

February 9, 1994

P.S. Protest No. 93-19

WITEL COMMUNICATIONS SYSTEMS, INC.

Solicitation No. 052684-93-A-V187

DIGEST

Protest against award of contract for telephone system is denied where determination of Centrex offeror's technical acceptability was not arbitrary or in violation of procurement regulations; protest involving interpretation of previously-awarded telephone contract is dismissed for lack of subject matter jurisdiction.

DECISION

WilTel Communications Systems, Inc., ("WilTel") timely protests the award to Pacific Bell ("Pacific") for a telephone system for the Santa Clarita, CA, postal facility.

In 1992, the Postal Service centralized its process for procuring telephone systems for facilities in the continental United States. The Telephone System National Aggregated Procurement ("TSNAP") consisted of two phases. The first phase was a competition for electronic digital private branch exchange ("EDPBX") and electronic key telephone systems ("EKTS") vendors.¹ The Office of Procurement, Postal Service headquarters, competitively awarded mandatory ordering agreements for each type of system. WilTel received the agreement for EDPBX systems on March 27, 1992; another vendor received the agreement for EKTS.

Phase two, which is ongoing, calls for a site by site competition between one of the TSNAP vendors (depending on the size of the required system) and the locally franchised telephone exchange company ("LEC"), which offers leased Centrex systems, serves a specific geographic area, and provides the exchange where the subscriber line terminates.²

¹ EDPBX systems will involve between 51 and 5,000 instruments; EKTS systems are smaller.

² Management Instruction AS-710-92-4, Procurement of Telephone Systems, June 12, 1992, ("the MI") outlined policies and procedures to be followed in procuring all new telephone systems for the Postal

The Santa Clarita solicitation was a phase two procurement. Accordingly, the San Bruno Purchasing Service Center issued solicitation 052684-93-A-V187 to Pacific (the LEC) and to WilTel on May 26, 1993, requiring a telephone system comprised of 440 instruments and contemplating firm fixed pricing for five years.

As part of its "Large System Standard Statement of Work," the Santa Clarita solicitation describes the Telephone Cost Evaluation Model ("TCEM"), designed to "simplify the evaluation of the phase 2 competition." Mandatory for all new telephone systems procurements, this computer model calculates the costs of the competing Centrex and EDPBX solutions to specific Postal Service telephone systems requirements, to identify the more cost-effective solution in each case.³

The Santa Clarita solicitation required both the Centrex provider and the TSNAP vendor to meet the specifications listed on Form 8139, including number of instruments and number of trunk ports on the system, automated call distribution ("ACD") capability, training, maintenance, cabling and conferencing requirements. The general requirements are described in Section 2 of the Statement of Work, which states that "[w]hile a particular location may not need all these features and capabilities, both the Centrex vendor and the TSNAP contractor must propose functionally equivalent systems."

Section 3.1.3 of the Statement of Work required the offerors to "provide ISDN [Integrated Service Digital Network] station equipment that interfaces to the system using the Basic Rate Interface (BRI)." Section 3.3 states that "[a]utomatic call distribution (ACD) must be

Service nationwide. The MI states that EDPBX provides "(1) connectivity to public and private networks; (2) numerous services to customers such as call transfer, call waiting, call forwarding, automatic inward dialing, etc.; and, (3) switching of calls internally end-to-end from the public and private telephone network."

The MI states that "[u]nder the TCEM process, LECs may offer centrally-based Centrex service and handsets only," and goes on to define Centrex as a "predominantly leased telecommunication service offered by the LECs to customers as a competitive alternative to EDPBX or EKTS systems. . . . The primary difference between Centrex and EDPBX/EKTS systems is that Centrex switching hardware is remotely located at the LEC's facility rather than at the postal facility."

Other definitions pertinent to this protest (from the TSNAP solicitation glossary):

Switched message network: "A network of telephone lines and switching equipment normally used for local and intercity telephone and data communications."

Switching center: "A location where an incoming call/message is automatically or manually directed to one or more outgoing circuits."

