

Protest of) Date: December 16, 1992
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) FABRICATING BUSINESSES)
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 Solicitation No. 104230-92-A-0079) P.S. Protest No. 92-77

DECISION

Fabricating Businesses (Fabricating) protests the award of a contract for locking cordfasteners to CIMTECH. Fabricating alleges that it was improperly found to be a nonresponsible offeror.

Solicitation No. 104230-92-A-0079 was issued by the Office of Procurement, Headquarters on May 18, 1992. The solicitation required delivery of the first article 30 days after award, 150,000 pieces 14 days after first article approval, 150,000 pieces 21 days after first article approval, and 234,000 pieces per month thereafter. Award was to be made primarily on the basis of price. Proposals were received on August 31. Fabricating was the lowest priced offer. Accordingly, a pre-award survey of Fabricating was performed by a quality assurance specialist on July 17.

The specialist found weaknesses in several areas of Fabricating's operations. He noted the limited technical expertise of the company with locking cordfasteners. The proposed production schedule did not consider possible lost time due to mechanical breakdown. The plant facilities and equipment were seriously inadequate to produce the cordfasteners. The specialist noted Fabricating's intent to plate parts after stamping, rather than purchasing the steel already plated, and that the steel was not in adequate stock. There were also doubts as to the adequacy of Fabricating's quality assurance system. Finally, the specialist opined that Fabricating would be unable to meet the required delivery schedule. For these reasons, the specialist recommended that Fabricating be found nonresponsible. The General Manager, Quality Assurance Division, concurred in this assessment, and, on August 14, 1992, the contracting officer informed Fabricating that it had been found to be nonresponsible and that award had been made to CIMTECH. Fabricating's protest followed.

Fabricating takes issue with the findings of the quality assurance specialist. It notes that its extensive experience in making vent dampners, which are more complicated than cordfasteners, decisively shows its production stamping experience. Fabricating indicates that they have interviewed and were prepared to hire employees with

extensive technical experience. It claims that the equipment it has is sufficient to produce the cordfasteners, that it has spare equipment ready, if needed, and that it would have addressed the issues raised by the specialist if he had asked any questions during the pre-award survey. Fabricating alleges that the specialist has not been truthful in his analysis of its plant capacity and equipment coming to completely unsupported conclusions and ignoring evidence which was presented to him during the survey. Fabricating notes that it now has quotes on pre-plated steel and will commit to meet all required quality control standards. As a result, it concludes that it will be able to meet the delivery schedule.

Fabricating argues that the quality assurance specialist lacked adequate knowledge of how cordfasteners are produced. Fabricating also states that CIMTECH called it to help manufacture cordfasteners because it was already at full capacity on the contracts it held.

The contracting officer notes that his decision is based on the information contained in the pre-award survey, on which he had a right reasonably to rely. He rebuts, at length, Fabricating's allegations that it could successfully perform the contract, concluding that the available information dictates the decision that Fabricating lacked the capacity and capability to do so. He notes that it was Fabricating's responsibility to supply at the pre-award survey any information it had which would have indicated it was a responsible offeror.

The contracting officer further disputes any allegations that the quality assurance specialist was biased or in any way prejudiced against Fabricating. He reiterates the specialist's extensive experience and expertise regarding metal fabricating and concludes that the specialist was fully qualified to conduct the pre-award survey and to reach the conclusions he reached. The contracting officer also states that the allegations that the specialist was biased and prejudiced against the protests are unsupported. Finally, he notes that CIMTECH was properly found to be responsible.

CIMTECH has submitted comments which state that it has sufficient capacity to perform the contract successfully and that Fabricating has misstated the substance of the telephone conversation, which dealt with Fabricating calling CIMTECH to offer to serve as a subcontractor on the contract. Fabricating has also filed comments which reiterate the points made in its

protest and indicates that it could easily produce the cordfasteners within the required time frame. It states that many of the specialist's reservations concerning its capabilities were the result of misunderstandings or miscommunications.

The legal standard by which we review a contracting officer's determination that a bidder is nonresponsive 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 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, Feb. 9, 1981. "When the decision of the contracting officer is based on the judgement of technical personnel, the protester must show that such judgement was fraudulent, prejudiced, or arbitrary and capricious." Year-A-Round Corporation, P.S. Protest No. 87-12, June 12, 1987. The contractor bears the heavy burden of proving that either the pre-award survey was inaccurate or the resulting responsibility determination was unreasonable. ARA Food Services Company, P.S. Protest No. 78-35, September 5, 1978. In resolving factual conflicts between the protester and the contracting officer, the statements of the contracting officer are given a "presumption of correctness" which the protester bears the burden of overcoming. See E-Z Copy, Inc., P.S. Protest No. 88-17, May 11, 1988; Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986.

This case is very similar to that set forth in Fairfield Stamping Corporation, P.S. Protest No. 88-04, June 3, 1988. In that case, the contracting officer concluded, based on a pre-award survey of the protester, that the protester was a nonresponsible offeror on a solicitation for locking cordfasteners for a variety of reasons, including inability to meet production and delivery requirements, failure to document the necessary equipment to assemble the cordfasteners and lack of technical expertise. Even though the analyses of the contracting officer and quality control specialist contained minor errors, we upheld the contracting officer's determination of the protester's nonresponsibility because these inaccuracies did not impair the validity of the ultimate determination. See Coastal Striping and Painting Corp., Comp. Gen. Dec. B-214869, 84-2 CPD & 697, December 26, 1984.

In this case, similarly, the areas of disagreement between Fabricating and the quality specialist do not invalidate the overall adequacy of the evidence which supports the contracting officer's determination that Fabricating was a nonresponsible offeror. Even if the specialist made minor errors in his evaluation due to omissions or miscommunications, the deficiencies noted as to Fabricating's expertise, plant capacity and equipment, supply of raw materials, and quality control procedures suffice to justify the contracting officer's determination. That determination must, therefore, be upheld.

Two collateral issues raised by Fabricating require only brief treatment. An allegation of impermissible bias by postal personnel against an offeror can only be sustained upon a showing of "irrefutable proof that the officials had a specific and malicious intent to harm the protester, since contracting officers otherwise are presumed to act in good faith. Prejudicial motives will not be attributed to such officials on the basis of inference or supposition." I.C., Inc., P.S. Protest No. 86-06, April 25, 1986, quoting Rodgers-Cauthen Barton-Cureton, Inc., Comp. Gen. Dec. B-220722.2, 86-1 CPD & 19, January 8, 1986. Fabricating's allegations do not rise to this level, and are insufficient in this regard.

Finally, Fabricating's allegations that CIMTECH cannot successfully perform the contract amounts to a challenge to the contracting officer's affirmative determination of CIMTECH's responsibility. "We do not review such allegations in the absence of fraud or bad faith on the part of the contracting officer or a failure to apply definitive responsibility criteria." Automated Conversion Technologies, Inc., P.S. Protest No. 92-63, September 25, 1992. Fabricating's allegations do not fall within any of these categories, and are

not, therefore within our review function.

The protest is denied.

For the General Counsel:

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