

Protest of ) Date: July 1, 1987  
 )  
 DAVID W. BAKER )  
 )  
 Under Solicitation No. 483-69-87 ) P.S. Protest No. 87-53

### DECISION

David W. Baker timely protests the contracting officer's determination of nonresponsibility under a solicitation for highway mail transportation services.

Solicitation No. 483-69-87, issued by the Detroit Transportation Management Service Center (TMSC), requested bids for transportation of mail between the Muncie, IN, Post Office and the Muncie Station Annex. Six bids were opened on May 6, 1987, and Mr. Baker was the low bidder. On May 7, pre-award questionnaire Forms 5472 and 5472-A, Statement of Assets and Liabilities, were sent to Mr. Baker. Because of the fact that Mr. Baker's wife is currently Highway Contract Route (HCR) contractor, the Postal Service was aware of a levy against the Bakers by the IRS for back taxes totaling \$21,979.58 because it was asked to withhold against Mrs. Baker's contract. The Form 5472-A returned by Mr. Baker did not reflect this liability, so the contracting officer inquired of the IRS as to the status of the tax lien. Based on these discussions, which indicated that the taxes had not yet been paid and that no agreement for their payment had been made,<sup>1/</sup> the contracting officer notified Mr. Baker that he was not a responsible bidder because his financial status was suspect.

In his protest, Mr. Baker asserts that he and the IRS have an agreement for payment of the back taxes. Mr. Baker further contends that his financial status notwithstanding, he can satisfactorily perform the contract because he already owns the equipment that is necessary and will have no employee payroll since he will operate the route himself.

According to the contracting officer's report, many contractors who have received an IRS levy have subsequently defaulted due to the IRS actions which cause the Postal Service to withhold all contract payments.

The standard of review of a determination of nonresponsibility is limited:

A responsibility determination is a business judgment which involves

<sup>1/</sup>This information was verified by the contracting officer in a second conversation with the IRS after the receipt of the protest.

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.

Craft Products Company, P.S. Protest No. 80-41, February 9, 1981; see also Vinyl Technology, Inc., P.S. Protest No. 86-40, June 11, 1986.

The existence of a tax lien does not require a finding of nonresponsibility. Echelon Service Company, Comp. Gen. Dec. B-209284.2, December 2, 1982, 82-2 CPD & 499. However, it is a factor which may be considered in making such a determination. See Gil Trucking, p.S. Protest No. 84-87, February 11, 1985. Rejection of a bid may not be made on the basis of a conclusory opinion, but must relate to substantial evidence presented. Levi Carver, P.S. Protest No. 76-25, March 29, 1977.

The contracting officer appears to have considered the tax lien as the sole dispositive factor in his determination. Consideration of the tax lien alone is improper grounds for rejection and does not meet the Craft Products Company, supra, substantial evidence standard.

While factors other than the tax lien exist which may support a finding of nonresponsibility in this case, there is nothing in the record to indicate whether or how they were considered by the contracting officer. The issue is whether Mr. Baker can perform the contract in a reliable manner if he is not paid as a result of the tax lien. Mr. Baker has sought to show that he can, by virtue of his ownership of his truck and that he will drive the route himself. The contracting officer should now consider whether, based on the impact of the tax lien on Mr. Baker's overall financial situation, he can perform the contract in a reliable manner.

The matter is remanded to the contracting officer for further action in accordance with this decision.

**[Signed "D. D. Anna for"]**

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

**[Compared to original 3/5/93]**