

Protest of) Date: July 7, 1989
PITNEY BOWES INC.)
Solicitation No. 104230-88-A-0174) P.S. Protest No. 89-22

DECISION

Pitney Bowes Inc. (Pitney Bowes) timely protests the terms of Solicitation No. 104230-88-A-0174 for multi-line optical character reader machines on the grounds that the solicitation contains ambiguities and unduly restrictive requirements and that the evaluation scheme is unfair and prejudicial.

The Postal Service identified a need for multi-line optical character readers (MLOCRs) to read and sort mail at high speeds. In order to identify potentially suitable equipment and manufacturers, the Postal Service conducted a Modification Test Agreement program (MTA) in which several prototypes of MLOCRs were tested, including newly manufactured MLOCR machines and existing single-line optical character readers (SLOCRs) retrofitted to enable the machines to perform MLOCR functions.^{1/} Only those vendors which successfully completed the MTA program were eligible for contract award. Pitney Bowes is eligible for consideration through a license agreement with Elsag, Inc., (Elsag) which successfully completed the MTA program.

Solicitation No. 104230-88-A-0174, issued December 16, 1988, by the United States Postal Service Office of Procurement, Headquarters, sought offers from vendors qualified through the MTA process. The solicitation and clarifying amendments allow for three possible scenarios for award of the contract: (1) award to one offeror for 346 new MLOCRs; (2) awards to two offerors of new MLOCRs with one vendor supplying 176 machines and the other 175; or (3) award to one offeror for 222 new MLOCRs, and to another offeror for 127 retrofit MLOCRs. The foundation for the retrofit MLOCRs are existing Postal Service-owned SLOCRs procured under earlier contracts.^{1/}

^{1/}An SLOCR reads the city-state-ZIP Code line of the address block of a mail piece, verifies the five or nine digit ZIP Code printed on the mail piece by comparison to the city and state information on the same line, and prints a bar code onto the envelope which corresponds to the verified ZIP Code. An MLOCR reads up to four lines of the address block, searches an internal directory for that address' nine digit ZIP Code, verifies the nine digit ZIP Code, and prints a corresponding bar code onto the envelope. To print the bar code, the MLOCR does not require the presence on the envelope of a five or nine digit ZIP Code if it can read and locate the address in its directory.

^{2/}The mechanisms by which award could be split are explained in Amendment A03.

The evaluation formula is found at section M of the solicitation and provides, in relevant part:

1.0 Offerors will be evaluated on the performance of their MLOCR achieved during the [MTA] using the cost model identified in Attachment A^{3/} combined with the total offer price submitted under Section A (Items and Prices). The combination of performance and price will be evaluated using PRESENT VALUE and INITIAL INVESTMENT calculations as follows:

1.1 The INITIAL INVESTMENT will be calculated using the offeror's total offer price ... divided by the number of MLOCRs ... submitted under Section A. This value is then multiplied by the fractional number of machines required to process 264,000 mail pieces in an 8 hour time period. The fractional number of machines is determined from the following formula using the average MLOCR throughput determined from the [MTA] data.

REQUIRED MACHINES = $264,000/8 \times \text{throughput}$

INITIAL INVESTMENT = $\text{Total Price}/[\text{number of MLOCRS offered}] \times \text{REQUIRED MACHINES}$

1.2 The PRESENT VALUE will be determined from the ANNUAL OPERATING COSTS over 10 years using an interest rate of 9 percent and an inflation factor of 6.0 percent.^{4/}

1.3 The first year ANNUAL OPERATING COST will be determined from the [MTA] data and the cost model using 264,000 mail pieces processed in a [sic] 8 hour day for 286 days per year plus the recurring maintenance cost (labor and spare parts) determined from the maintenance evaluation of the [MTA] data.

ANNUAL PROCESSING COST = $264 \times 286 \times \text{cost to process 1000 pieces}$

ANNUAL OPERATING COST = ANNUAL PROCESSING COST + ANNUAL MAINTENANCE COST

2.0 Based on the above, the offer with a combination of PRESENT VALUE and INITIAL INVESTMENT that results in the lowest cost to the U.S. [P]ostal [S]ervice will be selected for award.

^{3/}Attachment A contained a series of line items, for which the vendor was to indicate prices, in order to comprise the total price offered.

^{4/}The method for arriving at the present value from annual operating cost is described in section 1.4 and is not challenged by the protester.

