987  
YEAR-A-ROUND CORPORATION )  
 )  
Solicitation No. 104230-86-A-0160 ) P.S. Protest No. 87-12

### DECISION

Year-A-Round Corporation protests the contracting officer's determination that it is a nonresponsible bidder for award of a contract for mail collection and mail relay boxes pursuant to Invitation For Bids (IFB) No. 104230-86-A-0160.<sup>1/</sup> Year-A-Round asserts that it has made substantial changes in its quality control system and that it now meets the inspection standards set forth in the solicitation.

The IFB was issued on July 22, 1986, by the Office of Contracts, Headquarters, with an offer due date of August 22. Year-A-Round's bid was the second low of 12 offers received. After the low bidder withdrew its bid due to a lack of subcontractor support,<sup>1/</sup> the contracting officer requested a pre-award survey of Year-A-Round.

The pre-award survey was conducted at Year-A-Round's facilities in October and November, 1986, by a Defense Contract Administration Service Management Agency (DCASMA) team. DCASMA recommended that no award be made to Year-A-Round, basing its decision on two major factors. First, the DCASMA team concluded that Year-A-Round's quality assurance program was inadequate. They found that Year-A-Round's equipment and procedures were inadequate to meet the requirements of the quality assurance standards required by the IFB. The team also noted that under the protesters' other government contracts, including Postal Service contracts, DCASMA had issued Year-A-Round 16 quality deficiency reports during the 17 months preceding the survey.

Second, the survey team concluded that Year-A-Round's production capability was deficient. The team found that the protester had two long term delinquent contracts,

<sup>1/</sup>The protester refers to being found "nonresponsive" to the subject solicitation. However, it is apparent that Year-A-Round is protesting the contracting officer's nonresponsibility determination.

<sup>2/</sup>Although he stated that the low bidder was permitted to withdraw its bid, the contracting officer must have concluded that in the absence of subcontractor support the low bidder would have been unable to perform the contract, and was therefore a nonresponsible bidder.

caused in part by Year-A-Round's lack of a comprehensive information management structure. They noted that although the specifications of the subject contract were sufficiently complex as to require additional management control, Year-A-Round had no plans to add additional personnel for this contract. The General Manager, Procurement Technical Support Division, concurred in DCASMA's findings that Year-A-Round failed to meet the quality and production capability requirements of the solicitation.

Because of the deficiencies found by DCASMA, the contracting officer determined that Year-A-Round did not meet the requirements of Postal Contracting Manual (PCM) 1-903 for responsible bidders, and therefore rejected Year-A-Round as nonresponsible. Year-A-Round was informed of this decision in a January 19, 1987, letter. Contracts were awarded under the solicitation to Aero Engineering Corporation and Jebco, Incorporated, the fourth and eighth low bidders, on January 21, 1987.<sup>4/</sup> This protest followed.

Year-A-Round argues that it meets the quality inspection standards required by the IFB. The protester asserts that it has expended a great deal of administrative and engineering effort since the pre-award survey to update its quality control system. It avers that it received no official communication from DCASMA or the Postal Service that its quality control program was still unsatisfactory. The protester further argues that it satisfactorily completed 11 Postal Service contracts in fiscal 1986, and is currently producing eight Postal Service items on seven different contracts. Year-A-Round contends that at no time has it been told that the items currently being produced have been unsatisfactory.

Year-A-Round also asserts that it has made numerous commitments to suppliers for additional equipment and materials, and has made

<sup>3/</sup>The third low bidder was found nonresponsible. Aero, the fourth low bidder, was found eligible to receive award for 50% of items one and two. The fifth low bidder's offer expired when it failed to extend its bid acceptance period. The sixth low bidder was found nonresponsible, and the seventh bidder's offer expired. The eighth low bidder, Jebco, was found eligible for award.

significant preparations for the first article., Year-A-Round argues that it was asked several times to extend its bid acceptance period, with no indication that it had been operating unsatisfactorily.

