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| Protest of                      | ) | Date: August 24, 1987  |
| SIXTO GARRASTEGUI EXCLUSA       | ) |                        |
| Under Solicitation No. PR 22-87 | ) | P.S. Protest No. 87-66 |

DECISION

Mr. Sixto Garrastegui Exclusa has timely protested the contracting officer's rejection of his bid for box delivery service in and around the township of Lares, Puerto Rico, on the ground that he could not perform the solicited services for the amount bid. Mr. Garrastegui was the low bidder under Solicitation No. PR 22-87, issued by the San Juan Transportation Management Service Center (TMSC).

The bids were opened on May 27, 1987, and Mr. Garrastegui was low bidder at an annual rate of \$7,709.42.<sup>1/</sup> On June 8, representatives of the contracting officer met with Mr. Garrastegui and discussed with him their belief that he had underpriced several line items on his cost worksheet, and would not be able to perform the solicited service for the amount bid without suffering financial hardship.<sup>1/</sup> According to the contracting officer Mr. Garrastegui raised

<sup>1/</sup> Nine other bids were received ranging from \$9,690.39 to \$11,945.40.

<sup>2/</sup> The contracting officer's report includes the following discussion of Mr. Garrastegui's cost statement:

A further analysis of Mr. Garrastegui's PS Form 7468A submitted with his bid showed an entry of \$150.00 per annum for Operational Cost (Item 1B); 13 miles per gallon at \$1.03 p/g (Item 6) and \$120.00 for Insurance cost (Item 8). All these figures were considered extremely underpriced by the bidder. For example, average price per gallon on May 1987 was \$1.18 and as of this writing is about \$1.25 p/g and going up. We were also skeptical of his claim of the number of miles per gallon (13) his vehicle is capable to achieve. The terrain traversed by this route is very mountainous area and with the stop and go conditions, the most we figure is 10 miles per gallon productivity. The same with his estimated cost for insurance coverage. The mandatory insurance of 100/300 for bodily injury and 50,000 for property damage average cost in Puerto Rico is around \$350. The entry of \$150 per annum for Operational Cost was considered too low considering a set of tires alone will probably be that much.

Postal Contracting Manual 2-406.1 requires that in cases where the contracting officer has reason to believe that a bid mistake has been made, he shall request the bidder for a verification of his bid. If the contracting officer believed that Mr. Garrastegui's bid was constructed on the basis of mistaken understandings of the costs of certain items necessary to contract performance,

"no objections." The contracting officer thereafter rejected Mr. Garrastegui's bid. According to the contracting officer's report to this office, the sole reason for rejecting the bid was the contracting officer's belief that Mr. Garrastegui could not perform the contract without financial hardship. The record contains no evidence that the contracting officer or his representatives made any inquiry as to the bidder's financial resources other than the amounts he would be paid if awarded the contract.

Earlier decisions of this office have ruled that the fact that a bid appears low does not, by itself, require its rejection. Edward B. Friel, Inc., P.S. Protest No. 82-8, May 4, 1982; Bean Trucking Company, P.S. Protest No. 81-61, February 10, 1982. Even the fact that the bidder might suffer a loss if awarded the contract for the amount bid is not, in itself, an adequate ground for rejecting the bid, as long as the bidder verifies his bid. See Edward B. Friel, Inc, supra, and cases cited therein.

The contracting officer might have found Mr. Garrastegui nonresponsible due to the fact that he lacked adequate financial resources or the ability to obtain such resources during performance of the contract, in accordance with Postal Contracting Manual (PCM) 1-903.<sup>1/</sup> That PCM provision states:

The adequacy of a contractor's financial resources is particularly important when an unusually low price is not founded on superior efficiency, techniques, or processes.

However, the contracting officer must comply with . PCM 1-905, which requires that he seek financial information from various sources before making a determination of nonresponsibility.<sup>1/</sup> As we stated in National Fleetway, Inc., P.S. Protest No. 80-26, July 3, 1980:

Although PCM 1-902 states, generally, that it is the respective contractor's responsibility to demonstrate affirmatively his responsibility, the section goes on to state that the contracting officer must comply with 1-905 before making a determination. PCM 1-905.3 details the sources from which the contracting officer shall seek information on responsibility. They include, in addition to the contractor, existing sources within the Postal Service,

he should have brought the suspected mistakes to Mr. Garrastegui's attention and requested verification of the bid. It is not clear from the record whether the discussions between Mr. Garrastegui and the contracting officer's representatives satisfied the requirements of 2-406.1, but any oversight was harmless in the circumstances. Mr. Garrastegui's attention was directed to the line items considered underpriced, and, while it appears that he was not requested to verify his bid, the filing of this protest clearly indicates Mr. Garrastegui's intention that his bid be accepted as filed.

<sup>3/</sup> Section 19 of the Postal Contracting Manual (PCM), which applies to transportation contracts, expressly incorporates PCM section 1, part 9.

<sup>4/</sup> See also PCM 19-122.1, which states that the contracting officer must seek information regarding responsibility from the prospective contractor and other sources in accordance with PCM 1-905.3, when sufficient current information is not available to contracting personnel.

publications, and other sources such as suppliers, customers, credit agencies, etc.

See also Gil Trucking, P.S. Protest No. 84-87, February 11, 1985; Government Products Corporation, P.S. Protest No. 84-58, December 10, 1984.

Since the record in the instant case contains no indication that the contracting officer sought or considered any financial information either from the bidder or from other sources, we must conclude that the contracting officer's rejection of Mr. Garrastegui's bid was not based on substantial evidence. While our review of a determination of nonresponsibility is limited, see Craft Products Company, P.S. Protest No. 80-41, February 9, 1981; see also Vinyl Technology, Inc., P.S. Protest No. 86-40, June 11, 1986, the determination must not be made on the basis of a conclusory opinion, but must relate to substantial evidence presented. David W. Baker, P.S. Protest No. 87-53, July 1, 1987.

The protest is sustained and the matter is remanded to the contracting officer for reconsideration of Mr. Garrastegui's responsibility consistent with this opinion.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[Compared to original 3/8/93 WJJ]**