

June 18, 1996

P.S. Protest No. 96-07

G.T. TRANSPORTATION INC.

Solicitation No. 800-22-96

DIGEST

Protest contending that contracting officer improperly found bidder nonresponsible for highway transportation contract is denied; reasonable basis for determination has been shown.

DECISION

G.T. Transportation Inc. protests the determination that it was a nonresponsible bidder on a solicitation for the highway transportation of mail.

Solicitation No. 800-22-96 was issued January 17, 1996, by the Western Area Distribution Networks Office, Denver, CO, seeking sealed bids for the transportation of mail between the Cheyenne, WY, Processing and Distribution Center and Rock Springs, WY. The schedule called for two daily round trips, involving 387,530 estimated annual miles and 9,040 estimated annual hours. The contractor was to provide two two-axle tractors and three 53-foot tandem axle trailers.

Of 26 bids which were opened on February 20, that of G.T. Transportation Inc. was second lowest at an annual rate of \$320,082. The lowest bidder failed to respond to the contracting officer's inquiry for financial information and was found nonresponsible.

G.T. Transportation Inc. was asked to complete a pre-award questionnaire describing its business history, facilities, vehicles, and other information relevant to the determination of its responsibility. The information provided revealed that G.T. Transportation Inc. was a corporation established in September, 1994, which was owned and operated by James G. Taylor of Westminster, CO. Prior to the incorporation, Mr. Taylor had performed mail

transportation contracts as a sole proprietor under the name G.T. Transportation.¹ The sole proprietorship had operated emergency and permanent mail transportation contracts in southern California. It currently operates one contract out of Eureka, CA.²

Mr. Taylor indicated that he would perform the Wyoming service with two 1990 Kenworth tractors which were already owned,³ and that he would purchase three new Wabash dry freight vans. He identified himself and three other named individuals as the initial drivers, and provided an asset and liabilities statement for the corporation which identified assets of \$721,500 and liabilities of \$504,000. The assets and liabilities included a home worth \$190,000 which was subject to a \$130,000 mortgage.

By letter dated March 1, the contracting officer notified the corporation that he could not make a positive determination of its responsibility. The reasons given for that conclusion included the following:

There is insufficient evidence to demonstrate a long-term self-sufficiency and financial viability of this business entity. There are long periods (up to four years) during which no Postal contracts were held; there is no evidence that any other freight hauling ventures were undertaken during these periods. Moreover, there is no evidence that during the past approximately four to five years this business entity has been engaged in any tractor-trailer operations.

I find a connection between the business entity and the Steve Foose Trucking/Colorado Mail Services, Inc. entities. The connection is/was not only of a legal nature but there is also evidence that it affects [sic] management and day-to-day operations. This finding is coupled with the fact that the Postal Service has experienced serious performance problems with Steve Foose Trucking/Colorado Mail Services, Inc. Performance problems have led to a default termination of a tractor-trailer route operating in Colorado and Wyoming.

The bidder did not provide, as required, vital information needed to make a positive determination of responsibility. The specific required information referred to is the name and phone numbers of both the vehicle supplier and the financial institution which could verify that vehicles would be available prior to the start of the service.

¹ Materials submitted by the protester are not wholly consistent in distinguishing between the former sole proprietorship and the subsequent corporation.

² That contract is HCR 95536. That contract was awarded to Mr. Taylor "d.b.a. G.TTransp." on August 26, 1994. The contract annual rate, as awarded, was \$49,173.

³ Copies of Colorado Registration cards for three 1990 Kenworth tractors and three additional International Harvester tractors were supplied. The registrations are in the name "GT Transport," and include the names of "Steve Foose Trucking Inc." or "Colorado Mail Services," each of 7030 E 54th Place, Commerce City, CO, as operator/lessee.

By letter dated March 8, G.T. Transportation Inc. protested the determination of nonresponsibility to the contracting officer. The protest notes that the sole proprietorship has existed since 1986, when it was located in the Palm Springs, CA, area, where it operated various contracts from Palm Springs, including one "which involved five trucks and five trailers with lift gates." The Palm Springs contracts, first awarded as emergency contracts and then as regular contracts, were terminated for the Postal Service's convenience when service was moved to the new Redlands, CA, General Mail Facility, after which "we operated several emergency contracts from the Redlands office."

Mr. Taylor moved the business to Colorado for personal reasons, intending to participate in mail transportation contracts; in the meantime, he has owned and leased out trucks, driven trucks, and operated a tire and truck maintenance business. The only current contract, HCR 95536, which involves a 24' bobtail truck, "has been run smoothly and efficiently."

Mr. Taylor states that his business has been profitable for ten years. He contends that he has already demonstrated that he owns "quality trucks and has the financing approved for brand new trailers." Mr. Taylor acknowledges that there is a family connection between himself and Steve Foose, but denies that the connection should affect his bid. G.T. Transportation Inc. is a separate entity with which Mr. Foose has no connection.

The protester concludes:

I'm well aware that this run was bid at a low profit margin, requiring a great deal of close supervision and hard work. However, with my mechanical and driving capabilities, and the work ethic I feel I possess, I have no doubt that my company could provide excellent service on this contract. This entire business was created for the sole purpose of performing postal contracts, and we wish to remain in that capacity.

Upon receipt of the protest, the contracting officer forwarded it to this office for consideration. However, at the same time, he requested the bidder to furnish corporate and individual income tax returns for the past three years, a bank statement of the corporation's cash assets, and "copies of vehicle registrations or titles for the corporation's vehicles and major equipment." Upon receipt of some of the requested information, the contracting officer asked for additional information, which was supplied.

