

**August 16, 2000**

**P.S. Protest No. 00-13**

**N.L.R. COMPANY, INC.**

**Solicitation No. 608-94-00**

**DIGEST**

Protest of failure to receive highway mail transportation contract is denied. Where principals of corporation were also principals of another corporation which previously performed the route unsatisfactorily, that firm's past performance may be considered in determining current firm's capability and supported the determination that that firm lacked capability to perform.

**DECISION**

N.L.R. Company, Inc., (N.L.R.) protests its failure to receive award of a contract for the highway transportation of mail.

The Great Lakes Transportation Networks Office issued solicitation 608-94-00 for service on Highway Contract Route (HCR) 60713 for service between the Chicago, IL, Metro Service Hub and the Indianapolis, IN, Processing and Distribution Center. The service requires five tractors and trailers, and involves 668,097 annual schedule miles and 17,605 annual schedule hours. According to solicitation section M.1, first preference for award was to be given to the low responsible offeror. Service on HRC 60713 had previously been provided by L.V.L., Inc. (L.V.L.). The Postal Service declined to renew L.V.L.'s contract because of its poor performance, thus necessitating the new solicitation.

Twenty-one offerors submitted offers in response to the solicitation, of which N.L.R.'s offer was the third low. The two lower offerors withdrew their offers after contracting officials expressed concerns about the adequacy of costs set out on the worksheets accompanying their offers. The contracting officer concluded that N.L.R. was not a capable offeror because its principals were the same as L.V.L.'s principals, and declined to award it the contract. Instead, award was made to the fourth low offeror, Berry Inc.

N.L.R.'s protest directed to the contracting officer contends that it is entitled to the award as a lower-priced offeror than Berry Inc. It asserts that it meets the sollicita-

tion's requirements for an eligible offeror, and claims familiarity with highway contracting because "[m]embers of the management team have been in the Highway Contracting business for over fifty years," that it "is capable in running a business that will uphold customer service and on-time delivery . . . ." and that it has the drivers and equipment ready to perform the service.

The contracting officer's statement replying to the protest does not dispute N.L.R.'s eligibility to propose, but does dispute its ability to perform the required service satisfactorily. The statement notes L.V.L.'s previous unsatisfactory service on this route as well as on another route, HCR 60719, between Chicago and Indianapolis. Because of the identity of N.L.R.'s managers, equipment, and drivers with those of L.V.L., the contracting officer concludes that it would not be in the Postal Service's best interest to award N.L.R. the contract.<sup>1</sup>

The contracting officer was asked to supplement his statement with additional information. The material provided in response included L.V.L.'s articles of incorporation, documentation that N.L.R. had proposed to use vehicles previously used by L.V.L., and a great many PS Forms 5500, Contract Route Irregularity Reports, documenting service problems on L.V.L.'s two route.

The protester did not comment on the contracting officer's report. Berry Inc. submitted comments reciting its ability to perform.

## **DISCUSSION**

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).

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<sup>1</sup> Although the documentation subsequently supplied establishes the identity of the corporations' managers and N.L.R.'s intention to use equipment previously used by L.V.L., nothing in the file identifies N.L.R.'s intended drivers.

The material supplied with respect to L.V.L.'s contract performance is more than sufficient to justify the contracting officer's concerns about that performance. The Forms 5500 document repeated instances of driver lateness, mechanical problems, and other delays for which the operator is appropriately accountable.

It was wholly appropriate to consider L.V.L.'s prior performance record in connection with the evaluation of N.L.R.'s current ability to perform.

Where a new corporation proposes to provide contractual services, its responsibility may be determined by evaluating the responsibility of its principal officers and shareholders. *Magnum Haulers Inc.*, P. S. Protest No. 85-90, March 7, 1986, (unsatisfactory performance of protester's sole stockholder's other wholly-owned corporation attributed to protester); *Cimpi Express Lines, Inc.*, P. S. Protest 88-57, December 15, 1988 (same).

*Todd's Letter Carriers, Inc.*, P.S. Protest Nos. 92-39;40;41, October 21, 1992. While N.L.R. here is not a "new" corporation, having been incorporated in October, 1993, it offers no information demonstrating its corporate experience other than the postal contracting experience of its "management team,"<sup>2</sup> and the record provides no information about that experience other than that attributable to L.V.L. It was not arbitrary or capricious to conclude that L.V.L.'s performance demonstrated its current lack of capability and to conclude similarly as to N.L.R.

The protest is denied.

William J. Jones  
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Contract Protests and Policies

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<sup>2</sup> Larry Vassar is the president of N.L.R. and L.V.L.; Richard Vassar was the incorporator of L.V.L. and is the vice-president of N.L.R. He signed L.V.L.'s appeal of the Postal Service's decision not to renew its contract and N.L.R.'s offer and its protest.