A series of amendments to the solicitation resulted in an ultimate deadline of March 16, 1989, for receipt of proposals.^{1/} Pitney Bowes submitted its protest against the terms of the solicitation on March 14. The contracting officer's statement was received April 12.

After another round of submissions, a protest conference with Pitney Bowes was conducted on May 25 and comments thereon were received June 7. The contracting officer presented supplemental comments on June 19.

Best and final offers under the solicitation were due May 25. Three offers were received, of which only Pitney Bowes' proposal offered retrofit equipment. On June 13, the Assistant Postmaster General, Procurement and Supply Department, pursuant to Procurement Manual 4.5.5.a, authorized award of a contract to Electrocom Automation, Inc. (ECA), an offeror of new equipment, for 346 new MLOCRs notwithstanding the pendency of this protest. The Assistant Postmaster General concluded that the Postal Service would be harmed, financially or otherwise, by delaying award until the protest is resolved. He also concluded that, based upon examination of the offers received, Pitney Bowes would not have received award even if the protest had resulted in amendment of the evaluation scheme and reevaluation of offers as requested by the protester.

DEFECTIVE EVALUATION SCHEME

Pitney Bowes asserts that the evaluation scheme is defective and prejudicial to offerors of retrofit equipment. Subsumed within this contention are three arguments: (1) that economy of scale considerations are unfairly ignored; (2) that the undepreciated value of SLOCRs is not considered in the evaluation scheme; and (3) that the evaluation scheme fails to account for a required delivery date for retrofit equipment which is earlier than that required for new MLOCR equipment. These points are addressed in order.

Economies of Scale

Pitney Bowes asserts that there are certain items^{1/} required for both new and retrofit machines the cost of which vary disproportionately with the number of units being manufactured; that is, the more units that are manufactured, the lower the costs per unit to the vendor. The protester claims to be prejudiced because the evaluation scheme compares the per unit price of its 127 machines with the per unit prices of other offerors' 346, 222 or 176 new machines, rather than with the per unit price of 127 new

^{5/}Although the protester, in its March 14 protest as well as in the protest conference, mentions an unduly short time frame for receipt of offers, that issue was not raised as a ground for the protest and so is not before this office for decision. Similarly, the parties disagree about whether the protester had opportunities to consider and comment upon the evaluation scheme prior to the offer due date. Since this protest decision fully addresses the protester's concerns about the evaluation, this argument need not be considered.

^{6/}Pitney Bowes asserts that the items include costs incurred in manufacturing, in purchasing commercial items (including computer terminals, hardware, software, magnetic tape drives, and power supplies), documentation, training, and test equipment.

machines. Pitney Bowes suggests that a 127-127 comparison is necessary to avoid prejudice, not so much because it offers retrofit rather than new MLOCRs, but because it offers fewer units. Simply stated, purchasing components or other commercial items in greater numbers results in per component costs to the vendor which are lower than those incurred in the purchase of fewer components. Since a retrofit offeror need purchase fewer components, a one-to-one comparison of the cost of these units is prejudicial to offerors of fewer units since it must add these costs to its price proposal.

Pitney Bowes' proposed comparison would be for evaluation purposes only^{1/} with the "offer" for 127 new MLOCRs used only to compare prices with the retrofit proposal. Once the most advantageous offer is identified by this comparison, the purchase would be for 346 new, a split award, or 127 retrofit and 222 new MLOCRs, as allowed by the solicitation.

The contracting officer states that any per unit price comparison based upon one of 127 new to one of 127 retrofit units would be artificial since no award could be made on that basis and such a scheme would not satisfy the needs of the Postal Service. The contracting officer states that even if such a comparison were made, the Postal Service would require additional machines, and this would alter the calculus. Further, the contracting officer states that retrofit units should be less expensive than new units since the Postal Service-owned SLOCRs provide the foundation for retrofit units and, so, retrofit MLOCRs cannot be at a pricing disadvantage regardless of any economies of scale disregarded in evaluation.

In response to the contracting officer's statement that any new MLOCR offer of 127 units would be illusory, Pitney Bowes asserts that the Postal Service could easily determine whether offerors artificially lowered their unit price for 127 MLOCRs by comparison with the same offeror's unit prices for the other quantities.