³ The MI explains that recent technological changes have made Centrex competitive in pricing, and the intent of requiring the TCEM process for phase 2 solicitations is to ensure that on a site by site basis, the Postal Service can choose the lowest cost system.

provided as an integral part of the system. The ACD capability must provide automatic distribution of incoming calls to individual call distribution groups for any size system"; section 3.3.1 lists the required capabilities of the ACD, including "call routing into a queue until a position is available, followed by automatic connection to the next available position . . ." The solicitation did not mandate that the ACD be located off-site; it was silent on the location of the ACD equipment.⁴

Solicitation provision 3.3, Evaluation and Award Factors, states:

- a. The Postal Service intends to award a contract to the responsible offeror whose technically acceptable proposal conforming to the solicitation offers the lowest net present value price over a sixty month life cycle as calculated by the TCEM.⁵
- b. The proposed telephone system must fully comply with all requirements in the solicitation to be considered technically acceptable. All required components must be included in the proposal. A proposed Centrex solution must be able to perform each of the technical functions specified. Where digital telephones are specified, proposals offering other than digital telephone instruments will be rejected as technically unacceptable.

Further, in order for the Centrex offeror's solution to be technically acceptable, it must be consistent with Schedule 1.3, which states:

The telephone system central office solution must meet the specific requirements set forth in PS Form 8139 . . . and the general requirements set forth in the Standard Statement of Work . . . The vendor may propose limited switching equipment on the USPS premises, such as a remote switching module. However, this equipment must clearly be an extension of the central office switching equipment. On-premise EDPBX or EKTS may not be proposed as part of a Centrex solution.

Proposals from Pacific and WilTel were due July 12. Upon their receipt, the contracting officer forwarded them to the appropriate Information Resource Management Telecommunications Support Center ("ITSC") for headquarters field units, which evaluated the LEC's solution for technical acceptability on a pass/fail basis. The ITSC also evaluated WilTel's proposal to ensure that "all required components were proposed." The ITSC found both offerors' solutions technically acceptable. The procuring office then ran the TCEM and determined that for the Santa Clarita facility, Pacific's solution would be more cost effective. Accordingly, award was made to Pacific on August 20. WilTel's protest followed.

⁴ Although phase 1 procured EDPBX and EKTS suppliers only, and phase 2 includes Centrex offerors, both the phase 1 (TSNAP) solicitation and the Santa Clarita solicitation required ACD capability.

⁵ Section 11 of the Statement of Work also states that award will be made "to that offeror who submits a technically acceptable and lower priced proposal that is based on the criteria established in the TCEM."

WilTel contends that under its TSNAP agreement, it has the exclusive right to furnish on-site call switching equipment nationally for "medium to large U.S. Postal Service sites such as Santa Clarita," and that:

Contrary to the TSNAP Contract, the Postal Service accepted a Pacific proposal for Santa Clarita that relies on on-site switching equipment, not Centrex service, to meet some of the mandatory requirements. Therefore, the award must be overturned.⁶

WilTel claims that Pacific's on-site ACD performs call switching functions and is therefore unacceptable for the Santa Clarita solicitation and "in contravention of the TSNAP groundrules [sic]."⁷

The protester claims that automated call distribution is "clearly a switching function. The character of the function is no different whether it is performed by a PBX, a stand-alone ACD, or Centrex It can also be provided by a separate ACD switching unit For each incoming call on a given line . . . it selects one of multiple potential destinations and routes the call accordingly."⁸ WilTel bases its protest on provision B.16 of its TSNAP agreement's specifications⁹ and that provision's interpretation by postal officials in the TSNAP preproposal conference, and claims that the Postal Service unfairly changed the rules after phase 1, allowing companies like Pacific a "second chance" to offer on-site

⁶ According to WilTel:

The partial breakup of the telephone monopoly made it legally possible for users to own their own telephone systems to handle internal communications and connect to the public telephone network. This led to the rapid market acceptance of the [PBX. . . which] is a sophisticated switching device located on the user's premises that can route all communications within those premises. . . . All of this is accomplished without resort to the local phone company network.

⁷ The protester also cites the TSNAP glossary definition of Centrex: ". . . similar to an on-premise EDPBX but whose switching functions are performed in a central office."

⁸ WilTel cites *APEC Technology Limited*, GSBCA No. 9921-P, 89-2 BCA 21,750, April 5, 1989, which refers to ACDs as a "type of external switching."

⁹ Page 42 of the original TSNAP solicitation, at B.16, states:

CENTREX.

