

Protest of)	
)	Date: July 18, 1990
GULF & ATLANTIC MARITIME)	
SERVICES, INC.)	
)	
Solicitation No. INT 1-10-90)	P.S. Protest No. 90-22

DECISION

Gulf & Atlantic Maritime Services, Inc. (G&A), on behalf of The Bank Line Limited (Bank Line), protests the award of contracts for international ocean transportation service between the New York International and Bulk Mail Center (NYI&BMC), Jersey City, NJ and Mombasa, Kenya, and between the NYI&BMC and Dar Es Salaam, Tanzania, to Mediterranean Shipping Company, S.A. (MSC).

Solicitation No. INT 1-10-90, for multiple, separate segments of international ocean service between the NYI&BMC and foreign points, was issued January 18, 1990, by the Surface Contracts Management Division, Office of Transportation and International Services. For each segment, the solicitation specified a required container size (by length), requested minimum sailing frequency, requested maximum transit time, estimated annual container requirements (by number of containers) and elapsed time (ELT).^{1/}

For purposes of evaluation, the solicitation provided that proposals would be divided into groups. "Group A" would consist of proposals which met or bettered the specified frequency and transit times, or which had ELTs equal to or better than the specified ELT. Within Group A, proposals would be ranked according to price, subject to a 10 percent preference for direct or indirect service over feeder vessel service.^{1/} "Group B"

^{1/}ELT is defined in the Solicitation as "the sum of the frequency expressed in days (e.g. weekly = 7) and the transit time expressed in days."

^{2/}These terms are defined in the solicitation as follows.

"Direct' service means line of travel proceeding from the origin port to the destination port without interruption or deviation."

"Indirect' service means line of travel proceeding from the origin port to an intermediate port (or ports)

would consist of proposals not qualified for Group A, but which included an ELT within 3 days of the specified ELT.

As with Group A, Group B proposals were to be ranked according to price, subject to the same 10 percent preference. Award would be made to the highest ranked Group A proposal unless the highest Group B proposal were at least 20 percent better.

Specifications for the segments at issue were as follows:

<u>Destination</u>	<u>Cont. Size</u>	<u>Min. Sail. Frequency</u>	<u>Requested Max. Transit Time</u>	<u>Est. Annual Containers Requirements</u>	<u>Elapsed Time (ELT)</u>
Mombasa	20'	Weekly	33 Days	70	40 Days
Dar Es Salaam	20'	Every 3 Weeks	45 Days	15	66 Days

Contracts for both segments were awarded to MSC on April 3, 1990. For the Mombasa segment, MSC proposed to provide 20-foot containers, weekly frequency, 33 days maximum transit time and 40 days ELT. For the Dar Es Salaam segment, MSC proposed to provide 20-foot containers, weekly frequency, 34 days maximum transit time and 41 days ELT. MSC's price offers of \$2,000 per container for both segments were the lowest offers among proposals placed in Group A. G&A's proposal^{1/} for Mombasa, which included a 40 day transit time and a 47 day ELT, did not qualify for evaluation in Group A or in Group B. G&A's Dar Es Salaam proposal included a 39 day transit time and a 53 day ELT, which were within the requirements for evaluation in Group A. G&A was ranked fourth among the five proposals received for the Dar Es Salaam service.

The protest alleges that, notwithstanding MSC's offer to provide transit times of 33 days to Mombasa and 45 days to Dar Es Salaam, G&A has been informed by MSC's agent that MSC's actual transit times are 51 days and 58 days, respectively. G&A concludes that MSC's proposals, evaluated in light of this information, were not responsive to the Postal Service's requirements. In subsequent correspondence, G&A alleges that its own proposals for the Mombasa and Dar Es Salaam segments were improperly evaluated.^{1/}

before calling on the destination."

"'Feeder' service means line of travel proceeding from origin port to an intermediate port where mail is transferred to a branch transportation line for further transit to destination."

^{3/}G&A submitted its proposals as agent for Bank Line.

