Protest of	)	
	)	Date: August 31, 1989
INNOVATIVE SALES BROKERS, INC.	)	
	)	
Solicitation No. 337100-89-A-0051	)	P.S. Protest No. 89-41

DECISION

Innovative Sales Brokers, Inc. (ISB), timely protests its rejection as nonresponsible under Solicitation No. 337100-89-A-0051, issued by the Contracts Branch, National Inventory Control Center, Sommerville, NJ, for 69,600 units of P.S. Item 07516, printer ribbon cartridges.[1/] The solicitation was issued on March 8, 1989. Twelve offers were received, with unit prices ranging from $3.29 each to $7.40 each.[1/]

ISB submitted the lowest offer. Although offers were due by 4:30 p.m. on April 7, ISB's offer was late, being received the following day. In accordance with Procurement Manual (PM) Section 4.1.3 d.2 and the solicitation provision A-4, "Late Submission and Modification of Proposals", ISB's late offer was accepted for consideration since ISB's offer appeared to have an overriding price benefit to the Postal Service and considering it would not delay the evaluation process.
The contracting officer wrote ISB on April 12, advising ISB that its late offer would be considered, but requesting that the offeror verify its price, since it was lower than the price being paid ($3.35 per unit) under an existing contract. The letter also requested that the offeror prepare and submit to the contracting officer information concerning, but not limited to, its finances, performance capabilities, and warranties. According to the contracting officer, the protester neither verified its offer nor otherwise responded to the April 12 letter.

[1/]P.S. Item 07516 is a cartridge ribbon intended for use with Centronics printers which have been converted to 704 cartridge feed. According to the solicitation, the ribbon was to be made in accordance with USPS Specification USPS-R-998B(ESC) as modified in various respects by Section B of the solicitation. One of those modifications, set out at page 3 of the solicitation, changed the minimum length of the ribbon to be contained within the cartridge from 147 feet to 190 feet.

[2/]Although the solicitation was to be negotiated, it provided that price would be the most significant evaluation factor.

At the Postal Service's request, the Defense Contract Administration Service (DCAS) conducted a pre-award survey of ISB and its proposed subcontractor, Perfect Image, Inc. In the course of the survey, ISB advised DCAS that it was not aware that the specification required the cartridges to contain 190 feet of ribbon.[1/] In its pre-award survey, DCAS concluded that while ISB has the production capability to provide cartridge printer ribbons, neither ISB nor its subcontractor can provide a cartridge with 190 feet of ribbon which meets the length requirements of the solicitation, and thus found them technically unacceptable.[1/] In fact, ISB felt that the requirement for inserting 190 feet of ribbon into the cartridge is "physically impossible."

Concerning ISB's financial capability, DCAS asserts that the contractor furnished it only a cash flow projection, providing neither financial statements, a listing of current (or recently past contracts) for the same of similar items, nor a statement from its bank or financial institution stating the total amount of its line of credit and the amount currently outstanding. The DCAS pre-award survey notes that a copy of the Dun and Bradstreet report, dated April 19, concerning ISB was reviewed, which report revealed that on April 7 a voluntary Chapter 7 bankruptcy petition was filed by Innovative Sales Consultants, Inc. DCAS stated that the bankrupt company is now conducting business as ISB. Moreover, ISB's Vice President of Marketing (who signed ISB's proposal relating to this solicitation) was a participant in Innovative Sales Consultants, Inc. However, the exact relationship between ISB and Innovative Sales Consultants, Inc., is unclear because of ISB's failure to provide both financial statements and information concerning the bankruptcy of Innovative Sales Consultants, Inc.

DCAS concluded, based primarily on the lack of financial statements of ISB, and the recent bankruptcy liquidation of Innovative Sales Consultants, Inc., that ISB has not demonstrated an overall financial condition sufficient to perform under the solicitation. In addition, ISB does not have a line of credit. The line of credit of one of ISB's stockholders, Mr. Hamib Simantob, committed to ISB for this solicitation as necessary, could only be evaluated as indicative of the assets of ISB, not its liabilities, since no direct relationship between the financial condition of ISB and Mr. Simantob, apart from the commitment of a line of credit, could be established.