As part of Phase 2 of its overall telecommunications plan, it will be the policy of the Postal Service to evaluate CENTREX . . . at all locations prior to issuing an order under TSNAP (Phase 1). For systems in excess of 12 lines, this policy will be managed centrally, on a national level. For systems numbering 12 lines or less, this policy will be managed at the local level. . . . The elements to be used for CENTREX versus PBX evaluation will be issued under separate cover. All interested parties will be given an opportunity to provide comments before the first order is issued under TSNAP.

switching "under the guise of 'Centrex' service."¹⁰

Finally, WilTel alleges that "[u]pon information and belief, Pacific's California Centrex tariff does not include authorization or pricing for on-site ACD units." WilTel asks that this office decide in its favor by ruling that the Postal Service cannot accept on-site switching at Santa Clarita; by overturning the award to Pacific; and by awarding the contract to WilTel in accordance with TSNAP.

The contracting officer replies that after the ITSC informed her that both Pacific's and WilTel's proposals were technically acceptable, she ran the TCEM for both companies, and Pacific's was the lowest cost solution.

Regarding WilTel's main contention, that Pacific's proposal relies on on-site switching equipment instead of Centrex; and specifically that its ACD unit performs on-site switching, the contracting officer states that she relied on advice from technical personnel in the ITSC, to the effect that "the ACD proposed by Pacific Bell does not perform any on-site switching functions. All switching functions are being performed in the central office."

The contracting officer explains that WilTel's protest "demonstrates [its] lack of understanding regarding emerging [ISDN] technology," which is the basis of the Santa Clarita Centrex system:

Twenty-four (24) Stations of the 450 line system are designed for ISDN ACD Groups. These 24 stations are connected to the Central office via a single ISDN bearer channel commonly referred to as 1B channel. There is no physical connection between the ACD and the Station instruments. The ACD proposed by Pacific Bell is actually a 486 PC running ISDN software.

The contracting officer asserts that Pacific's ACD "has no internal switching function. All calls are queued at the Central office. When an agent becomes available, the next call is switched by the Central office to that available line."

The contracting officer states that even if Pacific's ACD were a switching device, WilTel's protest would be without merit because the solicitation allows limited switching equipment on postal premises as long as it is "an extension of the central office switching equipment." She states her belief that the latter language is consistent with the terms of WilTel's TSNAP agreement.

The contracting officer asked the contracting officer who administers WilTel's TSNAP agreement to submit a statement on the merits of this protest. He also concludes that Pacific's ACD does not perform on-site switching as alleged by the protester. He states that each of the 24 ACD stations at the Santa Clarita facility has its own Centrex line and is

¹⁰ Our review of the transcript of the TSNAP preproposal conference does not support WilTel's allegations that rules were changed so that LECs could offer on-site call switching systems rather than central office switching. The conference's discussion of phase 2 is consistent with what occurred here, a competition between the TSNAP vendor and the Centrex provider for postal facilities such as Santa Clarita's.

"connected to the central office via a single ISDN bearer channel. . . All calls are queued and switched from the Central Office to the next available ACD agent." The TSNAP contracting officer concludes: "Therefore, WilTel's assumption that [the] system provided by Pacific Bell utilizes on-site switching is inaccurate -- what it does is use on-site equipment to assist in the performance of off-site, central office switching."

Pacific agrees with the contracting officers that its ACD is not switching equipment. According to Pacific, EDPBXs and EKTS, solicited as phase 1, are the only systems or equipment that it cannot propose and, consequently, that is the only restriction on equipment which an LEC like Pacific may use as part of its Centrex solution.

The RFP clearly permits LECs to deploy ACDs in conjunction with a central office switch and preclusively rebuts the sole predicate for WilTel's protest of the award to Pacific.

Pacific states that its ACD is dependent upon the "physical switching fabric of Pacific's central office switches in order to accomplish the switching of queued calls." Pacific has submitted a letter from AT&T (the manufacturer), in which it describes the ACD at issue as follows:

The AT&T Network Systems Destiny Automatic Call Distributor (ACD) is a PC-based, Customer Premises Equipment (CPE) solution which attaches to the line side of the Pacific Bell central office switch.

The Destiny controls all of the ACD switching functions within the physical switching fabric of Pacific Bell's central office 5ESS Switch. Call control information is passed from the Customer's PC to the switch over Pacific Bell's publicly tariffed Centrex-IS service, using standard D-channel signaling (Q.931) within the ISDN Basic Rate Interface offered in Centrex-IS tariff packages A, B, C, or D.

