

Protest of) Date: December 3, 1991
BLACKHORSE SERVICES CORP.)
d/b/a MAACO AUTO PAINTING)
AND BODYWORKS)
Solicitation No. 129990-91-A-M536) P.S. Protest No. 91-71

DECISION

Blackhorse Services Corp., d/b/a MAACO Auto Painting and Bodyworks, ("MAACO") timely protests the award of a vehicle repair and maintenance agreement to Casso's Paint and Body, Inc. ("Casso") under Solicitation No. 129990-91-A-M536. The protester contends that the method used to select the awardee was arbitrary and capricious.

The solicitation for vehicle maintenance services for eleven different types of Postal Service vehicles was issued by the Procurement Service Office in Atlanta, GA, on August 21, 1991, with a due date of September 4. Section M of the solicitation described the method for evaluation of proposals as follows:

M.1 BASIS OF AWARD (VEHICLE MAINTENANCE) (Provision OA-33) (June 1988)

The Postal Service intends to award an agreement to the responsible offeror(s) whose proposal(s) will be most advantageous to the Postal Service, considering cost or price and other factors specified elsewhere in this solicitation.

The Postal Service may enter into one or more vehicle maintenance agreements to perform maintenance, repair, and servicing of vehicles assigned to an individual Postal Service installation. Each offeror is advised that the Postal Service will enter into agreements with only those offerors whose proposals represent the best overall value to the Postal Service. Distance from the postal installation (deadhead time), hours of operation of both the postal installation and the offeror (ability to service when postal vehicles are idle); and availability and cost of emergency road service are some of the criteria used in arriving at the best overall value.

The solicitation sought an hourly labor rate for body repair for each of the eleven different types of vehicles. The solicitation also asked offerors to state whether the hourly labor rate they were offering included towing, and if it did not, to state the price for round trip towing. Section A.2 and Section B of the solicitation contained a provision stating that "[t]he U.S. Postal Service reserves the right to evaluate offers based on hourly rate + towing charges."

Finally, the solicitation included the following provisions describing the steps that prospective offerors desiring an explanation of the solicitation should take:

K.6 EXPLANATION TO PROSPECTIVE OFFERORS (Provision A-6) (October 1987)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, or specifications must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their proposals.

Proposals were received from MAACO and Casso. MAACO offered the following prices:

<u>Make, Model of Vehicle</u>	<u>Hourly Labor Rate</u>
AM General 1/4 ton	\$21.00
AM General 1/2 ton	\$21.00
Grumman LLV 1 ton	\$21.00
Chevrolet 1 ton	\$21.00
Chevrolet 2 ton	\$21.00
International 7 ton	\$21.00
Volvo/White 9 ton	\$21.00
Volvo/White Tractor	\$21.00
Mack Tractor	\$21.00
Trailer	\$21.00
Passenger Car	\$21.00
Round trip charge for towing:	\$70.00

Casso's prices were as follows:

<u>Make, Model of Vehicle</u>	<u>Hourly Labor Rate</u>
AM General 1/4 ton	\$24.00
AM General 1/2 ton	\$24.00
Grumman LLV 1 ton	\$24.00
Chevrolet 1 ton	\$24.00
Chevrolet 2 ton	\$24.00
International 7 ton	\$32.00
Volvo/White 9 ton	\$32.00
Volvo/White Tractor	\$32.00
Mack Tractor	\$32.00
Trailer	\$30.00
Passenger Car	\$24.00
Round trip charge for towing:	\$28.00

The contracting officer evaluated the proposals by adding each offeror's hourly labor rate to its towing charge and comparing the resulting totals for each vehicle type.^{1/}

^{1/} For example, MAACO's hourly rate of \$21.00 for repairs on the AM General quarter ton vehicle was

After comparing the results from these calculations, the contracting officer determined that Casso's proposal provided the best overall value to the Postal Service. Award was made to Casso on September 6. MAACO filed this protest with the Atlanta office, where it was received on September 20. The Atlanta office forwarded the protest to this office for resolution.

In its protest, MAACO alleges that the method used for selecting the awardee was arbitrary and capricious. The protester claims that "[c]alculating the cost under this contract by adding one hour of repair plus the round trip towing charge bears no correlation whatsoever to the actual cost of work reasonably anticipated under this contract." [Emphasis in original]. The protester asserts that during its pre-proposal investigation, it learned that a considerable amount of labor time is required to properly perform the average postal vehicle repair. According to the protester, the average number of labor hours needed to repair a quarter ton vehicle which was in a collision is between 23 and 27 hours. The protester also claims that it discovered that less than five percent of the vehicles require towing from the Vehicle Maintenance Facility ("VMF") to the body shop and that "virtually no vehicles require towing both ways." The protester states that the contracting officer's designee indicated to the protester that such information had been provided to the contracting officer by the VMF and was therefore available to him.

Given these facts, the protester argues that the "proper methodology to evaluate all [offers] is to analyze the proposed labor rates and towing fees for the typical repair work which is anticipated under the contract." The protester illustrates its proposed methodology for evaluation with the following example based on the typical repair of a quarter ton vehicle:^{1/}

If performs the repair it will cost:

- (1) \$552.00 without towing (23 hours at \$24.00 per hour);
- (2) \$566.00 with towing one way (\$552.00 plus \$14.00);
- (3) \$580.00 with towing both ways (\$552.00 plus \$28.00).