^{4/}G&A demurs from the contracting officer's statement that all proposals for Mombasa and Dar Es

The contracting officer comments in his report on the protest that a representative of MSC attended the pre-proposal conference, at which the terms "transit time" and "ELT" were explained in detail, from which discussion the contracting officer concludes that there was no misunderstanding by MSC's representative as to what was required in proposals regarding those items. Moreover, both prior and subsequent to award, MSC/Bank Line confirmed in writing its proposed transit times. The contracting officer notes the absence in the protest of "concrete historical evidence" of MSC's inability to perform as it had proposed. As to the specific segments, the contracting officer further comments as follows:

Mombasa

Three offerors proposed transit times within the 33 day specification. One proposed 34 days. MSC's proposal, on its face, was therefore feasible. However, subsequent to receipt of the protest, the contracting officer received a "container history report" indicating that MSC was recently failing to meet the 33 day transit time, which inability MSC attributed to weather conditions and a change in rotation of the order of vessels arriving at Mombasa. As a result of this information, the contracting officer and MSC mutually agreed to terminate the contract for convenience effective June 30, 1990.^{1/} The contracting officer intends to make award for a replacement contract to the next-in-line offeror under INT 1-10-90. G&A would not be in line for award because its proposal was outside the limits of both Group A and Group B.

Dar Es Salaam

Each of the five proposals received for Dar Es Salaam met the frequency and transit time requirements. MSC confirmed its transit time in writing after receipt of the protest. However, as with Mombasa, a subsequent container history report indicated recent failure to meet the required 45 day transit time, which failure MSC similarly attributed to weather conditions and a change in the order of rotation of vessels arriving at Dar Es Salaam. MSC's worst recorded case is a 46 day transit time and a 53 day ELT, against specification requirements of 45 days and 66 days, respectively. The contracting officer indicates willingness to accept the level of service being provided by MSC. He states that all Dar Es Salaam offers except MSC's exceeded the "loose sack" rate,^{1/} and

Salaam offered feeder vessel service only. G&A points out that it offered monthly indirect service, supplemented by feeder vessel service to achieve the required frequencies, to both destinations. G&A argues that its proposals should therefore be rescored to include allowance for the 10 percent preference for direct or indirect service. For the reasons discussed below, our decision does not reach the merits of this argument.

^{5/}The contract's Termination for Convenience Clause authorizes the Postal Service to terminate the contract on 60 days' notice without liability for termination damages.

^{6/}Procurement Manual (PM) 12.4.6 authorizes the procurement of international ocean service by tender (and acceptance) of mail at a prescribed rate per pound. The contracting officer calculates that the loose sack equivalent rate to Dar Es Salaam as \$2,221, compared to \$2,350 per container for the second-low offer.

therefore that should MSC's contract be terminated, no other award would be made under the solicitation. He also states that G&A's proposal was ranked so far down the list that it would, in any event, not be in line for award.

Discussion

We deal first with G&A's assertion, first made in a letter from counsel received at this office on June 25, submitted in response to the contracting officer's report, that its proposals were not properly evaluated.

PM 4.5.4.d provides, inter alia, that no protest will be considered if received more than 15 working days after award of the contract in question. The timeliness requirements are jurisdictional, and cannot be waived. See Montgomery Elevator Co., P.S. Protest No. 90-5, March 9, 1990, and cases therein cited. The contracts in question were awarded on April 3.

Each submission which establishes a new and independent basis for a protest must meet the timeliness requirements set forth in the PM. Evergreen International Airlines, Inc., On Reconsideration, P.S. Protest No. 86-07, June 9, 1986. The issue regarding the evaluation of G&A's bid was first raised in counsel's June 25 letter. Consequently, it was untimely, and thus may not be considered by this office.

Turning to the protest as initially filed, we accept the contracting officer's assertions, which are supported by substantial evidence and were not rebutted by G&A, that based on the relative ranking of its proposals, G&A was not in line for award for either the Mombasa segment or the Dar Es Salaam segment, and that as to the latter, based on the price comparison with the loose sack rates, no offeror other than the awardee, MSC, was in line for award.

PM 4.5.2 vests this office with jurisdiction to decide protests where the protester is an "interested party." Generally, "interested party" has been interpreted to mean a party which is eligible for award if its protest were upheld. York International Corporation, P.S. Protest No. 89-77, January 19, 1990. G&A lacks standing as an interested party because it has failed to challenge the eligibility of all higher ranked offerors, and as a result, if the award to MSC were reversed, G&A would not be in line for award. Strapex Corporation, P.S. Protest No. 85-33, July 11, 1985.

The protest is dismissed.

William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 6/4/93]