Finally, Pacific rebuts WilTel's claim that Pacific is not authorized to use on-site ACDs, stating that the California Public Utilities Commission has approved their use.¹¹

In its reply to the contracting officer and to Pacific, WilTel asserts that neither has persuasively answered the question of whether Pacific's on-site ACD performs switching functions. WilTel maintains that it is irrelevant where the "physical switching point" or "fabric" is; the relevant point is where the switching function is performed. WilTel alleges that Pacific's ACD performs switching functions at the postal site and is not controlled by the central office. "It is an intelligent, stand-alone device; a personal computer, not part of a Centrex switch. It certainly is not a 'limited' switching device In no sense is it a mere 'extension' of a central office switch. Instead, it is the on-site ACD that provides the brain and directs the activity, with the central office device acting as the subservient appendage."

¹¹ The protester dropped this allegation in subsequent submissions. In any event, there is insufficient evidence on the record to overturn the contracting officer's affirmative determination of Pacific's responsibility in this regard. See, e.g., *Central Air Southwest*, P.S. Protest No. 93-15, September 29, 1993.

WiTel claims that the AT&T letter submitted by Pacific "demonstrate[s] that this ACD performs switching functions, including the most fundamental and important switching function: determining how incoming calls are to be routed and routing those calls by issuing instructions to other equipment."

WiTel also takes issue with Pacific's statement that the Santa Clarita solicitation only prevents Pacific from offering EDPBX equipment, contending that it also prohibits on-site switching equipment that is not dependent on the central office equipment--which the protester claims is the case here. WiTel asks that the award to Pacific be overturned and that the Postal Service be directed to place an order for Santa Clarita with WiTel in accordance with the TSNAP agreement.

In a protest conference, and subsequent written comments, WiTel made the following points:

- The description offered by AT&T proves that Pacific's ACD is a computer that controls call switching functions from the postal site, which makes it forbidden under both the Santa Clarita schedule section 1.3 and TSNAP's definition of Centrex.
- The interpretation of section 1.3 by Pacific is that "it can offer *any* switching on-site except a full PBX"--an interpretation which WiTel characterizes as "patently unreasonable."
- Section 1.3 is designed "only to allow limited switching equipment that is an element of Centrex," such as a remote switching module that is merely an extension of the central office switching equipment.
- The plain meaning of the AT&T specifications shows that the brain of the switching system is located at the postal site, even though the circuits that carry out the brain's commands might be located at Pacific's central office.
- Only something like a remote switching module can be located on-site (an ancillary extension, a "dumb" appendage); whereas Pacific's ACD is an intelligent computer controlling the switching functions. A "brain" cannot be an "extension."
- Pacific's ACD controls its central office functions; the central office equipment is dependent on the ACD for directions. Routing and switching are the same function, and the ACD's "sole purpose in life" is to switch calls.
- "It is thus [Pacific's] **central office switch** which is controlled by and an extension of the on-site ACD, not the other way around." [Emphasis in original.]

This is the mirror image of the configuration of a remote switching module, where the main controlling elements are at the central office and the dependent 'extension' (the R[emote]S[witching] M[odule]) is at the site. In other words, to treat an intelligent independent device such as an ACD as an 'extension' would be inconsistent with the clear premise of clause 1.3 that an RSM, which is a **dependent**

device, is an 'extension.' . . . [Emphasis in original.]

- It was arbitrary for the contracting officer to accept on-site switching in the form of an ACD;
- "Where, as here, the contracting officer's competing interpretation is unreasonable, there is no 'ambiguity' and her interpretation is not entitled to any deference."¹²
- Interpreting contractual language and definitions is in our office's purview; that without such authority our review of technical judgments is nonexistent.
- This office should rule that the Postal Service may not accept on-site switching equipment including ACDs "under the guise of 'Centrex'," overturn the award to Pacific, and direct the Postal Service to place the order with WilTel under its TSNAP agreement because there was no technically acceptable lower-cost Centrex offer.

By memorandum dated November 17, we asked the contracting officer to respond to WilTel's contention that Pacific's on-site ACD controls the central office switching, presenting a situation which is the opposite of that allowed by solicitation paragraph 1.3.

