Protest of	)	
	)	Date: December 7, 1990
BIGGS GENERAL CONTRACTING	)	
	)	
Solicitation No. 199986-90-A-0174	)	P.S. Protest No. 90-63

DECISION

Biggs General Contracting (Biggs) timely protests its rejection as a nonresponsible offeror under Solicitation No. 19996-90-A-0174 for the renovation of office space in the St. Louis Postal Data Center. The protester asserts that it is financially sound and capable of performing the contract.

The Overland Park, KS, Facilities Service Office issued the solicitation July 31, 1990, with a proposal due date of August 28. Three amendments (A01 dated August 7; A02 dated August 17; and A03 dated August 21) were issued, none of which affected the time, date, or location of the opening of proposals. Thirteen proposals were received in response to the solicitation. The only evaluation factor cited in the solicitation was cost/price.

Biggs, a sole proprietorship owned by Leonard Biggs, submitted the low offer in the amount of $362,734. The second low offer was submitted by Schuster Engineering in the amount of $373,100.
The project manager conducted a preaward survey of Biggs based on information furnished by Biggs, telephone contacts to references listed by Biggs, and Dun and Bradstreet reports. The contracting officer made the following conclusions from the survey: 1) Biggs is a new firm for which Dun and Bradstreet has no listing; 2) the financial report is based on Biggs Wrecking and Excavation Co., a proprietorship owned by Leonard Biggs, rather than on Biggs General Contracting; 3) the Dun and Bradstreet report covering Biggs Wrecking and Excavating Co. shows little if any experience as a general contractor and none in fairly large remodeling projects; 4) telephone calls to references provided by Biggs indicate Biggs does almost exclusively demolition work as a subcontractor; 5) Biggs' key personnel, other than Leonard Biggs, have been with the company approximately three months at the time of the survey; 6) Biggs presented no affirmative evidence of experience with or current work in a large remodeling project or as a general contractor.[1/]

[1/]This project entails renovation of office space including demolition, construction of new partitions, installation of new ceilings and carpeting, electrical and HVAC alterations and construction of new toilet rooms.

The contracting officer rejected Biggs as nonresponsible based on the information obtained in the preaward survey and awarded the contract to the second-low priced proposal, that of Schuster Engineering, on September 20.

By letter dated October 1 and received by the contracting officer October 4, Biggs protests the award to Schuster Engineering, contending "Biggs is a financially sound company with sound references" that has "the qualifications to perform this project."

The contracting officer, in his report received by this office on November 9, states that the complexity of the project requires an experienced renovation contractor. The work is to be done in occupied space which is critical to the operation of the Postal Data Center and requires phasing of the work into six phases. The contracting officer found that Biggs has not shown the background or experience necessary to accomplish this project. Neither Biggs nor Schuster Engineering submitted comments in response to the contracting officer's report.

Procurement Manual 3.3.1 directs

> [t]he contracting officer [to] make an affirmative written determination of responsibility before awarding any contract . . . . In the absence of information clearly showing that a prospective contractor meets applicable standards of responsibility, the contracting officer must make a written determination of nonresponsibility.

The legal standard by which this office reviews a contracting officer's determination that an offeror is nonresponsible is well settled:

> 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 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.

Jindal Builders and Restoration Corporation, P.S. Protest No. 90-10, April 19, 1990, citing Craft Products Company, P.S. Protest No. 80-41, February 9, 1981; see Lock Corporation of America, P.S. Protest No. 89-14, March 10, 1989; Marshall D. Epps, P.S. Protest No. 88-47, September 15, 1988; Cardinal Glove Company, Inc., P.S. Protest No. 89-84, November 14, 1989.

Our review of the file and the contracting officer's report concerning the preaward survey conducted as to Biggs indicates that the contracting officer's determination that the protester is nonresponsible was not arbitrary or capricious and was reasonably based on substantial information. The contracting officer obtained information from

various sources from which he could reasonably conclude that Biggs did not have the experience necessary to complete the project. We will not disturb that determination.

The protest is denied.

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

[checked against original JLS 6/24/93]