



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delaware Luggage Co. d/b/a Casecraft, Inc.
File: B-231653
Date: September 13, 1988

DIGEST

Where contracting officer determined prospective awardee was responsible based on a positive preaward survey finding the firm's past performance difficulties resolved and its current performance satisfactory, and there is no showing that the determination was made in bad faith, there is no basis to object to the agency's affirmative determination of responsibility.

DECISION

Delaware Luggage Co., d/b/a Casecraft, Inc., protests award of a contract to Princeton Case Co. under invitation for bids (IFB) No. 7FXG-D3-88-8460-S, issued by the General Services Administration (GSA) for quantities of dispatch cases.

We deny the protest.

The solicitation was issued to procure items in excess of the supply potential for the months of October and November 1987 under a prior indefinite quantity requirements contract awarded to Princeton for the same dispatch cases, and running from March 31, 1987 through February 28, 1989. That contract provided that Princeton Case was obligated to fill all orders not in excess of the monthly supply potential stated in the contract; the government could acquire the quantity that exceeds that potential from another source.

Essentially, Delaware Luggage argues that Princeton Case is a nonresponsible contractor because it had performance difficulties under its requirements contract for these items; the protester points out that it was actually

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Princeton Case's failure to keep up with agency needs under its current contract that necessitated the solicitation here. Delaware Luggage concludes that the agency's affirmative determination of responsibility therefore was unjustifiable.

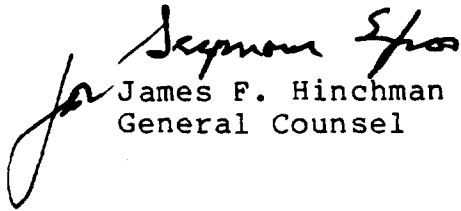
Whether Princeton Case is a responsible prospective contractor is a determination within the business judgment of the contracting agency. Prior to award, an agency is required to make an affirmative determination of the prospective awardee's responsibility, Federal Acquisition Regulation § 9.103(b), which we will not question absent a showing of fraud or bad faith. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1988). To make this showing, the protester has a heavy burden of proof, as contracting officials are presumed to act in good faith. Keyes Fibre Co., B-225509, Apr. 7, 1987, 87-1 CPD ¶ 383.

We find no showing of bad faith here. The record shows that the affirmative determination of Princeton Case's responsibility was made on the basis of a preaward survey that found Princeton to have adequate financial resources, adequate production capability, and a satisfactory performance history. The agency acknowledges that deficiencies in Princeton Case's preproduction sample under its existing contract caused a delay in approval of its sample, and that this delay caused order backlogs that ultimately caused Princeton Case's supply potential to be exceeded, and thus necessitated issuance of the solicitation here. The review of the firm's performance history specifically considered the difficulties experienced by Princeton Case under its current contract in producing the preproduction sample, however, and found that once the difficulties were resolved, early in the contract period, the firm's subsequent performance was satisfactory. Thus, the agency appears to have acted reasonably here in finding Princeton Case to be responsible. The protester's disagreement with the determination does not suffice to show that the agency acted in bad faith. Keyes Fibre Co., B-225509, *supra*. Accordingly, the agency's affirmative determination of Princeton Case's responsibility was unobjectionable. Ingram Barge Co., B-230672, June 28, 1988, 88-1 CPD ¶ 614.

The protester further contends that the agency could have ordered its requirements at a lower per unit price under Princeton Case's existing contract than under the new

contract. We find no merit to this contention, since under its existing contract Princeton Case was not obligated to fill orders exceeding its monthly supply potential and the quantities of the requirements contract here exceed that potential.

The protest is denied.

James F. Hinchman
General Counsel