

Protest of) Date: July 15, 1991
RON GARSON d/b/a RON'S TRUCKING)
Solicitation No. 552-40-91) P.S. Protest No. 91-33

DECISION

Ron Garson, doing business as Ron's Trucking, timely protests the contracting officer's determination that he is a nonresponsible bidder under Solicitation no. 552-40-91, issued by the Twin Cities Transportation Management Service Center for the highway transportation of mail from the Duluth, MN, General Mail Facility to Mount Royal Station. The solicitation was issued on April 7, 1991, with bid closing on May 7. Mr. Garson's bid was the lowest of the five received.

The contracting officer's determination of nonresponsibility was based on Mr. Garson's default termination on July 28, 1990, of a postal emergency contract and Mr. Garson's poor performance record during the 1990 Christmas season on another contract.^{1/} Additionally, the contracting officer concluded that, because of schedule conflicts between the solicited service and HCR 55641, Mr. Garson would have to hire a driver for this route. In the contracting officer's analysis, the amount of the Mr. Garson's bid would not provide a profit if a hired driver were paid Service Contract Act wages. After determining Mr. Garson nonresponsible, the contracting officer awarded the solicited service to the next low bidder.

In his protest, Mr. Garson states that, if given a chance, he could have "handled the route without a problem." Mr. Garson has not filed comments on the contracting officer's report.

^{1/}The terminated contract was 557DU with service between Duluth and Hibbing, MN. The cited poor performance was on HCR 55641 with service between Duluth and Virginia, MN.

Discussion

The standard of our review of a contracting officer's finding of nonresponsibility is well established:

A responsibility determination is a business judgment which involves balancing the contracting officer's conception of the [requirements of the contract] with available information about the contractor's resources and record. We will 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; Cimpi Express Lines, Inc., P.S. Protest No. 88-57, December 15, 1988.

Procurement Manual (PM) 3.3.1 a. sets forth the reasons for responsibility determinations as follows:

Contracts may be awarded only to responsible prospective contractors. The award of a contract based on price alone can be false economy if there is subsequent default, late delivery, or other unsatisfactory performance.

PM 3.3.1 a. PM 3.3.1 e. requires: "[i]n the absence of information clearly showing that a prospective contractor meets applicable standards of responsibility, the contracting officer must make a written determination of nonresponsibility." PM 3.3.1 e.1. PM 3.3.1 b.3. provides that to be determined responsible a prospective contractor must have a good performance record.

The contracting officer's determination of nonresponsibility in this case was not arbitrary and capricious and was based on substantial evidence. Recent unsatisfactory contract performance, as evidenced by a default termination, can justify a determination of nonresponsibility. E.H.O. Trucking, P.S. Protest No. 91-28, June 24, 1991; Mike and Candace Russell, P.S. Protest No. 91-13, May 6, 1991; Package Express, Inc., P.S. Protest Nos. 87-57, 87-58, 87-64, July 27, 1987; Hunter L. Todd, P.S. Protest No. 85-78, October 18, 1985. Additionally, a record of recent unsatisfactory performance on a postal contract, even without a termination, can justify a finding of nonresponsibility. Bathey Manufacturing Company, P.S. Protest No. 82-7, March 31, 1982.

Because Mr. Garson's recent termination for default under contract no. 557DU and unsatisfactory performance on contract no. HCR 55641 justify a nonresponsibility determination, we need not decide whether the contracting officer's determination that Mr. Garson could have to operate the route at a loss would independently justify a finding of nonresponsibility.

The protest is denied.

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

[checked against original JLS 8/11/93]