

Protest of) Date: June 19, 1990
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 JINDAL BUILDERS AND)
 RESTORATION CORPORATION)
)
 Solicitation No. 209986-90-A-0003) P.S. Protest No. 90-18

DECISION

Jindal Builders and Restoration Corporation (Jindal) protests its rejection as a nonresponsible offeror under Solicitation No. 209986-90-A-0003 for an indefinite quantity construction contract to repair various owned and leased postal facilities in Cincinnati and Dayton, Ohio, and also protests the awards made to Boswell Construction Inc. (Boswell) and Wise Construction Co., Inc. (Wise) on that solicitation. The protester contends that the contracting officer incorrectly determined that Jindal had a poor performance record, and that the price differences among the offerors should have resulted in a reevaluation of the awards.

The Postal Service Facilities Service Office in Louisville, KY, issued the solicitation on December 12, 1989, with an offer due date of January 11, 1990. Ten offers were received in response to the solicitation. Jindal submitted the third lowest offer. After a pre-award survey, the contracting officer determined that Jindal was nonresponsible in light of reports of unsatisfactory performance received from Jindal's references.^{1/} The contracting officer then determined that it was in the best interest of the Postal Service to make multiple contract awards and made awards to Wise, Rainbow Construction Co. (Rainbow), and Boswell by letters dated March 6, 16 and 30. Jindal was notified of each award by letters of these dates. The first such letter also advised Jindal of the contracting officer's determination of its nonresponsibility.

On March 13, the contracting officer received Jindal's protest of the finding of its nonresponsibility and of the award to Wise. On April 3, he received Jindal's protest against the award to Boswell. The contracting officer denied Jindal's March 13 protest as obviously without merit by letter dated March 23, and similarly denied Jindal's April 3 protest by letter dated April 10. In a letter dated April 14 which was received April 19, Jindal has protested both denials to this office.^{1/}

^{1/}The contracting officer had previously rejected the offers of the lowest offeror and the second low offeror for non-responsibility.

^{2/}Rainbow has submitted comments to this office regarding Jindal's protest. Rainbow fully agrees with the contracting officer's finding that Jindal was nonresponsible.

In its protest, Jindal disagrees with the contracting officer's finding of nonresponsibility, arguing that it has been unfairly evaluated, and also "has not been given the opportunity to 'rectify' the misinterpreted or mistaken information received by the Postal Service regarding its performance." Jindal also argues that the price differences between itself and the successful offerors warrant cancellation of the awards.^{1/}

In his report, the contracting officer states that he determined, based on the references Jindal supplied, that Jindal was not a responsible offeror due to its poor performance record. Additionally, the contracting officer urges that the protest be dismissed in part as untimely, asserting that Jindal's protest of the award to Wise is untimely since Jindal received the contracting officer's denial on March 24, 1990, and did not protest to the this office until April 14, 1990 (approximately 15 working days later). Finally, the contracting officer recommends that the remainder of the protest be denied as being without merit.

DISCUSSION

Procurement Manual (PM) 4.5.4 d. states that "protests must be received not later than ten working days after the information on which they are based is known or should have been known, which- ever is earlier...." Here, since Jindal received the contracting officer's denial of its initial protest regarding its nonresponsibility and the award to Wise on March 24, and did not protest it to this office until much later than 10 days after receipt, this part of the protest is untimely. USA 800, Inc., P.S. Protest No. 89-90, February 15, 1990; Huntington Laboratories, Inc., P.S. Protest No. 89-46, November 15, 1989; AHJ Transportation Inc., P.S. Protest No. 89-03, March 16, 1989 (protest was not received within ten working days after protester became aware of a nonresponsibility determination).^{1/}

As to the portion of Jindal's appeal which concerns the award to Boswell, we find Jindal to lack standing to raise it, since it is well established that a protester disqualified from participating in a procurement lacks standing to challenge award to another. Consultants & Designers Inc., P.S. Protest No. 90-11, May 18, 1990; Savoia Corporation, P.S. Protest 87-126, April 5, 1988; Malcolm A. Miller, Inc., P.S. Protest No. 87-87, August 25, 1987; Strapex Corporation, P.S. Protest No. 85-33, July 11, 1985.

^{3/}Because the work to be done under an indefinite quantity construction contract cannot be established when offers are received, offerors are requested to propose on the basis of a "multiplier" based on a unit price schedule. In this case, Jindal's multiplier was 0.88, while Wise's was 0.93 and Boswell's was 0.95. Rainbow's multiplier, not challenged here, was 0.97.

^{4/} Jindal's arguments concerning its responsibility are similar to those raised in its previous unsuccessful protest regarding a nearly contemporaneous finding of nonresponsibility for the same reasons asserted here. Jindal Builders and Restoration Corporation, P.S. Protest No. 90-10, April 19, 1990. The protester has presented no information in the course of this protest which would cause us to reach a different result were we to reach the merits here.

The protest is dismissed.

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

[checked against original JLS 6/2/93]