

Protest of )  
TAMMIE SUE KIMERY ) Date: September 25, 1989  
Solicitation No. 850-034-89 ) P.S. Protest No. 89-55

DECISION

Tammie Sue Kimery timely protests the determination of the Manager of the Phoenix Transportation Management Service Center that she is a nonresponsible bidder under Solicitation No. 850-034-89 for box delivery highway contract service at Cottonwood, AZ, for which she was the low bidder.

The contracting officer's determination was based upon Ms. Kimery's lack of cash on hand to operate the route for the period before she would receive the first payment from the Postal Service,<sup>1/</sup> and upon her failure to disclose on her Pre-Award Questionnaire that her driver's license had been suspended from December 1985 to March 1987.

With her protest Ms. Kimery supplied two letters, one from an individual stating that he would supply Ms. Kimery with gasoline on a 30-day credit basis, and another from two individuals expressing that they "would be willing to assist her [Ms. Kimery] financially." Ms. Kimery states that her failure to note the driver's license suspension on the Pre-Award Questionnaire was a result of her not having been informed either of the license suspension, or of any fine for the underlying offense of operating a vehicle with an expired registration.

In his statement in response to the protest the contracting officer observes that the letter from the retailer offering Ms. Kimery credit terms for the purchase of gasoline was not submitted in time for consideration in the responsibility determination, and was in fact dated five days after receipt by Ms. Kimery of that determination. The contracting officer further states that the financial backing of individuals who are not signatory to the bid may not be taken into consideration in the responsibility determination as they are not legally responsible for contract performance. He notes that information provided by Ms. Kimery on her Pre-Award Questionnaire shows that her only vehicle is a 23-year old automobile and that she shows a negative net worth. He concludes that Ms. Kimery does not have adequate financial resources to maintain a vehicle of that age or to provide a replacement in the event of breakdown. With regard to the suspension of Ms. Kimery's driver's license, the contracting officer finds the fact of the suspension, and the failure to make note of it on the Pre-Award Questionnaire, to be indicia of nonresponsibility.

<sup>1/</sup>Mail transportation contractors are paid following the conclusion of a 28-day postal accounting period.

## Discussion

The legal standard by which we review a contracting officer's determination that a bidder is nonresponsible is well settled:

[a] responsibility determination is a business judgement which involves balancing the contracting officer's conception of the requirement with available information about the contractor's resources and record. We well 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.

The requirements of a responsibility determination are established in the Procurement Manual (PM). PM 3.3.1.a. states, in part:

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. To qualify for award, a prospective contractor must affirmatively demonstrate its responsibility....

In order to be determined responsible, a prospective contractor must have, inter alia, financial resources adequate to perform the contract. PM 3.3.1.b.1.

We have previously recognized that highway mail transportation contractors must have cash reserves to pay for fuel, maintenance, and other expenses before receipt of the first contract payment. AHJ Transportation, Inc., P.S. Protest No. 89-19, September 7, 1989; David W. Baker, P.S. Protest No. 87-76, August 10, 1987; Ella Beachy, P.S. Protest No. 87-05, April 17, 1987. The contracting officer may appropriately decide that for purposes of his determination the bidder herself must have adequate cash reserves; proffers of credit or financial backing by parties who would not be legally responsible for performance of the contract are of no account. AHJ Transportation, Inc., supra; Ella Beachy, supra.

We may not overrule the contracting officer's judgment as to the adequacy of Ms. Kimery's financial resources absent evidence of fraud, prejudice or arbitrary and capricious action. Graphic Technology, Inc., P.S. Protest No. 85-66, December 30, 1985; Hi-Line Machine, Inc. and Gardner Industries, Inc., P.S. Protest No. 85-6, March 7, 1985. Considering the age of Ms. Kimery's vehicle and her negative net worth, we find that the contracting officer acted within his discretion in determining that Ms. Kimery lacked adequate financial resources to successfully perform the contract. Our finding makes it unnecessary to consider whether the weight given by the contracting officer to the suspension of Ms. Kimery's driver's license and to her failure to note the suspension on the Pre-Award Questionnaire was reasonable.

The protest is denied.

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

**[checked against original JLS 5/24/93]**