

**June 3, 1999**

**P.S. Protest No. 99-12**

## **CLINT CASTERLINE**

**Solicitation No. 980-12-99**

### **DIGEST**

Protest of failure to receive award of mail transportation contract is denied. Determination that offeror was not capable was reasonable when offeror could not operate route personally along with other contracts currently held, offeror did not provide requested evidence of financial capability and of his ability to obtain necessary operational resources.

### **DECISION**

Mr. Clint Casterline protests his failure to receive award of a mail transportation contract.

The Western Area Distribution Networks Office, Seattle Branch, issued solicitation 980-12-99 for Highway Contract Route (HCR) 59235, for one round trips daily (except Sundays and holidays) between Wolf Point, and Bainville, MT, stopping at three additional post offices *en route*. The route requires a 300 cubic foot van and involves an estimated 43,036 annual schedule miles and 1,469 estimated annual schedule hours. Solicitation section M 1. a. provided, in part that “[f]irst consideration will be given to proposals which meet all of the service requirements specified. If one or more proposals offers service that meets the service requirements, award will be made to the low, responsible offeror.”<sup>1</sup>

Mr. Casterline submitted the lowest offer at the annual rate of \$29,700. Subsequently, the Seattle Branch requested that he clarify his proposal by supplying a cost work-

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<sup>1</sup> “Responsibility” is the term previously used to describe what the current regulations refer to as “capability.” See, *RAF Technologies, Inc.*, P.S. Protest No. 98-24, January 11, 1999.

sheet, omitted from his original proposal. The offeror was also requested to provide a financial plan to document “how you intend to pay operational costs/wages . . . before you receive your first paycheck” and was requested to provide documentation, such as copies of bank statements, to support his financial plan.

The request further noted the assumption that Mr. Casterline would operate the route himself, since the amount proposed would not cover the wages and benefits established by the Department of Labor pursuant to the Service Contract Act (SCA) if a hired driver were to be used. Since Mr. Casterline was currently personally operating the contract for HCR 59237, Wolf Point to Raymond, MT, he was asked to explain how he would operate both routes or pay the SCA wages applicable if that contract were operated by a hired driver.

Mr. Casterline supplied the requested worksheet, which allocated all hours of operation to “Contractor’s Wages,” (indicating that he did not intend to use a hired driver), but which understated the annual hours by 269 hours. He submitted a financial plan which made reference to a Visa Card line of credit and to a low-four-figure bank account, but provided no documentation for either account. Mr. Casterline explained that he intended to have his son-in-law drive the existing route, but did not address the SCA wage issue. Finally, Mr. Casterline’s documentation identified only one currently owned vehicle, the Ford pickup truck currently being used on HCR 59237 to operate HCR 59235.

The Seattle Branch analyzed the information supplied and inquired of the Administrative Officer, Wolf Point, concerning his performance on his existing route. The contracting officer concluded, for the following reasons, that Mr. Casterline could not be found capable to operate the solicited route:

- Failure to document his financial capability with respect to his bank account and his Visa line of credit.
- The inability to operate HCR 52937 economically while paying hired driver wages.<sup>2</sup>
- Failure to explain how the vehicle already dedicated to the existing contract could be used on the new contract.
- An unfavorable evaluation by the Wolf Point Administrative Officer, including five unexplained irregularities (late arrivals) out of a total of nine irregularities between September 12, 1998, and January 29, 1999, and complaints about Mr.

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<sup>2</sup> The contracting officer calculates that amount to be \$36,921 annually. The annual rate for that contract is \$28,056.

Casterline's attitude from postmasters at two of the five stops on his current route.

The contract was awarded to the second low offeror, Ms. Shirley Aspenlieder, at \$30,122.89.

Mr. Casterline's protest complains of the award to Ms. Aspenlieder, questioning her experience in operating a mail transportation contract, whether she had the necessary primary and backup equipment for the route (noting that just after the contract was awarded, he sold Ms. Aspenlieder a "mail box" (cover) for her pickup truck), and whether she had timely submitted all the necessary contract paperwork. Mr. Casterline notes his lower price, his fourteen year's experience, contends that he has "two vehicles already on a route . . . and was willing to purchase another vehicle," complains that "Wolf Point had a lot to do with me not getting the contract," and notes that his earlier efforts to have the route transferred to him by the previous contractor were unsuccessful.<sup>3</sup>

The contracting officer's statement notes the reasons, summarized above, why Mr. Casterline was found not to be capable. In addition, it summarizes the bases on which Ms. Aspenlieder was found capable, asserting that while she lacked personal experience with trucking, she had several years of business experience, and that her husband, who would serve as backup driver, had such experience. With respect to equipment, the contracting officer noted "recognized past practice that the supplier has until the actual effective date of the contract to procure the vehicle and present it for inspection," and that Ms. Aspenlieder's plan to lease a backup vehicle, if necessary, until she could acquire one was also acceptable. The statement asserts that the contractor's paperwork was timely submitted; the only paper being provided after award was the contractor's waiver of notice of award, a form necessitated by delay in making the award.

Mr. Casterline submitted comments responding to the contracting officer's statement. His comments begin by asserting that he does "not have anything against" the awardee, but has protested because of his objections to the Wolf Point AO's efforts "to keep me from the route," and repeats his complaints that he was not allowed to assume the previous contract for HCR 59235 after having been told by a representative of the Seattle Branch that he could.

