

Protest of) Date: February 5, 1988
DJW SERVICES)
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) P.S. Protest No. 87-116

DECISION

DJW Services, a sole proprietorship owned by Joseph M. Wallace, protests the contracting officer's determination of its nonresponsibility under Solicitation No. 059992-87-A-0351 for maintenance of the heating, ventilation and air conditioning (HVAC) systems at the San Mateo, CA, Postal Data Center (PDC).

The solicitation, issued September 1, 1987, by the Procurement and Materiel Management Service Office, Daly City, CA, sought bids on a two-year, firm-fixed-price contract to perform preventive HVAC maintenance service and on-call 24-hour-a-day corrective maintenance and emergency repairs (out-of-scope work). Bidders were to submit a monthly preventive maintenance price and straight time and overtime rates for emergency repair and corrective maintenance work. Bids were evaluated on the basis of the preventive maintenance price plus 400 hours of straight time repairs and 100 hours of overtime repairs.

Bidders were required to have a minimum of 15 years' experience in the HVAC field, including experience with Liebert water-cooled air conditioning equipment.

Eight offers were opened October 1. DJW's aggregate bid of \$44,400 was apparent low, and the contracting officer began a pre-award survey of DJW. Joseph Wallace provided the contracting officer a letter of information, DJW's financial statements, and resumes for himself and Raymond Lowe. Mr. Wallace indicated that DJW had no full-time employees and that he would perform substantially all the contract services, using Mr. Lowe "as a consultant and back-up mechanic on an as needed basis." Mr. Wallace has approximately 10 years' HVAC experience and Mr. Lowe more than 15 years' experience. Referring to the requirement for experience with Liebert equipment, Mr. Wallace stated he expected to enroll in the next Liebert training course and, meanwhile, would seek training from an experienced chief engineer who is a Liebert course graduate. In its 1 1/2 year existence, DJW had performed one government contract and one commercial contract totalling less than \$3000. DJW's financial statement showed assets of \$330 at the end

of 1986 and of \$12,800 at the end of August 1987. In the course of his pre-award inquiry, the contracting officer learned that both Mr. Wallace and Mr. Lowe held full-time jobs with another company and that DJW had recently accepted an \$1,100 alteration contract from another government agency.

On October 27, the contracting officer determined that DJW was not a responsible contractor because Mr. Wallace lacked the required experience and necessary personnel and because DJW's assets demonstrated insufficient financial capability to complete the contract. Carrier Building Services, the second low bidder was awarded the contract. DJW's timely protest to this office followed.

DJW urges that the HVAC experience requirement can be satisfied by that of its consultant, Mr. Lowe, until Mr. Wallace can complete his own training. DJW reports that the incumbent's employees obtained their Liebert training and certification only after the commencement of their contract. With respect to the sufficiency of personnel, the protester asserts that although he has a full-time job, he has great flexibility and the consent of his employer to take on the responsibilities of the postal contract. He will be able to respond to emergency calls well within two hours because of the proximity of his full-time job to the Postal Data Center. The protester notes his understanding that the incumbent uses four man-days per month to accomplish the contract requirements.

Concerning his financial responsibility, the protester states that his cash assets are more than 9 times the monthly contract price, when twice that amount ordinarily would be sufficient. He predicts that only fan belts, costing a maximum of \$500, would be required to be purchased under the contract. DJW asserts that the contracting officer's actions are inconsistent with the Postal Service's policies toward small businesses, the Competition in Contracting Act, and the free enterprise system.

In response the contracting officer recites the findings of the pre-award survey as to DJW's experience and personnel. The response is accompanied by a memorandum from the PDC's associate plant engineer stating that the mistake of allowing the successful bidder on the previous contract to learn the system after award had been corrected in the current procurement and that prospective bidders were so informed at a pre-bid site visit.

The contracting officer reviewed services actually performed from November 1985 to September 1987 under the previous contract. Monthly maintenance, which must be scheduled between 7 a.m. and 4 p.m. weekdays, required 1 worker for 2 1/2 days per month; semi-annual maintenance required a minimum of 2 workers for 3 days; and annual maintenance required 2 workers for 5 days.^{1/} In addition, there were 46 service calls for out-of-scope work requiring approximately 530 workhours. The HVAC systems support \$30 million of computers at the PDC that serve the entire Postal Service. Their proper maintenance and reliable emergency service are imperative because of the significant cost of disrupting computer operations.

The contracting officer concedes that DJW's assets of \$12,800 may be sufficient for the supplies known to be needed under the contract. However, in recent past experience, the cost of parts needed for out-of-scope services in a 22-month period was \$24,600, in addition to over \$45,800 in personnel costs.

We review a contracting officer's determination of a bidder's responsibility under a well-established standard:

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

DWS, Inc., P.S. Protest No. 87-100, November 6, 1987, quoting Craft Products Company, P.S. Protest No. 80-41, February 9, 1981.

