

August 6, 1999

P.S. Protest No. 99-15

TRANS UNION TRANSPORT

Solicitation No. 150-45-99

DIGEST

Protest of determination of offeror's lack of capability to perform mail transportation contract is denied. Protester's contention that transportation specialist failed to attempt to contact it to arrange pre-award conference fails for lack of proof; record supports determination of offeror's lack of financial capability.

DECISION

Mr. Eric B. Harrison, a sole proprietor trading under the name Trans Union Transit, protests the contracting officer's decision not to award him a highway mail transportation contract.

Distribution Networks, Allegheny Area, issued solicitation 150-45-98 for service on Highway Contract Route 190LS between the Philadelphia, PA, Processing & Distribution Center and the New Jersey Hub and Spoke Program (HASP) facility on two round-trips daily except Mondays and days after certain holidays. The one-way distance between the facilities was about 120 miles, and the solicitation contemplated 146,780 estimated annual schedule miles and 3,992 estimated annual schedule hours, using a single-axle tractor and a 45 foot trailer.

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 pro-

posals offers service that meets the service requirements, award will be made to the low, responsible offeror.”¹

Forty-nine offers were received in response to the solicitation, of which that of Trans Union Transport was eighth lowest, with an annual rate of \$143,750. By letter dated February 10, 1999, Trans Union was advised that its offer was being considered for award, and it was asked to complete a pre-award questionnaire and provide various other items of information.

Based upon Mr. Harrison’s statement of assets and liabilities, which showed substantially more liabilities than assets, and a credit report which the office had separately obtained, the contracting officer had concerns about his finances. A transportation specialist recommended against award on the basis of this financial information in a pre-award memorandum which also noted her inability to reach Mr. Harrison by telephone despite several attempts on February 23 and 24. Another transportation specialist and the contracting officer concurred in that recommendation.

Mr. Harrison’s protest recites that he contacted the transportation specialist on March 10, and was advised that the specialist had been unsuccessful in reaching him; that he had not received the award, and that he had been sent a letter advising why he had not received the award. On March 13, Trans Union received notice that award had been made to the ninth lowest offeror, CA Express, Inc., at an annual rate of \$144,995.

Trans Union’s protest was received by this office on March 24. It contends that had the contract specialist tried to reach the offeror, a message could have been left with an answering service and Trans Union would have returned the call “right away.” Noting that its price was lower than that of the awardee, the protester asks that the award be reviewed.

The contracting officer’s statement recites the facts set out above concerning the identified financial concerns and the inability to reach Mr. Harrison, and further notes that Trans Union’s contract worksheet was inconsistent with his offered price.² The statement concludes that “award to Trans Union Transit would not be in the best interests of the USPS and would be placing the Postal [S]ervice operations at risk, because [it] had not offsetting assets to cover costs in excess of [its] income.”

¹ “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.

² The worksheet, which is not part of the offer, allocates the annual rate among various cost elements for the purpose of subsequent adjustments. Information in an offeror’s worksheet may be considered in the determination of the offeror’s capability. See, e.g., *FWH Motor Transit, Inc.*, P.S. Protest No. 84-30, May 21, 1984. Although the total on Trans Union’s worksheet equaled its offer, that total was less than the aggregate of the various cost components listed on the worksheet.

In response to this office's inquiry, the contracting officer supplemented his statement, providing the following additional information:

— The credit report reflected greater liabilities than shown on the statement of assets and liabilities, and delinquencies of 30 to 60 days on various monthly payments. The credit report also provides a "New National Risk Score," relating to the debtor's likelihood of paying debts, which was far less favorable than those usually seen by the contracting office.

— A contractor needs a certain amount of money to pay expenses prior to receipt of the first contract payment, which will come some 28 days or so after performance begins. Given its limited cash on hand, Trans Union would have to borrow to meet those costs, and its financial situation suggests that it would be difficult to obtain credit.

— The worksheet discrepancy had not been identified as a problem when Trans Union's pre-award information was requested, but it was identified in preparation for the pre-award conference, and would have had to have been resolved prior to award.

— It is possible that the problems identified in Trans Union's submissions could have been resolved in the pre-award conference, but the inability to reach Trans Union to hold such a conference precluded the resolution of those concerns, and further cast doubt on whether Trans Union could be reached during contract performance.

— The transportation specialist provided documentation that she had attempted to reach Trans Union once on the morning of February 24 and twice on the morning of February 25, receiving no answer to any of her calls. In a sworn statement, the specialist asserted that she made "several other attempts" for which she has no documentation.

The protester did not comment on the contracting officer's statements.

DISCUSSION

The protester contends that the transportation specialist did not try to reach Trans Union to schedule a pre-award conference. "To the extent that the accounts of the protester and the contracting officer differ, it is well settled that in a factual dispute we accept as true the statements made by the contracting officer absent controversion by the protester or sufficient evidence to overcome the presumption of correctness which attaches to the contracting officer's statements or action." *Schindler Trucking, Inc.*, P.S. Protest No. 97-05, May 14, 1997 (citation and internal quotation omitted). The contracting officer has provided documentation of the unsuccessful efforts made to reach the protester, while the protester has offered only conclusory assertions sug-

gesting that she did not, which are clearly insufficient to rebut the documented efforts.

The protester's objections might also be more broadly understood as a complaint about the extent of the contract specialist's efforts to reach the offeror. Given the need of contracting personnel to proceed expeditiously in the evaluation of offers, we are reluctant to propose guidelines on the necessity of taking additional steps when an offeror cannot be reached by telephone.

Unable to reach Trans Union, the contracting officer concluded on the basis of the available information that the offeror lacked capability and thus was not entitled to award.

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 will 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 aspect of capacity is having (or being able to obtain) "resources (financial, technical, etc.) adequate to perform the work." Purchasing Manual 2.1.7.c. 3.(b). The contracting officer's determination that Trans Union lacked financial capacity is adequately supported by the record. *K & B Enterprises*, P.S. Protest No. 95-27, September 22, 1995.

The protest is denied.

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