

Protest of	)	Date: July 1, 1987
	)	
JACK TYRA	)	
	)	
Solicitation No. 483-67-87	)	P.S. Protest No: 87-50

DECISION

Jack Tyra timely protests the contracting officer's determination that he is a nonresponsible bidder on a solicitation for the highway transportation of mail. Solicitation No. 483-67-87 was issued on April 6, 1987, by the Detroit Transportation Management Service Center (TMSC), requesting bids for service between Indianapolis, IN and Advance, IN. Mr. Tyra's bid was the lowest of the nine bids opened on May 6.

Following bid opening the contracting officer sent to Mr. Tyra a pre-award questionnaire for use in connection with his determination of Mr. Tyra's responsibility. Mr. Tyra returned the questionnaire (P.S. Form 5472) blank except for information as to his name, address, telephone number, type of business organization and date of birth, and a statement that he would buy equipment necessary to operate the route.<sup>1/</sup> The contracting officer then contacted Mr. Tyra by telephone to acquire the missing information. From that conversation the contracting officer determined that Mr. Tyra had no previous experience as a Postal Service contractor or a contractor in private industry. Mr. Tyra's experience in the trucking business consisted of two or three years as an employee in private industry where his duties included operating a truck for a minimal amount of time. Mr. Tyra's supervisory experience was in shipping and receiving in a warehouse. When asked how he would operate the contract from his address in Colorado, Mr. Tyra stated that he would move to Dearborn, MI. The contracting officer informed Mr. Tyra that the contract route did not involve Dearborn. (Dearborn is the site of the TMSC.) Mr. Tyra's response, if any, is not revealed in the contracting officer's report. However, the contracting officer concluded that Mr. Tyra lacked an understanding of the route. The contracting officer attempted to obtain information not immediately forthcoming

<sup>1/</sup> Mr. Tyra left blank the boxes in which the following information was requested:

1. Other business ventures in which prospective contractor has engaged.
2. Any capacity in which bidder has engaged in carrying of the mails.
3. Identities of individuals involved in the business who are employed by the U.S. Postal Service.
4. Identities of other individuals who would have access to the rails or postal operations areas during performance of the contract.

from Mr. Tyra. However, in considering the total of the background information presented by Mr. Tyra, plus Mr. Tyra's apparent lack of knowledge of the route, the contracting officer determined that Mr. Tyra was nonresponsible because he lacked a satisfactory record of performance.

In the protest Mr. Tyra states that he has 37 years experience in shipping and receiving and that his son has 25 years experience as a truck driver.<sup>1/</sup> He states his disbelief of the contracting officer's decision, and claims to be willing to move to service the route and to provide whatever references are needed.

In his report to our office, the contracting officer notes the circumstances under which he attempted to receive information concerning the protester's responsibility. In making his determination of Mr. Tyra's nonresponsibility, the contracting officer considered several factors. He believed that Mr. Tyra's statement that he would move to Dearborn, MI to perform the contract indicated a lack of knowledge concerning the route location. The contracting officer noted that Mr. Tyra had never held a highway contract before, and had very minimal experience in private trucking. This led him to doubt whether Mr. Tyra would be able to provide the contractually required level of service. Mr. Tyra also was found to lack knowledge of payroll, fuel purchases, labor laws and safety regulations necessary for satisfactory performance of a highway contract. Finally, the contracting officer notes that the driving experience of Mr. Tyra's son is irrelevant to Mr. Tyra's responsibility, since Mr. Tyra would be operating the route. The standard for this office's review of determinations of nonresponsibility is that stated in Craft Products Company, P.S. Protest No. 80-41, February 9, 1981:

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 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.

See also Vinyl Technology, Inc., P.S. Protest No. 86-40, June 11, 1986.

A prospective contractor has the burden of affirmatively demonstrating his responsibility, including ability to comply with the contract performance schedule, and a satisfactory record of performance. Postal Contracting Manual (PCM) 1-902, 903.1(ii) and (iii). If the information obtained concerning a contractor's responsibility does not indicate clearly that the prospective contractor is responsible, the contractor must be found nonresponsible. PCM 1-902. Similarly, if there is doubt as to the contractor's ability to perform the contractor must be found nonresponsible.

<sup>2/</sup> In a subsequent protest to this office dated June 16, Mr. Tyra adjusts his son's length of experience to 15-18 years.

Currency Technology Corporation, P.S. Protest No. 85-22, July 8, 1985; Spectral Data. Inc., P.S. Protest No. 82-58, November 11, 1982.

A bidder has the burden of affirmatively showing that it is a responsible bidder. Currency Technology Corporation, *supra*. The contracting officer cannot put the entire burden of establishing responsibility on the prospective contractor. *See, e.a.*, Government Products Corporation, P.S. Protest No. 84-58, December 10, 1984; National Fleetway. Inc., P.S. Protest No. 80-26, July 3, 1980; M. L. Hatcher Pickup and Delivery Services. Inc., P.S. Protest No. 80-69, December 10, 1980; *see also* PCM 1-905.3 (listing sources from which a contracting officer shall gather information regarding a bidder's responsibility). However, if the contracting officer makes a reasonable effort to obtain the necessary information, and is still in doubt about a bidder's responsibility, he may find the bidder nonresponsible. National Fleetway. Inc., *supra*.

On the record before us, there is no evidence that the contracting officer's determination that Mr. Tyra had failed to meet his burden was arbitrary or capricious. Mr. Tyra's incomplete response to the pre-award questionnaire provided the contracting officer with no information concerning his experience or ability to perform contract service of the type required. The information subsequently provided in response to the contracting officer's telephone inquiry does not cause us to conclude that the contracting officer's determination of nonresponsibility was in error. While the contracting officer might have tried other sources of information to gauge Mr. Tyra's responsibility, we cannot say that his failure to do so in the facts of this case is based on an unreasonable effort to obtain data concerning Mr. Tyra.

The protest is denied.

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