One criterion of responsibility is the contractor's ability to comply with the performance requirements of the contract, taking into consideration current business commitments. Postal Contracting Manual (PCM) 1-903.1(ii). The protester is a sole proprietorship with no employees, operated by a person who also holds a full-time job, and the firm has recently received another contract for alterations work. The protester's back-up mechanic is also employed full-time. The protester's assurances of his flexibility

^{1/} This averages to 4 1/3 work days per month, a figure consistent with the protester's expectation, although, of course, the hours will not be distributed equally per month.

with his full-time job are unsupported by evidence from his employers and no similar flexibility is asserted for the back-up mechanic.

The contract specifies that all preventive maintenance work, estimated to total 52 mandays annually, be performed during the day on weekdays only. Even if it were realistic to assume that the protester could fulfill that part of the contract, the contracting officer's conclusion that there is no assurance the out-of-scope services could be adequately and timely performed is based on substantial information. The 530 hours required for out-of-scope services during 22 months of the most recent contract is a reasonable basis for estimating that an average of 3 man-days monthly may also be required to perform out-of-scope work under this contract. In light of the cost and disruption resulting from loss of computer services due to a continuing malfunction of the HVAC systems, the contracting officer could properly determine that the protester lacks adequate personnel to perform the contract.

A separate measure of responsibility is whether the low offeror can successfully perform the contract in view of its financial position; that is, does the offeror have adequate financial resources or the ability to obtain them as required during contract performance. PCM 1-903.1(i); Marine & Industrial Insulators, Inc., P.S. Protest No. 87-31, July 1, 1987. We are aware of no basis for DJW's assertion that cash assets equal to twice the monthly contract price would be sufficient to establish a contractor's financial capability. To the contrary, the determination of financial capability is a factual one involving the contracting officer's judgment about the bidder's capability of satisfactory performance. Parker Steel Equipment Company, P.S. Protest No. 76-78, January 4, 1977. DJW does not challenge the accuracy of the pre-award survey and has failed to demonstrate that the resulting determination is unreasonable. The contracting officer's judgment properly took into account both the preventive maintenance and the out-of-scope requirements of the contract.¹⁷ The unpredictability of costs for both personnel and replacement parts of the latter was illustrated by a recent 22-month period where over \$26,000 was required for parts, and even larger sums were needed to pay wages during that period. The contracting officer's judgment that DJW's financial resources are not adequate to cover the reasonably anticipated out-of-scope requirements of the contract in a timely manner that poses no risk of computer downtime to the Postal Service is reasonably based on costs associated with the most recent HVAC maintenance contract and is not arbitrary and capricious.

The PCM authorizes, where appropriate, incorporating into solicitations special standards of responsibility. PCM 1-903.3; Graphic Technology, Inc., P.S. Protest No. 85-66, December 30, 1985. Such standards are specific and objective responsibility criteria established for use in a particular procurement for measuring a bidder's ability to perform the contract. Their purpose is to assure that the contractor selected is one which, having previously demonstrated competence in the performance of the specified services for the specified periods, may be expected to perform the contract

^{2/} While the contract does provide that the contractor will be reimbursed for such parts purchases, the contractor must have the financial resources for the initial purchase or to obtain credit from the supplier, and payments under the contract are in arrears. Solicitation, section G.

competently. Gage Constructors, P.S. Protest No. 87-11, July 13, 1987, citing Abco Peerless Sprinkler Corp., P.S. Protest 84-50, August 24, 1984. DJW's plan to obtain Liebert training after award does not meet this solicitation's special standards. A company may rely on the experience of its principals and regular employees to meet special experience requirements. However, the contracting officer need not accept the qualifications of a part-time consultant who is employed elsewhere to satisfy a solicitation's special experience requirements. Urban Masonry Corporation, Comp. Gen. Dec. B-213196, January 3, 1984, 84-1 CPD & 48; see also P.J.R. Construction Corporation, P.S. Protest 77-7, June 6, 1977. There is no showing that DJW's consultant, who appears to have the requisite experience, is readily available for performing all requirements of the contract, including the out-of-scope repairs for which time and reliability are essential in order to protect computer operations. Although neither the contracting officer's statement nor the engineer's memorandum explains why performance of this contract requires a minimum of 15 years' HVAC experience,^{4/} finding the protester nonresponsible for lacking such experience is not unreasonable and we will not overturn the contracting officer's determination.

The protest is denied.^{1/}

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[checked against original JLS 3/22/93]

^{3/} PCM 2-407.8(d)(1) requires that protests based on alleged deficiencies in a solicitation that are apparent before the date set for the receipt of offers must be received by the date and time set for the receipt of offers. The experience requirement was an express term of the solicitation and was a topic at the pre-bid site inspection. Thus DJW's claim that the requirement exceeds the needs of the Postal Service is untimely. O'Neal Tarpaulin & Awning Co., Inc., P.S. Protest 80-66, January 9, 1981, aff'd on reconsideration, March 20, 1981.

^{4/} DJW's allegations that the contracting officer's actions are inconsistent with Postal Service policies toward small business, the Competition in Contracting Act and the free enterprise system are wholly unsupported and therefore need not be considered. DWS, Inc., P.S. Protest 87-100, November 6, 1987; Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984, and cases cited therein.