Initially, we must emphasize that what is before us is not a question of an evaluation scheme which the contracting officer might have selected, rather, we are to determine whether the procurement scheme chosen is legally supportable. Eastman Kodak Co., Comp. Gen. Dec. B-231952 et al., November 8, 1988, 88-2 CPD & 455. Our examination of this factor must focus on the price of this procurement to the Postal Service rather than the cost to the offerors of supplying the equipment. See B. B. Saxon Co., Inc., Comp. Gen. Dec. B-190505, June 1, 1978, 78-1 CPD & 410. In Saxon, costs were added to all offerors' proposals except that of the incumbent because changing contractors would result in conversion costs to the government. This procedure was sustained by the Comptroller General because there is no requirement that the government place all competitors on an equal footing. It was concluded that a proper price evaluation should reflect the true costs to the government of making a particular award by taking into account the tangible factors which relate to costs which the government would have to bear. Id.; See also Pacific Northwest Bell Telephone Co., et. al., Comp. Gen. Dec. B-227850, October 21, 1987, 87-2 CPD & 379, where, in sustaining a protest against the terms of the solicitation, the Comptroller General noted

^{1/}Therefore, offerors of new equipment would submit per unit prices for 346, 222, 176, and 127 units, with the per unit price for 127 units only being for evaluation purposes vis a vis retrofit.

the agency's obligation to consider the lowest overall cost to the agency of the total system being procured.

Many factors normally contribute to the higher or lower cost of proposals. It is not incumbent upon contracting officials, or upon this office when reviewing the actions of those officials, to equalize all advantages or disadvantages of this sort. It is well-settled that a competitive advantage (or disadvantage) accruing to an offeror because of its own position need not be discounted or equalized in favor of the other offerors so long as it does not result from preferential or unfair treatment by the government. Integrated Communications Technology, Inc., P.S. Protest No. 88-14, April 4, 1988; Thermex Energy Corp., Comp. Gen. Dec. B-227034.2, August 17, 1987, 87-2 CPD & 164; Halifax Engineering, Inc., Comp. Gen. Dec. B-219178.2, September 30, 1985, 85-2 CPD & 559. Therefore, merely because an offeror, by virtue of prior experience, may be able to offer a lower price does not require adjustment of the evaluation scheme. Id. Equalization of any economies of scale should not be allowed to prevent the Postal Service from realizing such advantages. Since the costs to the Postal Service are unaffected by its failure to consider economies of scale in the evaluation, the evaluation scheme is reasonable and, thus, legally supportable in this regard.

While it is apparent that the contracting officer has, at times, misconstrued the intent of Pitney Bowes' suggestion to require new MLOCR offerors to submit unit prices based upon 127 machines, the contracting officer's position that such an offer would be illusory is persuasive. There would be nothing to ensure the accuracy or reliability of an offer for 127 new MLOCRs because no award for that number of new machines could be made. Pitney Bowes' assertion that a comparison between new unit prices for the other quantities and that for 127 units would alert the Postal Service to artificially lowered prices for the 127 units does not solve the dilemma. Upon making such a determination, the contracting officer could not then determine for himself the appropriate unit price for 127 units, and the allegedly unequal comparison could be perpetuated. See Aerospace Engineering Services Corp., Comp. Gen. Dec. B-184850, March 9, 1976, 76-1 CPD & 164. (There is "no requirement for equalizing competition by taking into consideration advantages [gained via incumbency or offeror's particular circumstances,] nor do we know of any possible way in which such equalization could be effected.")

Undepreciated Value

The protester alleges that it is prejudiced by the evaluation scheme's failure to allocate the significant undepreciated value of the existing SLOCRs to offerors of retrofit units because the value of the SLOCRs is wasted if new MLOCRs are procured. The protester further states that the existing SLOCRs would still have some use in mail processing, albeit an under-utilized one such as bar code reading, should all-new MLOCRs be purchased. Essentially, Pitney Bowes' position is that because mail processing has changed to a multi-line environment since the time the SLOCRs were procured, the Postal Service necessarily must under-utilize the SLOCRs, thus not fully realizing its substantial pre-existing investment in the SLOCRs, which is fiscally imprudent. From this premise, the protester concludes that the Postal Service must account for the under-utilization upon comparing new to retrofit MLOCRs.