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<sup>3</sup> Mr. Casterline advises that the Seattle Branch declined the transfer of the contract from the previous contractor to him for \$38,700 because the price was "too high." Seven of the eleven offers received in response to the solicitation were below that amount, which would appear to vindicate the Branch's analysis. As a result, there is no reason to draw an adverse inference from its unwilling to allow the transfer at that rate.

In rebuttal to the specific points raised by the contracting officer, Mr. Casterline states that he had advised the Seattle Branch that he intended to operate HCR 59237 as a partnership with his son-in-law, and that the evidence of insurance he supplied demonstrated that he had two vehicles currently available for HCR 59237, and that he had said that he would purchase another. He asserts that his worksheet assigned 1200 hours to his driving and assigned the remainder (which the contracting officer described as omitted), to “miscellaneous because of having to pay higher wages when I have substitute drivers.”<sup>4</sup>

The majority of Mr. Casterline’s response is devoted to refuting the concerns expressed about his performance on his existing contract. Armed with testimonials from other contractors and postal employees, he disputes the specifics of the objections raised, and complaining of the efforts of the Wolf Point administrative official to discredit him.

## DISCUSSION

This office’s reviews of determinations of . . . capability are limited[.] The contracting officer’s determination of an offeror’s lack of capability is subject to limited review by this office: A capability 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 an evaluation. Accordingly, we will not disturb a contracting officer’s determination that a prospective contractor is not capable, unless the decision is arbitrary, capricious, or not reasonably based on substantial information.

*Victor Partners*, P.S. Protest No. 98-34, March 19, 1999 (citations and internal quotations omitted).

One element of capability is the ability “to meet the require or proposed delivery schedule, considering all existing commitments . . . .” Purchasing Manual (PM) 2.1.7 c.3.(b)(2). “The extent to which a bidder’s other contract obligations may impact his or her ability to perform new service is a reasonable factor to consider in determining responsibility [now capability].” *Marcy L. Baker*, P.S. Protest No. 94-16 June 24, 1994.

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<sup>4</sup> Actually, on a supplement to the worksheet, Mr. Casterline divided his total hours for “Contractor Wages” into 1200 hours of personal driving and 269 hours of personal supervision, all at \$8.81 per hour, but instead of transferring all 1469 hours to line 17 of the worksheet, transferred only 1200 hours. The worksheet does not otherwise provide amounts for salary and benefits for the additional 269 hours which Mr. Casterline did not plan to drive.

It was reasonable for the contracting officer to inquire how Mr. Casterline would operate this new route in addition to his existing contract, and the request for clarification specifically pointed out the economic issue presented by the use of a hired driver on that route. Mr. Casterline's response did not address to the economic issue. While it indicated that his son-in-law "would like to drive the route," it gave no indication of Mr. Casterline's intention to operate the route in partnership with his son-in-law. In the absence of any such an indication, it was not unreasonable for the contracting officer to conclude that Mr. Casterline had not responded adequately to the expressed concern, and, accordingly, to conclude that he could not operate both routes economically.<sup>5</sup>

Similarly, Mr. Casterline's failure to provide information about his financial resources is an adequate basis for the contracting officer's determination. *Desiree Dais*, P.S. Protest No. 94-55, February 7, 1995. The lack of this information, coupled with his uncertain responses concerning the source of a vehicle available to perform the service raises reasonable questions about his "ability to obtain[] resources . . . adequate to perform the work," another element of capability. PM 2.1.7. c.3.(b)(1).<sup>6</sup>

Because these grounds are sufficient to support the contracting officer's determination of Mr. Casterline's lack of capacity with respect to this route, we need not resolve the difference between the parties' views of Mr. Casterline's current contract performance.

Finally, to the extent that the protest challenges the contracting officer's affirmative determination of Ms. Aspenlieder's capability, it involves an area where our review is limited. "An affirmative determination of capability is ordinarily not for our review absent evidence of fraud or bad faith on the part of the contracting officer or a failure to apply definitive capability criteria." *Four Star Aviation, Inc.*, P.S. Protest No. 98-28, March 1, 1998. The protest's evidence is insufficient to provide a basis for our review. *Steve Kuntz*, P.S. Protest No. 98-33, March 8, 1999.

The protest is denied.

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<sup>5</sup> Whether the Postal Service need accommodate a sole proprietor's request to transfer an existing contract to a partnership (a procedure requiring the Postal Service's approval, *see, generally*, PM 6.5.4 c.) in order to take on additional work, or whether under the terms of the partnership Mr. Casterline's son-in-law would, in fact, be exempt from entitlement to Service Contract Act wages and benefits (a matter within the jurisdiction of the Department of Labor *see, e.g., Victor Partners, supra*) are issues we need not address.

<sup>6</sup> It is not sufficient for Mr. Casterline to contend, after the fact, that his insurance forms demonstrated that he had vehicles available to serve the route when his submissions list only the truck currently in use on HCR 59237 and assert "I haven't purchased another vehicle yet" and "I was planning on purchasing another vehicle[. . .] but it is not acquired now" without indicating when and how the required vehicle would be acquired.

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