If MAACO performs the repair it will cost:

- (1) \$483.00 without towing (23 hours at \$21.00 per hour);
- (2) \$518.00 with towing one way (\$483.00 plus \$35.00);
- (3) \$553.00 with towing both ways (\$483.00 plus \$70.00)

The protester states that the above analysis clearly shows that its proposal offers the lowest cost to the Postal Service. The protester adds that larger jobs such as upgrades or repairs of large vehicles would result in even greater savings to the Postal Service if it were awarded the agreement. MAACO requests award of the vehicle maintenance agreement.

added to its towing charge of \$70.00, resulting in a total of \$91.00. This total was then compared to Casso's total price of \$52.00 for this vehicle which was comprised of its \$24.00 hourly rate plus its towing charge of \$28.00.

^{2/} For purposes of this example, the protester presumes that the typical collision repair of a quarter ton vehicle takes 23 hours.

In his report to this office, the contracting officer states that there is simply no basis in the solicitation for awarding the vehicle maintenance agreement in the manner in which the protester suggests. He claims that although information about past repairs may be available, this alone does not mandate its use. The contracting officer notes that it is difficult to estimate the number of hours required to repair a vehicle without first examining the extent of damage to the vehicle. The contracting officer also contends that since the information concerning the average cost of a repair was not provided to the offerors prior to award, it could not be considered in evaluating their offers. Finally, the contracting officer states that "[t]he offeror's hourly rate plus . . . towing charge for each vehicle bid was the sole basis for award."

In its reply to the contracting officer's statement, the protester claims that the contracting officer's statement raises additional areas of concern regarding the validity of the solicitation, the evaluation of proposals, and the fairness of the award. The protester states that the contracting officer improperly used a pricing criterion which is mentioned in Section B of the solicitation as the sole basis for award, instead of using the evaluation criteria set out in Section M of the solicitation. The protester asserts that this shows that the solicitation is ambiguous and misleading. The protester also reiterates its concern about the way in which the evaluation of proposals was conducted. According to the protester, the contracting officer has improperly evaluated the offerors' hourly rates plus towing charges "as a single 'price' when in fact each bid 'price' has two cost components -- one variable cost and the other a fixed cost.^{4/} The protester further argues that cost data collected from past repairs should be relied upon Casso as a reasonable predictor of future costs since there is nothing better to rely on "[i]n the absence of a crystal ball." The protester claims that the difficulty mentioned by the contracting officer in establishing the number of labor hours for a theoretical repair job can be overcome by using an average. Finally, the protester asserts that the contracting officer should not be concerned with the fact that offerors were not provided with this data since this data is for the contracting officer's use in evaluating the offers.

Discussion

Although the protester characterizes its protest as a challenge to the method used in evaluating the proposals, it is really a challenge to the terms of the solicitation. This is evidenced by the protester's claim that the solicitation is "ambiguous and misleading." The protester argues that the proposals should not have been evaluated by adding the cost of one hour of labor to the towing charge. Rather, the contracting officer should have used the information it possessed about past repairs and evaluated the proposals

^{3/} The protester demonstrates this distinction with the following illustration:

<u>Offeror</u>	<u>Hourly Rate</u>	<u>+</u>	<u>Towing Charge</u>	<u>=</u>	<u>Total Price</u>
A	\$100.00		0		\$100.00
B	\$ 25.00		\$100.00		\$125.00

The protester states that if one applies the method of evaluation which the contracting officer used, the lowest cost offeror is always A. The protester points out, however, that if the work required in its example is two hours instead of one, then Offeror B becomes 25% cheaper than offeror A. Further, if no towing is required, then Offeror B is 75% cheaper than A, even in the imaginary one hour job.

by multiplying the hourly labor rate of each offeror by the average number of hours needed to repair that type of vehicle and then adding to that total the towing charge. The problem with the protester's suggested approach is that offerors were not provided with the information concerning the average number of hours needed to repair each vehicle type and were not informed in the solicitation that proposals would be evaluated in the way suggested by protester.

It is well settled that the evaluation criteria which are set out in a solicitation must "fairly advise prospective offerors of the basis on which their offer[s] will be considered" Hill's Capitol Security, Inc., P.S. Protest No. 90-25, July 20, 1990. Furthermore, once offerors are informed of evaluation criteria, the procuring agency must adhere to those criteria in evaluating the proposals. Serv-O-Matic, Inc., P.S. Protest No. 91-32, August 9, 1991; TRW Financial Systems, Inc., P.S. Protest No. 91-19, May 29, 1991. Here, Sections M, A and B in the solicitation expressly advised offerors as to how their proposals would be evaluated. The record shows that the contracting officer evaluated the proposals in accordance with the solicitation. Contrary to the protester's assertions, it was not improper for the contracting officer to rely on the statement which was included in both Sections A and B in evaluating the proposals since Section M advised offerors that cost or price as well as "other factors specified elsewhere in th[e] solicitation" would be used in the evaluation. [Emphasis added]. Moreover, the contracting officer could not have evaluated the proposals in the manner proposed by the protester without first amending the solicitation and giving offerors the opportunity to revise their offers using the estimates about past repairs.

Procurement Manual 4.5.4 b. directs that protests "based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals must be received by the date and time set for the receipt of proposals." Here, the protester could have alerted the contracting officer to its concerns that it would not be in the best interests of the Postal Service to evaluate the proposals in the manner stated in the solicitation, following up with an immediate protest letter prior to the offer due date. Similarly, if the protester thought that the language in Sections M, A and B was ambiguous, it could have requested an explanation in writing, as provided by Provision A-6 in the solicitation, or it could have filed a protest raising this concern, before September 4, the date set for submission of proposals. "Our protest regulations require the prompt raising of protests and do not allow an offeror to sit quietly with a possible basis for a protest to see how he fares in the competition, raising the protest only if he does not succeed." Donald Clark Associates, Inc., P.S. Protest No. 91-34, September 4, 1991. Since Maaco did not file this protest until September 20, more than two weeks after proposals were due, the protest must be dismissed as untimely. The protest is dismissed.

[Signed]

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 5/17/95]