

Protests of)	Date: August 28, 1987
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D/A CAPITOL, INC.)	
MONITOR SECURITY AND CONTROL)	
SYSTEMS, INC.)	
GLEN INDUSTRIAL COMMUNICATION)	
Solicitation No. 104230-87-B-0064)	P.S. Protests Nos. 87-75, 87-77, and 87-80

DECISION

D/A Capitol, Inc., Monitor Security and Control Systems, Inc., and Glen Industrial Communication timely protest the award of a contract to Secur-Data Systems, Inc. (Secur-Data), for an access control system for the Engineering Support Center, Merrifield, VA, under Solicitation No. 104230-87-B-0064. The protesters question Secur-Data's responsibility.

This solicitation was the second step of a two-step, formally advertised procurement under part 5, section 2, of the Postal Contracting Manual (PCM). Secur-Data and each protester had submitted an acceptable technical proposal under the first step of the solicitation. The second step issued on June 4, 1987, requesting firm-fixed price bids to provide the offered systems. Secur-Data submitted the lowest bid. The contracting officer determined Secur-Data to be a responsible contractor on the basis of financial statements submitted by the firm, a visit by postal personnel to Secur-Data's facilities, and an on-site inspection of an access system installed and serviced by Secur-Data. He also obtained a listing of Secur-Data's current contracts and placed telephone calls to a number of the firms listed. A contract was awarded to Secur-Data on July 13.

The protesters assert that Secur-Data and its president were convicted of felonies, theft of property in excess of \$300, on or about March 16, 1987, in Montgomery County, MD. They assert that as a result of the convictions, the Department of the Army initiated debarment proceedings, and that Secur-Data was suspended from contracting by the Army effective June 1, 1987. This suspension was listed in the June 12 weekly supplement to the Consolidated List of Debarred, Suspended, and Ineligible Contractors issued by the Office of Acquisition Policy, General Services Administration. Each protester asks that the contract to Secur-Data be terminated.

The contracting officer states that the June 12 weekly supplement listing Secur-Data's

suspension was not available to him prior to award.^{1/} He became aware of the suspension on July 15 when advised of it by a protester after award occurred. Subsequent investigation by his office disclosed that Secur-Data was currently performing satisfactorily on other government contracts, including one for the installation of a security system for the U.S. Army Judge Advocate General's School in Charlottesville, VA. Documents furnished by counsel for Secur-Data raised questions concerning the propriety of the suspension.^{1/} He also states that our regulations (PCM 1-603 (6)) provide that a suspension does not of itself affect the rights and obligations of the parties. Additionally, he notes that Secur-Data has successfully completed all the site preparation work and has placed orders for all of the required equipment under the subject contract. Therefore, in his view, termination of the contract would not be in the best interest of the Postal Service, and the contracting officer asks that the protests be denied.

The protesters each appear to assert that no award could be made to Secur-Data because it had been suspended by the Department of the Army. This assertion is incorrect. Suspensions and debarments by other government agencies do not, per se, preclude award of a Postal Service contract.^{1/} Rather, PCM 1-605.1 (b) provides that suspension may be the basis for a suspension by the Postal Service. In the absence of such action by the Postal Service, suspension by another agency is not an absolute bar to award, although the fact of that suspension is a matter which may be taken into account by the contracting officer in determining the bidder's responsibility. Silverite Construction Co., P.S. Protest No. 86-56, August 15, 1986. Thus, the protests here are a challenge to the contracting officer's failure to consider the suspension in his determination that Secur-Data was responsible.

This office employs a limited scope of review of contracting officers' affirmative determinations of responsibility:

[I]n the absence of allegations of fraud or bad faith on the part of the contracting

^{1/} Postal Contracting Manual (PCM) 1-606 describes the GSA consolidated list, and provides that the Assistant Postmaster General, Procurement and Supply Department, is to receive and disseminate the GSA information within the Postal Service. The record reflects that the June 12 weekly supplement was one of a number of updates to the consolidated list furnished to Postal Service contracting personnel by a July 29 transmittal from the Procurement and Supply Department.

^{2/} A June 22 letter to the Department of the Army challenges the June 1 suspension on various grounds, including the lack of support in the administrative record for various characterizations of Secur-Data's crime by the Montgomery County MD State's Attorney's Office, and the contention that the administrative record is devoid of evidence of conviction for theft. The record does show that both Secur-Data and its president were found guilty of theft of property over \$300 by a jury, but counsel notes that no judgment was entered on the finding of guilt. The administrative record indicates that both defendants were sentenced to five years' supervised probation pursuant to the provisions of a Maryland statute providing for "probation before judgment," a procedure which counsel asserts does not involve conviction for the crime of which the parties were found guilty.

^{3/} A distinction must be noted concerning suspensions and debarments pursuant to statutes, such as the Davis-Bacon Act or the Service Contract Act, which are applicable to the Postal Service and as to which regulations applicable to the Postal Service prescribe the action which the Postal Service must take concerning the debarred or suspended party. The suspension at issue here is not of that type.

officials, or of claims that definitive responsibility criteria set forth in the solicitation were not applied, we will not review a protest against an affirmative determination of responsibility.

Silverite Construction Co., supra; Data Switch Corporation, Falcon System, Inc., P.S. Protest Nos. 85-4, 85-5, April 29, 1985; accord Stewart Industrial Hygiene and Safety, Inc., P.S. Protest No. 85-11, May 3, 1985; E.D.I. Corporation, P.S. Protest No. 83-51, January 26, 1984.

Here, the protesters have not alleged (and the record does not suggest) fraud or bad faith on the part of the contracting officer, and no claims concerning definitive responsibility criteria are at issue. The contracting officer's failure to discover the fact of Secur-Data's suspension or its underlying cause does not provide a basis on which to upset the determination of responsibility.

Accordingly, the protests are denied.

William J. Jones
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Office of Contracts and Property Law

[Compared to original 3/8/93 WJJ]