The contracting officer's position is that the scrap value of non-retrofit SLOCs is minimal or insignificant in an environment of mail processing which utilizes MLOCs, as the continued use of SLOCs would increase the complexity of effectively managing mail flows.¹⁷ In essence, the contracting officer asserts that if the existing SLOCs cannot be retrofitted to meet minimum performance requirements, then their value cannot be determined and must be assumed to be negligible. The contracting officer recognizes, though, that a simulation model indicates that some SLOCs (less than 100) are of value in a fully deployed MLOC network, though any re-deployment cannot be determined at this time.

The contracting officer performed an economic analysis considering the value of the undepreciated SLOCs and the earlier deployment (approximately 10 weeks) of retrofit units, providing the analysis to this office¹⁷ and concluding that this analysis would increase the cost of retrofit units. The protester contests this conclusion as counter-intuitive since inclusion of these factors should decrease retrofit MLOC life cycle costs, a response which the contracting officer contends is based upon selectively considered factors which favor Pitney Bowes' proposal.

We reject the arguments of both parties, but deny this ground of the protest. The focus of our inquiry on this issue must be narrowly confined to this procurement. While all offerors must be treated equally and be provided a common basis for preparation and submission of proposals, this does not mean that the contracting officer must evaluate proposals on the basis of moneys paid and requirements involved in prior dealings. Previous considerations, such as costs of previously procured equipment, cannot be required to be carried over to the present solicitation where the present solicitation does not impose them. See HEI Inc., Comp. Gen. Dec. B-228482, January 25, 1988, 88-1 CPD & 68. The contracting officer decided not to consider this pre-existing investment and, since it is not our charge to review whether this is the most appropriate method of evaluation but rather whether this method is legally supportable, see Eastman Kodak, supra, we find the approach to be reasonable and, consequently, legally sufficient. The Postal Service's pre-existing investment in SLOCs must be considered to constitute sunk costs (costs which are not recoverable in a given situation, see Massman Constrution Co., Comp. Gen. Dec. B-204196, June 25, 1982, 82-1 CPD & 624), the recoupment or non-recoupment of which is irrelevant to whether the present solicitation is legally objectionable.

In GTE Automatic Electric, Inc., Comp. Gen. Dec. B-209393, September 19, 1983, 83-2 CPD & 340, the Comptroller General denied a protest against the terms of the solicitation where the incumbent contractor had acquired and amortized underground

¹⁷The contracting officer also takes issue with Pitney Bowes' calculations concerning the extent of any undepreciated value and remaining useful life of the SLOCs, and suggests that the SLOCs may be or may become obsolete, reducing their undepreciated value to an insignificant point. The protester argues that permitting retrofit of the SLOCs in the first place conflicts with the contracting officer's position that the SLOCs are worthless.

¹⁸Originally, a redacted version of this analysis was provided to the protester. With the final comments of the contracting officer however, the complete analysis, along with the second "best case scenario" analysis, discussed below, were provided to Pitney Bowes.

cables necessary to perform. GTE argued that the agency should equalize competition by considering the cost of the cables (and a plant) in the evaluation scheme, as other agencies have done in similar procurements. The Comptroller General rejected this argument in stating:

... an agency is [not] precluded from attempting to foster competition by providing for an evaluation method that increases the feasibility of effective competition by non-incumbents. It is for the procuring agency, however, to determine whether adequate competition can be obtained in the circumstances of a given procurement; such matters are ordinarily business judgments requiring broad discretion by the contracting officer which this Office will not question unless shown to be unreasonable.

Id. (citations omitted). We find this reasoning persuasive.

GTE also held that the contracting officer need not equalize costs associated with comparing old or used equipment with new equipment, where all offered equipment, as here, is required to meet stated performance specifications. Where the evaluation factors pertain as logically to used equipment as to new equipment, the evaluation scheme is reasonable and a separate baseline is not required. Id. We determine the adequacy of the contracting officer's justification for the solicitation provision by examining whether his explanation withstands logical scrutiny. 120 Church Street Associates, Comp. Gen. Dec. B-232139, November 21, 1988, 88-2 CPD & 496. Consideration of the Postal Service's costs for this procurement of MLOCRs in a prospective manner withstands such scrutiny and is reasonable.^{10/}

Delivery Dates

Pitney Bowes claims that since the solicitation requires retrofit units be delivered significantly earlier than new MLOCRs, and, since the Postal Service has recognized the operational savings of conversion to an MLOCR system, the earlier delivery of retrofit units should be considered in Pitney Bowes' favor in comparing the retrofit units to new MLOCRs.

