

Protest of ) Date: February 6, 1992  
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BLACKHORSE SERVICES CORP. )  
d/b/a MAACO AUTO PAINTING )  
AND BODYWORKS )  
Solicitation No. 129990-91-A-M536 ) P.S. Protest No. 91-71

### ON RECONSIDERATION

Blackhorse Services Corp., d/b/a MAACO Auto Painting and Bodyworks, ("MAACO") has timely requested reconsideration of our December 3, 1991, decision denying its protest against award of a vehicle repair and maintenance agreement to Casso's Paint and Body, Inc. ("Casso").

The basis for the protest was a contention by MAACO that the method used for selecting the awardee was arbitrary and capricious. The protester claimed that the contracting officer should not have evaluated the proposals by adding each offeror's hourly labor rate to its towing charge and comparing the resulting totals for each vehicle type. Instead, the protester maintained that the contracting officer should have evaluated the proposals 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 protester further alleged that his suggested method of evaluation could be used by the contracting officer even if the solicitation did not provide offerors with information concerning the average number of hours needed to do a typical repair job.

In our decision, we held that MAACO's protest was untimely pursuant to Procurement Manual ("PM") 4.5.4 b. because it was really a challenge to the terms of the solicitation. We pointed out to the protester that if it thought that it would not be in the best interests of the Postal Service to evaluate the proposals in the manner stated in the solicitation, it could have alerted the contracting officer to these concerns in a timely manner, following up with an immediate protest letter prior to the proposal due date. We also noted that contrary to the protester's assertions, the contracting officer had evaluated the proposals in accordance with sections M, A, and B in the solicitation.<sup>1/</sup> Finally, we rejected the protestor's contentions that the proposals should have been evaluated using figures about past repairs and explained that it would have been improper for the contracting officer to do this without first amending the solicitation and giving offerors an opportunity to revise their offers using the estimates about past repairs.

PM 4.5.7 n. states that a request for reconsideration "must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not considered."

<sup>1/</sup> Since the language in sections A and B is identical with respect to the evaluation criteria, we will make reference only to section A for the remainder of our discussion.

Information not previously considered refers to that which "a party believes may have been overlooked by our office or to information which a party did not have access to during the pendency of the original protest." Spaw-Glass Construction, Inc., On Reconsideration, P.S. Protest No. 87-46, September 18, 1987; Fort Lincoln New Town Corporation, On Reconsideration, P.S. Protest No. 83-53, November 21, 1983.

In its request for reconsideration, MAACO claims that its protest did not allege any deficiency in the terms of the solicitation, but rather in the contracting officer's application of the solicitation's criteria. The protester states that evaluation criteria that were described in Sections M and A fairly advised prospective offerors of the basis on which their offers would be evaluated. MAACO claims, however, that in using the criterion set out in section A as the sole basis for award, the contracting officer was rejecting the requirement in Section M which mandated the selection of the proposal which "will be most advantageous to the Postal Service," and was, in fact, selecting the proposal which was the least advantageous to the Postal Service.

MAACO maintains that the language used in Section A of the solicitation did not indicate to offerors that this would be the sole criterion used in selecting the awardee nor did it suggest that only one hour's work at the lowest hourly rate was to be added to the offeror's towing charge and that the lowest sum would be selected. According to the protester, this criterion "clearly advises offerors that the [c]ontracting [o]fficer will conduct an evaluation in which he will use the proposed hourly rates and towing charges, if any, to select the proposal most beneficial to the Postal Service." The protester reasserts that the contracting officer could have used information about past repairs in evaluating the offers since prospective offerors "who are qualified to provide these services to the Postal Service can either estimate this information on their own or through reasonable due diligence discover it." MAACO adds that in this case there were only two offerors and one of them was the incumbent who was in the best position to understand the work that was anticipated.

Even if we were to find that MAACO's protest was a challenge to the contracting officer's application of the evaluation criteria, rather than a challenge to the terms of the solicitation, we would not sustain it. As we stated in our decision, after reviewing the solicitation we found that the contracting officer evaluated the proposals in accordance with the criteria. Section M of the solicitation stated that

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 solicitation did not define the term "most advantageous" but instead informed offerors that the contracting officer would look at price and other factors specified elsewhere in the solicitation to make this determination. The only other factors specified in the solicitation were in section A.2<sup>1/</sup> and in the second paragraph of section M.1.<sup>1/</sup> The contracting officer applied the criteria in Section A and found Casso's

<sup>2/</sup> Section A.2 stated that "[t]he U.S. Postal Service reserves the right to evaluate offers based on hourly rate + towing charge. "

<sup>3/</sup>Section M.1 stated that "[d]istance 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

proposal to be the most advantageous.<sup>4/</sup>

Although the protester disagrees with the way the contracting officer applied the evaluation criteria, the contracting officer's method of evaluation was reasonably based on the language in the solicitation. The language in Section A did not state that an offeror's hourly rate would be multiplied by any specific number before the towing charges were added. MAACO's argument that the contracting officer could have used information about past repairs in evaluating the offerors, was considered and rejected in our original decision. "Reconsideration is not appropriate where the protester simply wishes us to draw from the argument and facts considered in the original decision conclusions different from those we reached in that decision." Tompkins & Associates, On Reconsideration, P.S. Protest No. 8858, January 27, 1989; Fort Lincoln New Town Corporation, On Reconsideration, supra.

MAACO has not presented any factual or legal grounds warranting reversal or modification of our original decision. Therefore, on reconsideration, we adhere to our decision denying the protest.

**[Signed]**

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

**[Compared to original 5/18/95 WJJ]**

availability and cost of emergency road service are some of the criteria used in arriving at the best overall value. "

<sup>4/</sup> We note that although the contracting officer did not use information supplied by the offerors concerning the distance from the postal installation and the hours of operation in his evaluation, MAACO was not prejudiced by this error since Casso's distance and hours were comparable to those of the protester.