By letter dated May 15, the contracting officer advised ISB that had been found nonresponsible because, inter alia, of its lack of technical capability to meet the requirement and specification of the solicitation and its failure to provide financial information, and would not be considered for award. On May 18, a contract for the solicited item was awarded to NER Data Products.

[3/]The procurement specialist informed the DCAS representative, in a telephone conversation during the pre-award survey, that
the procurement specialist had at least two conversations with ISB's Vice President of Marketing prior to the offer due date concerning the amount of ribbon required to be inserted in the cartridge.

[4/]In a May 9 telephone conversation between the Procurement Specialist and the DCAS pre-award monitor, DCAS advised that
the subcontractor was determined to be unsatisfactory in both
its quality/inspection systems or procedure and its financial capability.

On May 24, ISB submitted a protest that disputed the contracting officer's determination of nonresponsibility, alleging that the statement that the protester lacks technical capability suggests that the solicitation was restricted to manufacturers, and is closed to dealers, distributors, and other vendors; that it has received a firm commitment for financing from First Interstate Bank in the amount of $600,000; and that although the protester's subcontractor does not manufacture the solicited item on a scheduled production basis, that is no indication of the subcontractor's ability to do so.[1/]

In his report, the contracting officer states that he relied upon the pre-award survey performed by DCAS since ISB had declined to submit pre-award information. The DCAS pre-award survey states that the protester cannot provide a ribbon which meets the requirements of the solicitation. Moreover, the contracting officer states that sufficient financial information was not provided.

Discussion

The legal standard by which this office reviews a contracting officer's determination that an offeror in 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 offi- cer considerable discretion is 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; see also 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; Fairfield Stamping Corporation, P.S. Protest No. 88-04, June 3, 1988.

PM Section 3.3.1 a. sets forth general standards for the determination whether a prospective contractor is responsible, as follows:

> [c]ontracts 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, including, when necessary, the responsibility of its proposed subcontractors.

[5/]The protest also presented rebuttal to the contracting officer's concerns about the subcontractor's quality assurance manual. In view of our disposition of the principle issues presented, we do not reach this issue.

In order to be determined responsible, a contractor must, inter alia, have financial resources adequate to perform the contract (PM 3.3.1 b.1), be able to comply with the required performance schedule (PM 3.3.1 b.2), and have the necessary production facilities (PM 3.3.1 b.6). As stated at PM 3.3.1 e.1, in the absence of information clearly showing that a prospective contractor meets standards of responsibility, the contracting officer must make a determination of nonresponsibility.

The DCAS pre-award survey was conducted less than three weeks after bid opening. The foremost deficiency of ISB and its subcontractor, which DCAS stated, is that neither ISB nor its subcontractor can provide the required cartridge containing 190 feet of ribbon. Moreover, ISB asserted that it is physically impossible to insert 190 feet of ribbon into the cartridge. On this basis alone, the contracting officer could have determined ISB to be a nonresponsible offeror. Such a contracting officer's determination of nonresponsibility would have been sufficiently supported by the pre-award survey so as not to be arbitrary, capricious, or not reasonably based on substantial information.

Not to rest his determination exclusively on technical nonresponsibility, the contracting officer analyzed the financial capability of ISB. As to financial capability, the pre-award survey asserted that the offeror did not provide the specific financial information requested, on various occasions, for financial analysis. In addition, ISB provided no insight into the bankruptcy of Innovative Sales Consultants, Inc., which employed the same people at the same address as ISB and which ISB's current Vice President of Marketing was involved. Although DCAS was hampered by the lack of information so much that it could not make a determination of ISB's financial resources, DCAS could properly determine that ISB did not demonstrate an overall financial condition sufficient to perform. The contracting officer's determination of financial nonresponsibility is sufficiently supported by the pre-award survey so as not to be arbitrary, capricious, or not reasonably based on substantial information.

There is nothing in that determination to support the protester's contention that the solicitation was improperly restricted to manufacturers, or that its subcontractor's ability to perform was improperly evaluated.

The protest is denied.

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

[checked against original JLS 5/24/93]