The protester maintains that the solicitation is explicit in its requirement for earlier conversion to a multi-line system for retrofit units, a statement with which the contracting officer does not disagree. Pitney Bowes concludes that since the benefits of parallel deployment of new MLOCRs have been at least implicitly recognized in the Postal Service's splitting of a new MLOCR award,^{11/} these benefits should be

^{10/}Moreover, although not a justification asserted by the contracting officer, it is not obviously apparent that the undepreciated value of the SLOCRs, even if considered in the evaluation, would operate in favor of the retrofit offeror. Assuming that the protester's contention that the SLOCRs retain value, albeit under-utilized value, in a multi-line mail processing environment, that remaining value would be lost were the SLOCRs to be retrofitted into MLOCRs. If new MLOCRs were procured, then that residual value remains since the SLOCRs continue to exist and operate to the benefit of the Postal Service. Therefore, if the SLOCRs are retrofitted, thus ending their independent useful life, their undepreciated value should, logically, work against the retrofit offeror.

^{11/}Amendment A03 states at Attachment A, & 5:

considered where retrofit and new MLOCRs are deployed in parallel. Pitney Bowes states that it is not aware of significant conversion costs to the Postal Service as the retrofit awardee must bear all costs of the retrofit and the only cost to the Postal Service is the down-time of the SLOCRs, the value of which it asserts the contracting officer contends to be minimal or insignificant.

The contracting officer states that any operational savings realized from earlier delivery of retrofit units are offset by the SLOCRs being out of service for a substantial period while being retrofitted and by conversion costs. The contracting officer explains that the evaluation scheme, as currently written, does not consider the benefit of parallel delivery unless Pitney Bowes is out of the competition and a decision is made to procure all-new MLOCRs. Finally, the contracting officer states that Pitney Bowes already enjoys a competitive advantage, given equivalent performance, since it must only retrofit existing machines rather than produce all-new equipment, a contention which Pitney Bowes claims is irrelevant to the issue of whether the Postal Service is required to consider operational savings of early delivery in the evaluation scheme.

The contracting officer included in his final submission a second economic analysis which considered Pitney Bowes' "best case scenario." In this analysis, the contracting officer credited the protester's proposal with the total savings which might be realized from early delivery, parallel deployment of the units, and the requested credit for the undepreciated value of the SLOCRs. This analysis, which did not reflect factors which may have increased Pitney Bowes' costs, results in a decreased cost of its retrofit MLOCRs. However, the contracting officer states that this decrease in cost would be insufficient to lower Pitney Bowes' price sufficiently to entitle it to award.

The record is replete with references to operational savings to be realized by conversion of mail processing to a multi-line system.^{12/} While the benefits of earlier conversion resulting from parallel delivery for a split new MLOCR award were used only to justify a split award rather than for allocating early delivery benefits to a particular vendor, see footnote 10, our previously stated focus upon the price to the Postal Service rather than upon the costs to the offeror, requires us to sustain this ground of the protest. The contracting officer does not dispute that the solicitation requires retrofit units to be delivered earlier than new MLOCRs or that the evaluation fails to account for this differential treatment. The solicitation must treat all offerors equally and provide a common basis for submission of proposals. HEI, supra. Since

The Postal Service reserves the right to make multiple awards under this solicitation. While making multiple awards may increase the initial acquisition cost, the costs of maintenance and contract administration, and result in lower operational savingsthe increase in operational savings resulting from the accelerated receipt of MLOCRs simultaneously from two or more sources may be more than sufficient to offset these costs.

Id. (emphasis added).

^{12/}In fact, the value of conversion (approximately \$775,000 per day) is the primary basis for award of the contract notwithstanding this protest.

the contracting officer's justification for this differential treatment concerns down-time of the SLOCs to be retrofit, but the evaluation scheme fails to take down-time into account, this ground of the protest is sustained as the contracting officer's actions lack a reasonable basis. Simply stated, the reason that this ground of the protest is the only sustainable ground is that the other disputed issues treat the offerors equally although the protester maintains that the effect of equal treatment is unfair under the circumstances; while, in this instance, the solicitation itself treats retrofit offerors differently than new unit offerors and the true value to the Postal Service of early delivery is affected thereby.