The contracting officer's response, which was provided by the ITSC technical expert, includes the following comments:

- Pacific's ACD, the AT&T Destiny computer, is not switching equipment. The protester's argument evidences a lack of understanding of the ISDN technology that comprises Pacific's solution.
- "ISDN is an all digital network that supports voice, data and imaging services via standard twisted pair telephone wire. Basic rate ISDN is the interface that will be used to access Pacific Bell's Central Office AT&T 5ESS ISDN Switch"¹³ which is located at the central office and performs all switching there.
- "The basic rate interface consist[s] of two 64k bps channels known as Bearers or B channels which may be used to carry voice or data. The basic rate interface also consists of a 16k bps supervisory channel commonly referred to [as] a D channel [which] is used to communicate with the central office."
- Pacific's ACD's communication with the central office switch over the D channel

¹² WilTel asserts that it alleges neither a solicitation defect nor an ambiguity, stating that an ambiguity "is deemed to exist only if the parties assert two or more **reasonable** interpretations." (Emphasis in original.) According to WilTel, since the solicitation did not state that the ACD must be on-site, Pacific conceivably could have offered an off-site ACD.

¹³ The response states that the 5ESS central office switch contains "five million lines of software code in its memory" and can switch "up to 1 million lines" It is the brain of the 5ESS "that truly controls all switching functions."

is referred to as "signaling," not switching.

-- "ISDN telephone instruments use D channel signaling to establish, maintain, provide accounting for, and terminate a telephone call connection. Instead of a signaling scheme[] based on tones (Touchtone/DMTF) and clicks (rotary), ISDN employs a more efficient system of sending data messages via the D channel to tell the central office switch when to setup, monitor, and tear down calls. These types of data messages are commonly called call handling, call control or call processing messages."

-- The central office "is not dependent on the Destiny to provide additional signals to connect the call." Pacific's ACD merely sends to the central office switch a "request via D channel signaling to perform the necessary function." In so doing, it sends the same call handling messages as would a receptionist using a manual telephone instrument.¹⁴ The central office thus performs all actual switching functions regardless of whether the call handling signal comes from the Destiny automated device or a manual telephone. The difference is that Pacific's ACD performs the same tasks "more efficiently by automating the signaling process."

-- All switching equipment, including central office switches, EDPBX and "traditional (non ISDN) ACDs" are directly connected to multiple paths "commonly referred to as lines or trunks. All switching equipment including traditional ACDs also have a switch matrix", which allows connections between "any two paths connected to the switching equipment."

-- Both multiple paths and a switching matrix are essential to switching. Pacific's Destiny has neither; therefore, it is not switching equipment and is incapable of switching.

-- WiTel is actually protesting automated signaling. "Automating the signaling function does not change it into a switching function Switching remains a separate function performed entirely by the central office."¹⁵

¹⁴ The response elaborates on this analogy as follows:

The central office would signal the receptionist that there is a[n] incoming call by sending a data message to the instrument to activate the instrument's ringer. The receptionist answers each incoming call and if an agent is available, the receptionist transfers the call. The transfer is accomplished by the receptionist depressing a button and/or dialing codes that signals over the D channel to the central office. The central office, after receiving the signalled request, performs the necessary switching functions. If all agents are busy the receptionist would signal the central office with a request to put the call on hold by depressing the hold button. The receptionist monitors the agents and signals to the central office, with a transfer request, as soon as an agent becomes free.

¹⁵ The response gives as an analogy a personal computer with a keyboard, stating that keyboard strokes "are requests to the PC's CPU to perform certain function[s]. . . . It would be ludicrous to consider the keyboard as the brain of the system. It is equally ludicrous to consider the Destiny PC to be the 'brains' of the central office."

-- "Santa Clarita is the first completely ISDN system implemented by the USPS. As this new technology emerges it is critical that the USPS is not precluded from [its] use because of WilTel's incorrect assertions."¹⁶

Finally, the response stresses:

Paragraph 1.3 of the schedule specifically prohibits two distinct types of switching equipment, EDPBXs and EKTS. The USPS chose not to specifically prohibit ACDs in the same manner. This is very revealing of the USPS intent for TSNAP solicitation. The USPS chose to allow a broad category of limited switching equipment and chose to prohibit specifically only two types of switching equipment.

In additional comments, Pacific agrees with the contracting officer's explanations as set out above and alleges that contrary to WilTel's statements, the protester is making an untimely protest against the terms of the solicitation.¹⁷ Pacific concludes that "WilTel has not set forth sufficient evidence to overcome the presumption of correctness to which the contracting officer's determination is entitled in this matter."

