

Protest of ) Date: September 4, 1987  
LEON ALDRIDGE )  
Solicitation No. 608-26-87 ) P.S. Protest No. 87-69

### DECISION

Mr. Leon Aldridge timely protests the contracting officer's determination that he is a nonresponsible bidder under Solicitation No. 608-26-87, issued March 24, 1987, which invited bids for the highway transportation of mail between Peoria, IL and North Suburban Facility, IL. The solicitation, issued by the Chicago Transportation Management Service Center (TMSC), required two trips between the service points on a daily basis. Bid opening was held at 1:00 p.m. on April 24, 1987. Thirty-one (31) bids were received, and on June 10, Mr. Aldridge was informed by letter that his bid was low.<sup>1/</sup>

That letter also advised Mr. Aldridge that the TMSC records showed that he was currently providing service, as an owner-operator, between Peoria and West Glen Station, IL, under Highway Contract Route (HCR) No. 61311. Under this contract Mr. Aldridge made 14 trips per day, except Sundays and most holidays. Mr. Aldridge had indicated in bid documents (P.S. Form 7468-B) that he intended to perform service under Solicitation No. 608-26-87 as an owner-operator as well. The letter requested Mr. Aldridge to explain how he intended to provide personal service safely on both contracts.

On June 11, 1987, Mr. Aldridge responded to the contracting officer's letter stating that he would personally perform the service required by Solicitation No. 608-26-87 as well as the morning service on HCR 616BA, from 0500 to 0820, but would hire a driver for that route's afternoon trips, from 1300 to 1830.

The contracting officer determined that Mr. Aldridge could not provide this service without exceeding the maximum number of hours of on-duty driver time prescribed in P.S. Form 7407, "Basic Surface Transportation Service Contract General Provisions," which is incorporated into Solicitation No. 608-26-87. These safety requirements limit

<sup>1/</sup> In fact, there were two lower bids than Mr. Aldridge's. However, both of the lower bidders had been determined to be nonresponsible.



Because Mr. Aldridge's proposed personal service would be unsafe and in violation of the contract, the contracting officer, on June 25, determined that Mr. Aldridge was non- responsible.<sup>4/</sup>

On June 30, Mr. Aldridge protested the contracting officer's determination, stating that the contracting officer's work hour calculations were incorrect, and that the contracting officer failed to discuss this matter with him prior to making his finding. Mr. Aldridge did not offer an alternative calculation of his personal daily or weekly work hours under his existing contract and his proposed service under Solicitation No. 608-26-87.

The standard governing our review of a contracting officer's determination of nonresponsibility 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.

Marine & Industrial Insulators, Inc., P.S. Protest No. 87-31, July 1, 1987; Pines Trailer Corporation, P.S. Protest No. 86-85, October 22, 1986; Year-A-Round Corporation, P.S. Protest No. 86-94, January 29, 1987.

The contracting officer determined that Mr. Aldridge could not provide the service on Solicitation No. 608-26-87 as an owner-operator together with the owner-operator service he was already performing under HCR 61311 without exceeding the contractual weekly hourly limit for safe driving. Consequently, Mr. Aldridge could not meet the minimum standards for a responsible prospective contractor, that is, he could not "comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental." PCM 1-903.1(ii).

Mr. Aldridge's bare allegation that the contracting officer's calculations of his work hours were incorrect<sup>4/</sup> does not carry his burden of establishing that the contracting officer's determination was arbitrary, capricious, or not supported by substantial evidence.

Total per week = 79 hours

<sup>4/</sup> In that June 25 letter, the contracting officer erroneously calculated Mr. Aldridge's personal service time as 13 hours per day for 6 days of the week. In reviewing the work hours in preparation of his statement, the contracting officer corrected this figure to 11 hours 50 minutes.

<sup>5/</sup> Although, as discussed in footnote 4, above, the contracting officer's June 25, 1987, letter did miscalculate Mr. Aldridge's projected daily and weekly work hours, after correction, his projected weekly work hours still exceeded weekly safety standards.

The protest is denied.

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

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