Protest of	)	
	)	Date: April 26, 1989
WETLER CORPORATION	)	
	)	Protest No. P.S. 89-12
Solicitation No.	)	
104230-89-A-0010	)	

DECISION

Wetler Corporation (Wetler) timely protests the contracting officer's determination that it is a nonresponsible offeror under Solicitation No. 104230-89-1-0010 for 50 model 501A edger-feeders, site spares and maintenance handbooks. The solicitation was issued on December 9, 1988, by the Office of Procurement, Washington, D.C., with an offer due date of January 9, 1989. Wetler was the low offeror.

Wetler stated in its proposal that it would perform 95% of the contract in-house and would subcontract only the painting operation, stating that it had "complete machining, sheet metal, wiring, plating, welding and assembly facilities" at its plant. Wetler did not name a subcontractor for a required nickel chromium plating operation. The Postal Service conducted a pre-award survey at Wetler on January 13. During the survey, a Wetler officer indicated that Pendler Anodizing, Inc. (PAI), a separate company whose facility is located on Wetler property, would perform the plating operation and, upon request, Wetler submitted PAI plating procedures as supplementary information. Later, when it became apparent that there were problems with PAI's plating facilities, Wetler proposed a second subcontractor, Automatic Plating of Deptford, NJ (Automatic Plating), but, when requested, provided no documentation to support its capabilities. The final survey report recommended against award to Wetler, enumerating the following deficiencies: 1) Wetler did not have the technical capability to perform the nickel chromium plating operation itself and PAI's proposed plating facility and procedures were inadequate; 2) records showed that Wetler's performance suffered from persistent quality control problems; and 3) there were recent reports of delinquent deliveries, which were found to outweigh two reports of satisfactory performance and deliveries. On February 7, the contracting officer informed Wetler that it had been determined to be nonresponsible for reasons which traced those of the survey report. First, Wetler's proposed subcontractor, PAI, was found not to have the technical capability to perform the plating operation. Second, the following deficiencies were identified in Wetler's quality assurance program: 1) its Material Review Board (MRB) procedures, a system for controlling nonconforming material, did not meet the requirements of & 3.7 of MIL-I-45208, as Clause E.4.b of the solicitation required; and 2) Wetler's in-process inspection reports did not meet the requirements of & 3.2.2 of MIL-I-45208, also required by the specifications, as evidenced by the fact that Wetler had not maintained

in-process inspection records for any of its prior Postal Service contracts. Finally, the contracting officer cited recent reports which showed Wetler's poor performance record on other postal contracts. Specifically, three outstanding Purchase Orders were delinquent: No. 19-86-P-1400, current due date, 12-23-88; No. 19-86-P-1864, current due date 1-03-89; and No. 19-87-P-0384, current due date, 2-15-89.[1/]

Wetler responded, addressing each of the issues raised by the contracting officer. Wetler contends that it did not name PAI as the subcontractor for the plating process, but that Automatic Plating would perform that operation, calling the contracting officer's statement to the contrary an "outright falsehood." With respect to the quality control issues, Wetler states that it has changed its MRB procedures to bring it into compliance with
& 3.7 of MIL-I-45208. It states that in its opinion, its in-process inspection procedures are adequate. Next, Wetler alleges that the contracting officer unfairly focused on a few isolated incidents of delayed deliveries and rejections, instead of viewing the entire course of Wetler's performance history, giving a distorted picture of its performance capabilities.

In response to the protest, the contracting officer states that he relied heavily on the pre-award survey report in making his nonresponsibility determination and that the survey report stated that PAI would be the plating subcontractor. He states that Wetler has failed to demonstrate affirmatively that it has a satisfactory quality assurance program. He also notes that, notwithstanding prior successful completion of Postal Service contracts, recent unsatisfactory performance reports show that Wetler has not met the necessary standards of responsibility with respect to performance.

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 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.

Craft Products Company, P.S. Protest no. 80-41, February 9, 1981. "When the decision of the contracting officer is based on the judgment of technical personnel, the protester must show that such judgment 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

[1/]All three of these purchase orders remained open as of March 3, the date of the contracting officer's report on the protest.

inaccurate or the resulting responsibility determination was unreasonable." Fairfield Stamping Corporation, P.S. Protest No. 88-04, June 3, 1988; ARA Food Services Company, P.S. Protest No. 78-35, September 5, 1978.
In its protest, Wetler offers no evidence that the judgment of the technical personnel was fraudulent, prejudiced, or arbitrary and capricious. Wetler has neither negated the finding that PAI does not have the required technical capability, nor supplied information about Automatic Plating sufficient for an evaluation to be made of its capabilities. Therefore, Wetler cannot show that the determination was inaccurate in questioning the adequacy of Wetler's plating capacity. As to the quality assurance matters, although Wetler cites one change it made in its MRB procedures, it merely disagrees with the contracting officer with respect to the remaining in-process procedures. Such disagreement is insufficient to show that the contracting officer's determination was unreasonably arbitrary, capricious, or based on insufficient evidence. See Michaletz Trucking Inc., P.S. Protest No. 85-28, June 14, 1985. Finally, both the contracting officer and Wetler agree that some of Wetler's past performance records are satisfactory. It is not unreasonable, however, for the contracting officer to rely more completely on recent unsatisfactory reports than on earlier satisfactory ones. See Graphic Technology, Inc., P.S. Protest No. 85-66, December 30, 1985; CCP Manufacturing Corporation, P.S. Protest No. 85-31, July 3, 1985; see also Becker and Schwindenhammer, Comp. Gen. Dec. B-225396, March 2, 1987, 87-1 CPD & 235.

Accordingly, this protest is denied.

[**DDAnna for:**]
William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 5/4/93]