WilTel's final response to the arguments of Pacific and the contracting officer states:

-- It is a "fundamental underlying fact" that Pacific's on-site ACD "monitors the status of the 24 ACD telephone stations, determines where each incoming ACD call will go, and directs the routing of the call accordingly. Since the central office equipment merely takes additional steps to implement the directions given by the ACD . . . the ACD **controls** the activities of the central office equipment insofar as ACD calls are concerned. The Contracting Officer's refusal to admit that this is 'control' does not alter the fact that the term is accurate."

-- The contracting officer "has the burden of rebutting WilTel's *prima facie* case

The response also states that WilTel's assertions about the acceptability of a remote switching module (RSM), because it would be a dependent device rather than the "brains" of the switching system, also are incorrect, because an RSM "has the same intelligence as the switching module located at the central office. . . . The use of the RSM as an example of switch equipment that could be on site [solicitation provision 1.3] clarifies that the USPS was not limiting the intelligence of on site switching equipment."

¹⁶ According to the response, the TSNAP contract "clearly envisioned using the capability of ISDN once the technology became available. Section B3.42 of the TSNAP contract states that the '[e]ndor must submit plans for migration of all systems to meet all additional approved CCITT ISDN functions or features.' This section goes on further to state that 'ISDN capability must be available within one year of contract award.'"

¹⁷ Procurement Manual (PM) 4.5.4 b. states that a protest "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."

that the on-site ACD performs switching functions and therefore is switching equipment" and has failed to meet that burden. The protester states that it does not dispute the fact that some switching functions occur at the central office; the issue is "what the ACD does on-site" which is "where the control and monitoring of the entire ACD switching activity takes place."

-- "WilTel has never contended that the ACD directs **all** the activities of the central office equipment, only the ACD activity." [All emphases in original.]

-- "Whether ISDN is used in conjunction with such switching equipment is irrelevant."

WilTel disputes the contracting officer's interpretation of TSNAP and asserts that such interpretations are not in accord with those of the persons who conducted the TSNAP procurement.

DISCUSSION

The dispute central to this protest is whether Pacific's ACD, a computer located on postal premises, performs call switching functions which the solicitation prohibits being performed on the Santa Clarita site. WilTel claims that the ACD performs and controls call switching, rendering Pacific's proposal technically unacceptable under schedule section 1.3. The contracting officer contends that Pacific's proposal is technically acceptable under section 1.3 because none of Pacific's on-site equipment constitutes switching equipment which is prohibited by the solicitation. Since award was to go to the offeror proposing the lowest cost technically acceptable solution and WilTel has not disputed award based on cost, technical acceptability is the only issue to be resolved.

A contracting officer's determination of technical acceptability is accorded considerable discretion by this office:

Our review of the technical evaluation of proposals in negotiated procurements is limited and we will not substitute our judgment for that of the technical evaluators or disturb the evaluation unless it is shown to be arbitrary, capricious, or in violation of procurement regulations. Generally, the contracting officer's determination will be upheld unless it is arbitrary, capricious, or unsupported by substantial evidence.

Cabletron Systems, Inc., P.S. Protest No. 93-23, December 23, 1993, quoting *Comcraft, Inc.*, P.S. Protest No. 92-20, May 28, 1992. Further, the burden is on the protester to establish that the technical evaluation was unreasonable. *Cabletron, supra*; see also *Cohlma Airline, Inc.*, P.S. Protest No. 87-118, April 13, 1988.

The parties do not dispute that under section 1.3, Pacific's solution must use Centrex, and cannot use EDPBX as part of the Centrex solution. The parties' conflict arises over section 1.3's limitation that the Centrex provider cannot use more than "limited switching equipment on the USPS premises" which is "clearly" an extension of the central office switching

equipment. WilTel claims that Pacific's ACD is the brains of Pacific's call switching equipment on which the switch in the central office depends, while the contracting officer takes the position that the ACD is not switching but "signaling" equipment, and that switching functions occur at and are controlled and performed by the 5ESS ISDN Switch at Pacific's central office, with the ACD at most "assisting" the central office.

The protester and the contracting officer thus disagree over the definitions of "switching," and "switching functions," and over whether "routing" is "switching," and dispute whether Pacific's ACD performs "signaling" or "assists" or "controls" switching. Both parties argue vigorously and in detail to support their respective positions. These disagreements, however, involve questions of fact, and it is well settled that "[i]n resolving factual conflicts between the protester and the contracting officer, the statements of the contracting officer are given a 'presumption of correctness' which the protester bears the burden of overcoming." *T&S Products*, P.S. Protest No. 90-06, March 9, 1990, quoting *Fairfield Stamping Corporation*, P.S. Protest No. 88-04, June 3, 1988.