Notwithstanding this analysis, we cannot direct the contracting officer to assign estimated operational savings to Pitney Bowes' proposal, as the contracting officer, upon remand from this decision, would be vested with reasonable discretion to restructure the solicitation, for example, by adjusting the delivery schedule to equalize installation dates, or by considering the benefits of the early delivery of retrofit units along with the down-time of the SLOCs. See e.g. T.J. O'Brien, et al, P.S. Protest No. 87-83, September 17, 1987 (contracting officer is in the best position to know the Postal Service's actual needs and therefore to draft appropriate specifications); Garden State Copy Company, P.S. Protest No. 82-47, September 28, 1982 (contracting officer must ensure that the evaluation factors chosen for the resolicitation are related to the needs of the Postal Service).

In any event, based upon the contracting officer's "best case scenario" analysis which considered early delivery in the protester's favor without regard to the down-time of the SLOCs to be retrofit, Pitney Bowes will not receive award if this factor were equalized.¹³ In this regard, we accept the estimates utilized in the contracting officer's "best case scenario" analysis, as the contracting officer is in the best position to ascertain such savings to the Postal Service and in factual disputes of this nature, we accept the position of the contracting officer absent sufficient evidence to overcome the presumption of correctness which attaches to the contracting officer's action. Cohlma Airline, Inc., P.S. Protest No. 87-118, April 13, 1988; Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986. Therefore, although this ground of the protest is sustained, Pitney Bowes has not been prejudiced and we decline to order termination of the contract awarded to ECA.

AMBIGUITIES

Pitney Bowes asserts that the requirement for cost and pricing data is unclear and that the absence of a formula with which to compute annual maintenance costs, considered as part of the evaluation scheme at Section M, & 1.3, renders the solicitation ambiguous.

The contracting officer states that cost and pricing data has been submitted by Pitney Bowes and was required from both retrofit and new MLOC offerors; therefore, the issue is moot. The protester acknowledged the mootness of the issue in the protest conference, although it asks for declaratory relief to the effect that the Postal Service

¹³The protester has not responded to these calculations.

should be stopped from determining, in the future, that Pitney Bowes provided insufficient cost and pricing data.

Since the protester has submitted this data and the contracting officer has not stated that this submission was problematic in any way, we consider the issue moot and will not consider it further.^{14/}

Regarding the absence of a formula to compute annual maintenance costs, the contracting officer's only comment is that such data has not been released to any party and so there can be no prejudice to Pitney Bowes. The protester maintains that this defect renders the solicitation ambiguous, without regard to whether particular offerors are prejudiced thereby.

Specifications must be sufficiently definite and free from ambiguity to permit competition on a common basis and an ambiguity exists if the specifications are susceptible to more than one reasonable interpretation. To be reasonable, an interpretation must be consistent with the solicitation read as a whole. Pitney Bowes, Inc., P.S. Protest No. 89-24, June 20, 1989, and cases cited therein.

Upon the record before us, the evaluation of annual maintenance costs is not ambiguous. Section M, 1.3 defines annual maintenance cost as the recurring maintenance cost, including labor and spare parts, determined by the maintenance evaluation of the MTA data. The protester has not demonstrated that the test data acquired from all qualified offerors, including Elsag, Pitney Bowes' licensor, is insufficient to demonstrate annual maintenance costs, and we have been presented no other information upon which to make such a determination.

RESTRICTIVE REQUIREMENTS

The protester cites thirteen specific requirements as being beyond the minimum needs of the Postal Service. It claims that even if these items are desirable, they are restrictive and prejudicial to offerors of retrofit equipment, and should not be considered in the evaluation. This argument is closely intermingled with the previously described economies of scale argument, as Pitney Bowes alleges that these items are more expensive for vendors of retrofit units (on a per unit basis) than for new MLOCR vendors and that their inclusion will not improve the performance of retrofit units which meet all Postal Service minimum requirements. The thirteen disputed items include: audible and visual indicators; directory utilization reports; magnetic tape drive; menu driven diagnostics; protection of electronic and mechanical components; automated test equipment;^{14/} training requirements; continuous operation of tape drive and graphic

^{14/}The protester's request for declaratory relief to stop the contracting officer from claiming, in the future, that its data was insufficient is dismissed. Such a speculative protest ground which anticipates adverse agency action is premature and will not be considered in a bid protest. Knoxville Glove Co., P.S. Protest No. 87-103, October 21, 1987.

