

Protest of) Date: May 20, 1987
JARKE CORPORATION)
Solicitation No. 169990-87-A-0034) P.S. Protest No. 87-33

DECISION

Jarke Corporation protests the award of a contract for support sets for pallets under Solicitation No. 169990-87-A-0034 to D.V. Industries, Inc. (D.V.).at

Invitation for Bids 169990-87-A-0034 was issued by the Central Region Procurement and Materiel Management Service Center on March 6, 1987 with an offer due date of April 1, 1987. The solicitation allowed bidders to bid on an FOB origin basis, an FOB destination basis, or both. The basing point for all items for the purpose of evaluating FOB origin offers was Forest Park, IL. A space was left for the bidder to state its shipping point. D.V. bid \$505,200 FOB Pender, NB, and \$521,400 FOB destination. D.V.'s FOB origin bid became \$518,700 when evaluated to include transportation cost. Jarke bid \$541,320 FOB Niles, IL, and \$552,720 FOB destination. On April 8, 1987, the contracting officer notified Jarke that award would be made to D.V., and award was made to D.V. on April 15. This protest followed.

Jarke advances four grounds for its protest. First, it claims that the solicitation is defective. Jarke asserts that postal contracting personnel told it on April 8 that, because Jarke was in the same geographical area as the point of delivery, Jarke's FOB origin bid would be evaluated as if it were an FOB destination bid. Jarke objects to this action, claiming it goes outside the boundaries of the solicitation's provisions for evaluation of bids. Second, Jarke attacks D.V.'s responsibility, arguing on the basis of a Dun & Bradstreet report and other indications that D.V. may not be financially capable of successfully performing the contract and that a pre-award survey of D.V. should be requested to assure that it will actually be able to perform the contract. Third, Jarke claims that D.V.'s contract performance will be in violation of the terms of the solicitation, in that D.V. will exceed the number of racks which can be loaded in a truckload. Jarke claims that D.V.'s prospective violation of the shipping requirement gave D.V. an unfair competitive advantage in the competition.^{1/} Finally, Jarke states

^{1/} Jarke terms D.V.'s bid "nonresponsive" and cites a provision of the Federal Acquisition Regulations (FAR) prescribing responsiveness of bids. However, Jarke's argument concerns contract administration, not responsiveness. D.V.'s bid is responsive, in that it offered to meet the material terms of the solicitation of the bid price. See Pease Management and Construction, Inc., P.S. Protest No. 86-68,

that D.V.'s certification that it is a woman-owned business is a facade to hide the ownership of D.V. by Dohlman Industries (which is not woman-owned) and gain the preferential treatment given to woman-owned businesses.

In response to Jarke's allegations, the contracting officer notes that D.V.'s bids for both origin and destination delivery were less than Jarke's and that he tried unsuccessfully to explain to Jarke that its FOB origin bid did not have any transportation costs added to it because Jarke's place of manufacture was within the Interstate Commerce Commission's prescribed commercial zone. He notes that D.V. has a past history of performing in accordance with contractual requirements and that he has checked with D.V.'s bank to ensure that D.V. will have the financial capability to perform the contract successfully. Finally, he states that the ownership of D.V. is irrelevant to the propriety of the contract award.

None of the issues raised by Jarke justify overturning the award to D.V. Insofar as Jarke protests the terms by which the bids would be evaluated, its protest is untimely, as it was received after the time set for bid opening. PCM 2-407.8 f. (1); see Rogelio Herrera, P.S. Protest No. 86-34, June 2, 1986. Jarke's complaint that its bid was misevaluated misapprehends the evaluation procedure. Section B.3.d. (5) indicates that FOB origin deliveries within the ICC-prescribed commercial zone will be no expense to the Postal Service. See, e.g., Jiffy Packaging, P.S. Protest No. 81-44, October 21, 1981. D.V.'s FOB origin bid had added to it an amount for transportation costs from its plant in Pender, NB to Forest Park, IL. No transportation cost was added to Jarke's bid, as its place of manufacture was within the ICC-prescribed commercial zone, and therefore, deliveries would be at no expense to the Postal Service pursuant to the above provision. The contracting officer correctly evaluated these bids, and, as D.V.'s bid was lower in price than Jarke's, award was properly made to D.V. See Jiffy Packaging, *supra*.

Jarke's allegations concerning D.V. are also insufficient to overturn the award. As to D.V.'s financial capability, a contracting officer's affirmative determination of a bidder's responsibility may only be overridden by clear and convincing proof of fraud, bad faith, or a failure to meet definitive responsibility criteria. Stewart Industrial Hygiene and Safety, Inc., P.S. Protest No. 85-11, May 3, 1985; EDI Corporation, P.S. Protest No. 83-51, January 26, 1984. Jarke has neither alleged nor proven such a claim. Jarke's allegation that D.V. will violate the contract terms when it performs the contract is a matter of contract performance and not for consideration in a bid protest decision. See Salomon Box Company, P.S. Protest No. 78-30, August 17, 1978. Finally, Jarke's claims concerning the allegedly fraudulent nature of D.V.'s certification as a woman-owned business is immaterial, as woman-owned businesses are not entitled to any special treatment because of their status. J. Fiorito Trucking Co., Ltd., P.S. Protest No. 87-08, April 23, 1987; Tulsa Diamond Manufacturing Corp., et al., P.S. Protest Nos. 85-18, 85-20, 85-23, June 20, 1985.

October 24, 1986. As to the FAR citation, the Postal Contracting Manual is the exclusive source of regulatory guidance for the Postal Service, and other government procurement regulations are not binding on the Postal Service. See Lubecon Maintenance Systems, Inc., P.S. Protest No. 84-78, December 17, 1984.

The protest is denied.

William J. Jones
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[Checked against original 3/3/93 WJJ]