

Protest of )  
LESLIE A. HARRISON ) Date: September 21, 1989  
Solicitation No. 190-71-89 ) P.S. Protest No. 89-49

### DECISION

Leslie A. Harrison timely protests the determination of the Manager of the Philadelphia Transportation Management Service Center that he is a nonresponsible bidder under Solicitation No. 190-71-89 for highway transportation service between Southeastern, PA, and Richboro, PA. Mr. Harrison submitted the fourth-low bid. His qualifications for award were considered after the three lower bidders were determined to be nonresponsible.

The contracting officer's determination of nonresponsibility cited Mr. Harrison's "past performance and a decision made to deny you access to the mails" as the basis for the determination. In her report on the protest, the contracting officer explained that the determination was based upon her decision dated November 17, 1988, to deny Mr. Harrison access to the mails based on his criminal record, specifically upon a 1986 conviction for concealment of a deadly weapon. The contracting officer also alludes to a 1985 decision to deny Mr. Harrison access to the mails based upon his "disruptive and abusive behavior."

The protester states that he has never been convicted of a crime, has never been debarred or suspended from contracting with the Postal Service, and was reinstated as a driver by the Postal Service on November 27, 1988. The contracting officer's reply states that the November 27 "reinstatement" of Mr. Harrison consisted of the issuance of a temporary driver's badge under standard procedures when an individual is identified to the Postal Service as a prospective contract driver, and that Mr. Harrison was not issued a permanent badge. With regard to the criminal conviction, the contracting officer attached a memorandum from the Assistant Regional Chief Inspector, Postal Inspection Service, which includes the following discussion:

The arrest of Mr. Harrison on 04/14/86, for Concealment of a Deadly Weapon under the laws of the state of Maryland, has also been completed. On 05/12/86, Mr. Harrison entered into a Probation Before Judgement (PBJ) Agreement. Without admitting guilt or being found guilty of the charge, Mr. Harrison was

sentenced by a judge to one year probation. During this probationary period, Mr. Harrison was instructed to maintain a clean criminal record. If arrested during the probation, Mr. Harrison could have been recharged with the 04/14/86 violation. Mr. Harrison did not violate his probation, and for all intents and purposes, under the state of Maryland law, Mr. Harrison has no conviction, nor will he, for the 04/14/86 arrest. Under the state of Maryland law, Mr. Harrison may make application to have the charge in question totally expunged from his criminal record.

### Discussion

The legal standard by which we review a contracting officer's determination that a bidder is nonresponsible is well settled:

[a] responsibility determination is a business judgement 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.

Craft Products Company, P.S. Protest No. 80-41, February 9, 1981.

A responsibility determination must be based upon information which is as current as possible. Year-A-Round Corporation, P.S. Protest No. 87-12, June 12, 1987. Here, the contracting officer's action was based upon events which took place three and four years prior to the determination. Those events, without the support of more current evidence, are too remote to justify a nonresponsibility determination. Compare Pamela J. Sutton, P.S. Protest No. 87-110, February 9, 1988 (default termination 13 months earlier coupled with recent corroborative conversations and correspondence with the prospective contractor justifies nonresponsibility determination) with Don Peterson, P.S. Protest No. 84-56, August 10, 1984 (default termination 19 months earlier too remote) and Levi Carver, P.S. Protest No. 76-25, March 29, 1977 (unsatisfactory service eight years earlier too remote). The protest is sustained and remanded to the contracting officer for further consideration of Mr. Harrison's responsibility consistent with this decision.

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

**[checked against original JLS 5/24/93]**