^{15/}Automated test equipment is more appropriately considered as part of the protester's ambiguity argument, as the main issue is whether the solicitation requires such test equipment be included in an offeror's proposal.

printer; requirement for six days of maintenance; requirement for 160 hours of training; requirement for nine days of field testing; excessive number of manuals; and excessive number of spare parts.

In response to these concerns, the contracting officer issued Amendment A05, on April 21, which addressed some of the thirteen items to the protester's satisfaction. Thus, audible and visual indicators, six days of maintenance, 160 hours of training, excessive number of manuals, and excessive number of spare parts are moot issues, as recognized in the protester's May 2 submission, and are no longer before this office for resolution. As to the remaining items, the contracting officer has offered explanations in support of the needs, has stated that the items are requirements for both the retrofit and the new MLOCRs, and maintains that equivalent requirements for retrofit and new MLOCRs are necessary to establish uniformity in all MLOCRs.

Postal Service procuring officials have the primary responsibility for drafting specifications to fulfill the minimum needs of the Postal Service and we will not object to specifications unless there exists no reasonable basis to sustain them. Warwick Communications, Inc., P.S. Protest No. 76-68, November 4, 1976; Zinger Construction Co., Inc., P.S. Protest No. 77-32, August 5, 1977. Further, there is considerable flexibility in determining the specifications that are reasonably within the minimum needs of the Postal Service. Comprehensive Health Services, Inc., P.S. Protest No. 83-46, October 28, 1983. Where, as here, specifications have been challenged as unduly restrictive of competition, it is incumbent upon the contracting officer to establish prima facie support for his contention that the imposed restrictions are reasonably related to the minimum needs of the Postal Service. Once such support is shown, the burden shifts to the protester to show that the disputed requirements are clearly unreasonable. Compucom Security, P.S. Protest No. 86-20, May 9, 1986.

The contracting officer's explanations for the necessity of the challenged requirements are reasonable and, thus, the requisite prima facie support has been established. These rationales have not been factually rebutted by the protester. The contracting officer having established prima facie support for his position and Pitney Bowes having failed to show that the requirements are clearly unreasonable, their inclusion is within the proper exercise of the contracting officer's discretion.^{16/}

The contracting officer explains that the solicitation requires the contractor to provide sufficient equipment to allow the Postal Service to repair all "fourth echelon repairable items" listed by the contractor. The contracting officer states that the contractor is the party with the knowledge of what test equipment is needed to repair and test these items. A list of currently available test equipment was released to Pitney Bowes, which has the option of providing specifications for existing test equipment or providing new test equipment.

^{16/}Because the protester claims that the requirement for automated test equipment was ambiguous in that offerors were not provided sufficient information upon which to base this portion of their proposals, we will comment specifically on this issue. We find the requirement sufficiently clear since the record reflects that it is the offeror which is in possession of the information needed to determine which test equipment is necessary to repair and test all "fourth echelon repairable items." The contracting officer provided a list of currently available test equipment to the offerors, thus leaving the protester with the option of providing specifications for existing test equipment or providing all new test equipment. The relevant information is in the possession of the offerors, and has not been shown to be ambiguous.

BAD FAITH

Pitney Bowes alleges that the Postal Service encouraged it to offer a proposal on this solicitation because it feared that competition would be otherwise inadequate. Pitney Bowes contends that the Postal Service never intended to award the retrofit alternative and thus skewed the comparison to favor new equipment. Pitney Bowes claims that the Postal Service sought to maintain the appearance of a fair retrofit-new MLOCR comparison to avoid raising public doubts about the implicit decision to completely scrap the existing SLOCRs. We interpret this allegation to constitute a charge of bad faith.

The contracting officer denies all allegations of bad faith and states that none of the contracting officials had access to the MTA data prior to the evaluation; therefore, the evaluation scheme could not have been intentionally biased against the protester.

Allegations of bad faith must be proven by virtually irrefutable proof of malicious and specific intent to harm the protester, not merely by inference or supposition. In the absence of such compelling evidence, contracting officers are presumed to act in good faith. Cohlma Airline, Inc., supra. Examination of the evidence presented in support of Pitney Bowes' allegations of bad faith fail to meet the "extremely high standard of proof" required. See Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984.

The protest is sustained to the extent indicated; otherwise it is denied.

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[checked against original JLS 5/20/93]