



adversarial confrontation at which he was treated unfairly and in an unprofessional manner. On July 11, Mr. Epps requested and was denied an extension of the deadline until July 12. At approximately 3:20 p.m. on July 11, Mr. Epps attempted to deliver a folder that he claimed contained some additional information. The contracting officer refused to accept the folder. On July 12 the contracting officer sent a letter to Mr. Epps explaining that he had been determined to be a nonresponsible bidder. Mr. Epps protests this determination.

As supplemented following the contracting officer's statement, the protest has three grounds. First, Mr. Epps alleges that the contracting officer was biased in his treatment of him because the contracting officer required additional information from him, but not from the other bidders. He further alleges that the decision not to award the contracts to him was grounded on racial discrimination. Finally, he contends that the contracting officer misstates certain facts about the circumstances leading up to the finding of nonresponsibility.<sup>1/</sup>

A contract may only be awarded to a responsible prospective contractor. Postal Contracting Manual (PCM) 1-902. The contracting officer must make an affirmative determination of responsibility before awarding the contract. PCM 1-904.1 The well settled standard by which we review such a determination is as follows:

[a] responsibility determination is a business judgment which involves balancing the contracting officer's conception of the requirement with 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.

Craft Products Company, P.S. Protest No. 80-41, Feb. 9, 1981. If the contracting officer lacks information about the low bidder, he may obtain the necessary information from the prospective contractor. PCM 1-905.3(i). This information could include data on the prospective contractor's financial resources, record of performance, and, in the case of maintenance contracts, his organization, experience, and technical skills. PCM 1-903.1; 1-903.2.

The contracting officer requested information of this sort from Mr. Epps. Since the contracting officer knew nothing about Mr. Epps, this request was justified. We do not know what information the contracting officer may have requested from the other low

<sup>2/</sup>Mr. Epps asserts that a telephone call which the contracting officer reported receiving from MrEpps was never made. In addition, Mr.Epps claims that, contrary to the contracting officer's statement, not all of the procurement personnel involved in the July 8 interview agreed to maintain the deadline for receipt of the requested information as July 11, 1988. Finally, Mr.Epps contends that the contracting officer erroneously stated that he asked for the telephone number of the Field Division General Manager/Postmaster, St. Louis Division, on July 11 after the contracting officer refused to accept the proffered folder. Apart from his recitation of the facts surrounding this solicitation, the contracting officer has not specifically addressed these allegations in his report to this office.

bidders. Any difference in the amount of information requested might be explained by the fact that he knew more about them. But the information he did require from Mr. Epps was not outside the bounds of the information which could properly be requested.

Mr. Epps was given ample opportunity to supply the information and failed to do so before the deadline. The contracts were due to begin on July 1. The contracting officer was not obliged to delay indefinitely the selection of a contractor while waiting for Mr. Epps to respond. Linde Construction, Comp. Gen. Dec. B-206442, March 17, 1983, 83-1 CPD & 271; see also Roarda, Inc., Comp. Gen. Dec. B-204524.5, May 7, 1982, 82-1 CPD & 438. The contracting officer was within his authority in enforcing the July 11 deadline. Since the contracting officer did not receive any of the information in a timely manner from Mr. Epps, his determination that Mr. Epps is a nonresponsible bidder was reasonable.<sup>1/</sup>

Mr. Epps complains that the contracting officer evidenced his bias at the July 8 meeting. In order to prove that the contracting officer acted with impermissible bias, the protester must affirmatively establish with sufficient evidence, that the contracting officer "had a specific and malicious intent to harm the protester, since contracting officers otherwise are presumed to act in good faith. Prejudicial motives will not be attributed to such officials on the basis of inference or supposition." I.C., Inc., P.S. Protest No. 86-06, April 25, 1986, quoting Rodgers-Cauthen Barton-Cureton, Inc., Comp. Gen. Dec. B-220722.2, January 8, 1986, 86-1 CPD & 19. Mr. Epps has made only general allegations of bias and has offered no factual evidence to show that the contracting officer had "a specific and malicious intent to harm" him. We must conclude that Mr. Epps has failed to prove his allegations of bias and prejudice.

As for Mr. Epps' general assertions that racial discrimination played a part in the rejection of his bid, he has provided no factual information to support his claim. "Mere supposition, however plausible, is insufficient to overcome the presumption of regularity attending a contracting officer's reported determinations." Penny H. Clusker, P.S. Protest No. 80-37, August 27, 1980; see also Book Fare Inc., P.S. Protest No. 80-29, July 3, 1980; Haselrig Construction Co., On Reconsideration, P.S. Protest No. 76-2, March 22, 1976.

Finally, Mr. Epps claims that the contracting officer made untrue comments in his statement to this office. Where factual conflicts exist between the protester and the contracting officer, the statements of the contracting officer are given a "presumption of correctness" which the protester bears the burden of overcoming. OSM Corp., P.S. Protest No. 88-36, August 18, 1988; E-Z Copy, Inc., P.S. Protest No. 88-18, May 10, 1988; Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986. However, even if Mr. Epps had proved these allegations, they have no bearing on the

<sup>3/</sup>The contracting officer may not, of course, place the entire burden of proving a bidder's responsibility on that bidder. See Government Products Corporation, P.S. Protest No. 84-58, December 10, 1984; M. L. Hatcher Pickup and Delivery Services, Inc., P.S. Protest No. 80-69, December 10, 1980. However, where the bidder has failed to transmit any information regarding its capabilities to the contracting officer, it cannot complain that he did not overturn every stone to locate information which would support the bidder's responsibility.

contracting officer's determination of nonresponsibility. "Inaccuracies as to minor, secondary issues which do not detract in any substantial way from the areas in which a bidder was found deficient do not impair the ultimate nonresponsibility determination." OSM Corp., supra; Fairfield Stamping Corp., P.S. Protest No. 88-04, June 3, 1988.

The protest is denied.

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

**[checked against original JLS 3/3/93]**