The contracting officer's statement describes the solicited service as "the main link between Cheyenne and the south and west portions of Wyoming" and "a vital link for mail going from . . . Utah to the entire state of Wyoming." He notes that the route traverses "one of the worst stretches of interstate highway in the country," and that "[w]e have traditionally had difficulty providing consistently high quality mail service in this area."

The contracting notes the following problems relating to G.T. Transportation Inc.'s financial responsibility:

-- The tractors which are proposed to be used on the contract are owned by Mr. Taylor, not the corporation.

-- There was no verification that the home shown on the statement of assets and liabilities was owned by the corporation.

-- As previously noted, the corporation had failed to provide the names and phone numbers of contact points concerning the source and financing for trailers.⁴

-- While the corporation's asset statement shows substantial cash assets, the bank records relating to the account show significant variances in the available balance, which, at the lowest indicated levels, would not be sufficient to operate the contract. The corporate tax forms reflect "an unfavorable assets to liabilities ratio and very minimal liquid assets." A business credit report reflects no credit history for the corporation and the existence of a tax lien.

With respect to past performance, the contracting officer makes the following points:

-- The corporation has never held a postal transportation contract. Mr. Taylor has operated contracts as a sole proprietor only intermittently. Several of those were emergency contracts operated only briefly (from six days to four months).

-- Review of the record of the sole proprietorship's performance on the Eureka, CA, contract, discloses the issuance of five irregularity reports over fourteen months which "raise concern about service failures." "This . . . performance history on a smaller one-truck contract makes an unconvincing case for the award of [this larger] contract"

Concerning the association of G.T. Transportation with Steve Foose Trucking/Colorado Mail Service, the contracting officer notes:

-- While Mr. Foose is not involved with the corporation, the corporation proposes to use the Foose facility in connection with this contract. The phone number provided to reach Mr. Taylor is answered as "Foose Trucking." Mr. Taylor has indicated that drivers employed by Steve Foose would be used to begin the contract service. The tractors proposed to be used for the service are currently leased to Foose Trucking, and Mr. Taylor has signed contract documents as a vice-president of Colorado Mail Services, of which Mr. Foose is president.

-- A highway transportation contract with Foose Trucking, HCR 80192, Denver BMC - Gillette, WY, was terminated for default due to "severe performance problems." "I cannot overlook at least the possibility of a recurrence of this type of performance."

The contracting officer supplemented his statement in response to this office's request. The supplement included the following information:

-- Foose Trucking/Colorado Mail Service operates four current postal contracts in the Pacific Area, one of which was renewed subsequent to the termination of HCR

⁴ The bidder's submission did, however, identify the proposed source of the trailers as "Complete [F]et."

80192. The contracting officer was unable to determine whether any of the leased equipment identified by the bidder was involved in performance of those contracts.

-- The performance problems associated with HCR 80192 occurred on multiple dates in 1992 (twelve occurrences), 1993 (thirty-nine occurrences) and early 1994 (four occurrences), including lateness caused by equipment failures, lack of appropriate documentation, and unsatisfactory drivers; safety violations; failures to stop at postal facilities; and creating environmental hazards by spilling fuel. At least one of the drivers proposed to operate this contract had operated HCR 80192.

-- While the contracting officer has no reason to believe that Mr. Taylor or GT Transportation Inc. were directly connected to the problems associated with HCR 80192, he "was concerned that Mr. Taylor had had a long term exposure to a management style which, on some contracts, produced unacceptable performance."

The protester did not respond to the contracting officer's submissions.

DISCUSSION

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 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, February 9, 1981.

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.), a good performance record (PM 3.3.1 b.3.), the "necessary organization, experience, accounting and operational controls, [and] technical skills . . . or the ability to obtain them" (PM 3.3.1 b.6.). "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.

Where a new corporation proposes to provide contractual services, its responsibility may be determined by evaluating the responsibility of its principal officers and shareholders. *Todd's Letter Carriers, Inc.*, P.S. Protests Nos. 92-39;40;41, October 21, 1992. Recent unsatisfactory prior performance, even without termination for default, may be the basis for a determination of nonresponsibility. *Id.* Lack of adequate financial resources can also justify a finding of nonresponsibility. *Charlie L. Thompson*, P.S. Protest No. 90-35, August

10, 1990.

In this case, the bidder and its principal have presented a limited record of previous past performance involving postal contracts of smaller size and involving smaller equipment than that required here. While Mr. Taylor has been forthcoming in providing information concerning the corporation's assets and his own, that information reflects some confusion between them. We agree with the contracting officer that it is unlikely that the house listed as a corporate asset is one in fact, and it is unclear why the tractors proposed to be used are Mr. Taylor's personal assets rather than corporate ones. The bidder's lack of similar experience and its financial imprecision may reasonably add support to the conclusion that it does lack the skills necessary to perform the service. See, e.g., *Cimpi Express Lines, Inc.*, P.S. Protest No. 88-57, December 15, 1988.

The fact that Mr. Taylor has been associated with another contractor (Steve Foose Trucking), some of whose contracting efforts have not been successful, seems of less relevance than Mr. Taylor's individual past contracting experience. There is no indication that Mr. Taylor was directly involved with those past performance difficulties. Further, although we acknowledge that responsibility determinations need not be fully consistent, and the conclusion that an offeror is responsible in one instance need not require that the same offeror be responsible in another,⁵ the fact that Foose's default has not prevented the subsequent renewal of other of its contracts in the same general area casts some doubt on the relevance of its performance weaknesses to more remote entities only tangentially related to the default.

The contracting officer's determination of nonresponsibility is adequately supported. The protest is denied.

William J. Jones
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Contract Protests and Policies

⁵ See, e.g., *P.J. Company*, P.S. Protest 96-06, June 14, 1996; *MCI Constructors, Inc.*, Comp. Gen. Dec. B-240655, November 27, 1990, 90-2 CPD 431.