Protest of	)	
	)	Date: August 10, 1990
CHARLIE L. THOMPSON	)	
	)	
Solicitation No. 010-233-90	)	P.S. Protest No. 90-35

DECISION

Mr. Charlie L. Thompson protests the determination of the contracting officer, Springfield, MA, Transportation Management Service Center, that he is a nonresponsible prospective contractor under Solicitation No. 010-233-90 for highway transportation service between Hartford and Staffordville, CT. Mr. Thompson was the low bidder.

The contracting officer recites two grounds in support of his determination: lack of adequate financial resources and a record of unsatisfactory service under another contract. The contracting officer states that Mr. Thompson failed to return a form listing his assets and liabilities, and that a commercial credit check disclosed various collection accounts and judgments against Mr. Thompson within the past three years. The contracting officer also states that under highway contract route (HCR) No. 06033, Mr. Thompson was counseled regarding his poor service in April, 1989, and again in February, 1990. In April, 1990, the contracting officer sent Mr. Thompson a three-day cure notice. A decision was made not to renew the contract when it expired at the end of June, 1990.

In his protest, Mr. Thompson argues that he was not to blame for the service failures under HCR No. 06033 and that unnamed postal officials at Hartford do not like him and wanted to remove him from the route. With respect to his financial responsibility, Mr. Thompson asserts his understanding that the only financial resources required were sufficient assets to operate the route until the first payment in 28 days.

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.

Craft Products Company, P.S. Protest No. 80-41, February 9, 1981; 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.

Procurement Manual (PM) Section 3.3.1 a. sets forth general standards for determining whether a prospective contractor is responsible. A responsible contractor must have "financial resources adequate to perform the contract" (PM 3.3.1 b.1.) and a good performance record (PM 3.3.1 b.3.). "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." PM 3.3.1 e.1.

The contracting officer's determination was not arbitrary or capricious, and was based on substantial evidence. Lack of adequate financial resources is sufficient to justify a finding of nonresponsibility. David W. Baker, P.S. Protest No. 87-76, August 10, 1987. Lacking the requested financial information from the prospective awardee, the contracting officer acted well within his discretion in relying on information from an independent financial-information source. Marine & Industrial Insulators, Inc., P.S. Protest No. 87-31, July 1, 1987; Gil Trucking, P.S. Protest No. 84-87, February 11, 1985.[1/]

A nonresponsibility determination may also be justified by the prospective awardee's prior inadequate performance, even if the latter disputes the contracting officer's view of that performance. Jindal Builders and Restoration Corporation, P.S. Protest No. 90-10, April 19, 1990. The evidence of Mr. Thompson's recent unsatisfactory performance under HCR No. 06033 -- documented instances of late or omitted service, two conferences to discuss service deficiencies, issuance of a three-day cure notice, and a decision not to renew the contract -- adequately supports the contracting officer's determination.

The protest is denied.

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

[checked against original JLS 6/4/93]

[1/]The suggestion that the only financial resources required are funds sufficient to operate the route until the initial payment in 28 days is incorrect. See AHJ Transportation, Inc., P.S. Protest No. 89-19, September 7, 1989. In any event, the protester has not affirmatively demonstrated even this level of financial responsibility.