

Protest of)
GERALD A. KARRLE) Date: March 15, 1988
Solicitation No. 549990-88-B-0034) P.S. Protest No. 88-09

DECISION

Gerald A. Karrle, owner of Southgate Union 76 (Karrle), protests the award of a vehicle repair and maintenance agreement to Jerry's Arco (Jerry's), under solicitation no. 549990-88-B-0034. The solicitation was issued by the Procurement & Materiel Management Service Office, Seattle, WA, on December 10, 1987, with a offer due date of December 24, 1987. Award was made on December 31, 1987 to Jerry's, the incumbent contractor.

By letter dated January 11, 1988, Karrle filed his protest with the contracting officer. On January 14, the contracting officer issued a determination that the protest was obviously without merit. Thereafter, Karrle protested the contracting officer's initial adverse decision by letter dated January 21, and the matter was referred to this office.

Karrle protests that Jerry's cannot comply with the solicitation's requirements. Karrle asserts that, since Jerry's does not have the correct infra-red testing equipment at its facility, it cannot perform the required diagnostic analysis. The protester further states its belief that Jerry's does not have trained automotive mechanics, while Karrle employs only certified mechanics. Finally, Karrle asserts that, since Jerry's does not own a tow truck, it cannot respond to road or towing calls.

The contracting officer states, in his report, that Jerry's performed very satisfactorily during the past two years, as confirmed by the three service inquiry attachments to his report. In response to the specific allegations of Karrle, the contracting officer replies that:

- (1) the contractor has an arrangement with a neighboring shop to use their Infra-Red equipment anytime he has the need;
- (2) the contract requires the contractor to be able to respond to road/towing service within 15 minutes and does not require that it has to own a tow truck. Jerry's utilizes 3 towing companies, therefore no delays are experienced in towing; and that
- (3) there is no requirement in the contract for mechanics to be ASE/NAISE certified. The requirement is that any mechanics working on postal vehicles must be qualified.

Two other unsuccessful offerors also submitted views regarding their respective offers. Transmission World echoes the sentiment of Karrle that Jerry's does not meet the requirements of the solicitation since Jerry's does not have a "regular qualified mechanic or [a] complete auto repair facility". Zenith Automotive reiterates much of what has been alleged by Karrle, adding that the Postal Service, to save money, should review and rewrite all of the vehicle maintenance schedules, since much of the maintenance could be done at twice the present service intervals. In addition, Zenith Automotive asserts that there the solicitation is faulty on several grounds: (1) there is no requirement that the performance of work be billed in accordance with flat rate standards; (2) the solicitation does not mandate that parts not be billed in excess of the manufacturer's suggested list price; and (3) the contractor is not required to maintain current service records on all vehicles.^{1/}

Jerry's states that its business is qualified to perform the contract and satisfies the requirements of the solicitation, that it has the capability of performing the requisite diagnostic analysis, that it allows only qualified mechanics to work on Postal vehicles, and, although it does not own a tow truck, it can use any of three companies to do towing.

The concerns expressed by Karrle have been rebutted by the comments of Jerry's and the contracting officer's report. Karrle's contentions challenge the contracting officer's affirmative determination of Jerry's responsibility. As our decisions have frequently stated, the contracting officer is afforded considerable discretion in determining a prospective contractor's responsibility. Pitney-Bowes, Inc., P.S. Protest No. 87-95, November 20, 1987; Lightron of Cornwall, Inc., P.S. Protest No 84-6, February 27, 1984; Mesa Constructors, P.S. Protest No. 83-39, September 20, 1983. The

^{1/}To the extent that the comments of Zenith Automotive claim that the solicitation is flawed, its comments will not be considered by this office as they are untimely. Such a challenge to the terms of the solicitation must have been made prior to the date and time set for the receipt of offers. Postal Contracting Manual 2-407.8 d. (1).

determination of contracting officer will not be overturned unless the protest falls within the very narrow standard of review employed by this office:

[I]n the absence of allegation of fraud or bad faith on the part of the contracting officer, or of claims that definitive responsibility criteria set forth in the solicitation were not applied, we will not review a protest against an affirmative determination of responsibility.

EDI Corporation, P.S. Protest No. 83-51, January 24, 1984, quoted in Chicago Transparent Products, Inc., P.S. Protest No. 87-130, December 16, 1987.

Here, the fact that Karrle expresses a different view of Jerry's ability to perform than the contracting officer does not amount to charging that the contracting officer acted fraudulently or in bad faith. Pitney-Bowes, Inc., *supra*; *cf.* Keyes Fibre Company, Comp. Gen. Dec. B-225509, April 7, 1987, 87-1 CPD & 383; Nations, Inc., Comp. Gen. Dec. B-220935.2, February 26, 1986. 86-1 CPD & 203. Further, there are no definitive responsibility criteria which have been incorrectly applied in this case. Karrle has not only failed to prove that Jerry's did not meet the required specifications, but has failed to even allege grounds on which we could overturn the contracting officer's determination. Accordingly, that determination must be upheld.

The protest is denied.

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

[checked against original JLS 2/23/93]