In his report to this office, the contracting officer adopts the analysis taken by the DCASMA pre-award survey team. He states that Year-A-Round did not meet the standards for responsible contractors set forth at PCM 1-903.1, and that he had serious doubts regarding Year-A-Round's ability to perform the contract in accordance with its requirements. He notes that the present pre-award survey was one of two taken within 30 days that resulted in no-award recommendations. The contracting officer also points to a November 25 DCASMA letter to the protester which reported numerous uncorrected deficiencies in Year-A-Round's quality control system. The contracting officer recommends that the protest be denied.

The standard under which we review a contracting officer's determination of an offeror's responsibility is limited:

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.

Kingsway Cranes & Conveyors and Stewart Glapat Corporation, P.S. Protest No. 86-01, April 14, 1986, quoting Craft Products Company, P.S. Protest No. 80-41, February 9, 1981.

Here, the contracting officer based his determination of nonresponsibility on DCASMA's findings at the pre-award survey. When the decision of the contracting officer is based on the judgment of technical personnel, the protester must show that such judgment was fraudulent, prejudiced, or arbitrary and capricious. Kingsway Cranes & Conveyors supra. The record does not show, nor does the protester allege, any impropriety or irregularity in the pre-award survey. DCASMA analyzed Year-A-Round's ability to perform the contract and found problems in its quality inspection program and production plan sufficient to recommend that Year-A-Round not be awarded the contract.

The DCASMA team found, and the contracting officer agreed, that Year-A-Round's quality control program was inadequate to meet the

requirements of the solicitation. Year-A-Round asserts that it now meets these standards, but there is no evidence in the record that any improvements have actually been made or that the protester presented such information to the contracting officer. Although some time passed Finally between the pre-award survey and the contracting officer's determination of nonresponsibility, the passage of time alone is not sufficient to overturn the contracting officer's judgment. While the contracting officer should consider information as current as possible in making his responsibility determination, PCM 1-905, the contracting officer here fulfilled his affirmative duty to seek out responsibility information by requesting the pre-award survey of Year-A-Round. It remains the bidder's responsibility to bring changed circumstances to the contracting officer's attention, and Year-A-Round failed to do so. See, Currency Technology Corporation, P.S. Protest No. 85-22, July 8, 1985. The protester has not submitted any evidence which indicates that any improvements were actually made in the quality assurance program. We cannot grant relief based on the protester's unsupported assertion of responsibility.

The protester argues that neither DCASMA nor the Postal Service informed it that its performance of any of its present contracts was unsatisfactory. There is no requirement that a contracting officer demonstrate past or present performance failures in order to support a nonresponsibility determination. Graphic Technology, Inc., P.S. Protest No. 85-66, December 30, 1985. In any case, DCASMA did inform Year-A-Round in a November 25, 1986, letter that the quality control delinquencies found by the pre-award survey team remained outstanding.

The protester does not dispute that it had two outstanding delinquent contracts at the time of the pre-award survey. The failure of a bidder to perform in a timely manner under prior contracts may provide a reasonable basis for a nonresponsibility determination. Graphic Technology, Inc., *supra*; Lithographic Publications, Inc., Comp. Gen. Dec. B-217263, March 27, 1985, 85-1 CPD &357. Additionally, the survey team found that Year-A-Round's deficient management structure was a major part of these delinquencies, and Year-A-Round has given no indication that it has addressed or remedied these problems.

Finally, the protester indicates that it has made numerous commitments to vendors for materials and equipment with which to perform this contract, and that it has made significant preparations for the first article. Since Year-A-Round was never awarded the contract, it was premature for it to make commitments as if it had. The fact that a bidder unilaterally makes preparations for a contract certainly cannot justify awarding the contract to it; a contract can only be awarded to a bidder found responsible to perform that contract. PCM 1-902. Cf. Temps & Co.--Claim for Costs, Comp. Gen. Dec. B-221846.2, August 28, 1986, 86-2 CPD &236 (relief denied when no reasonable chance that protester would have received award).

Each of the factors cited by DCASMA and relied upon by the contracting officer in his determination is sufficient ground upon which to base a finding of nonresponsibility. There is no basis upon which this office can overturn that determination.

The protest is denied.

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**[Compared to original 2/23/93 WJJ]**