Our office does not conduct independent investigations; rather, we resolve protests based upon the written record supplied by the contracting officer, interested parties and protester.

COR, Inc., P.S. Protest No. 90-16, June 22, 1990. This record does not contain evidence sufficient to overcome the presumption of correctness accorded the contracting officer's position and to prove that WilTel's interpretations should be substituted for the contracting officer's. Despite WilTel's arguments, we cannot say that the contracting officer's definitions of the functions performed by Pacific's ACD, the application of section 1.3 to this case, or, as a result, the determination of technical acceptability, were unreasonable.

Cabletron, Cohlma, supra. A protester's mere disagreement with the contracting officer's position and judgment does not meet its burden of proving that technical decisions were unreasonable. *New Breed Corporations*, P.S. Protest No. 93-20, October 21, 1993, citing *Computer Systems & Resources, Inc.*, P.S. Protest No. 86-4, March 27, 1986.¹⁸

¹⁸ The AT&T letter cited by both parties supports the contracting officer's position as well as WilTel's. It also is difficult to understand how the *APEC Technology* case cited by the protester (see footnote 8) aids WilTel. In that case the issue was whether the solicitation excluded Centrex, or external, call switching. Although the GSBCA decided that the government's intent was to exclude Centrex, instead requiring a "stand-alone" system, the decision repeatedly referred to Centrex, PBX and ACDs as different types of telephone systems and stated that the intent was not to rely on Centrex, PBX, ACD or other type of external switching." The GSBCA thus referred to some types of PBX systems and ACDs as external systems which were not technically acceptable under the solicitation; here there is no doubt that WilTel's PBX system is technically acceptable, and WilTel's argument that the same quoted language should work against Pacific is unpersuasive.

Like the GSBCA in *APEC Technology*, we examined the entire record, looking beyond specific technical terms to the contracting officials' intent in the particular solicitation. The record shows that the Postal Service contemplated use of both ACD equipment and the relatively new ISDN technology in this phase 2 procurement. Further, as previously discussed, the contracting officer admits that a "traditional" ACD can be considered switching equipment if it has a switching matrix and there are multiple connections, but argues that since Pacific's ACD does not, it should not be so considered. As discussed above, we are not required to make a finding that the contracting officer's position is factually more reasonable than WilTel's (since the protester has not met its burden of proving the reverse). In our opinion, however, the contracting officer's argument makes more sense than WilTel's where the latter seems to be arguing that

The protester has denied that it is claiming that the Santa Clarita solicitation, which required both ACD capability and an ISDN interface, was defective, an argument that would be untimely since it was not made before the time set for receipt of proposals. PM 4.5.4 b.; see, e.g., *M&S Quality Service*, P.S. Protest No. 93-18, September 24, 1993; *A-1 Transmission*, P.S. Protest No. 93-14, October 29, 1993. However, by claiming that the Postal Service "changed the rules" allowing LECs to offer on-site switching "under the guise of Centrex," the protester seems to be arguing that the Postal Service's actions in this case were contrary to the intent of its TSNAP agreement and that as a result, WilTel's rights under its TSNAP agreement have been violated by this contracting officer's application of section 1.3.

There is no support in the transcript of the TSNAP pre-proposal conference (see footnote 10) or in any document on this record for the contention that the Postal Service changed rules, allowing Centrex vendors to offer on-site switching systems, and no evidence that LECs may offer more than the limited internal switching contemplated in section 1.3 of this solicitation. In any event, we will not undertake to interpret the intent of the TSNAP agreement, nor will we attempt to resolve any issue involving conflict between the Santa Clarita procurement and WilTel's alleged rights under its TSNAP contract. Such allegations involving contractual disputes are beyond the jurisdiction of this office. See generally, *Stamp Venturers, Inc.*, P.S. Protest No. 93-06, April 22, 1993; *COR, Inc.*, P.S. Protest No. 90-16, June 22, 1990; *M.L. Halle Oil Service Inc.*, P.S. Protest No. 85-76, November 26, 1985 (contractor must look to contractual remedies provided pursuant to the Contracts Disputes Act for relief for breach of contract).

The protest is dismissed in part and denied in part.

William J. Jones
Senior Counsel
Contract Protests and Policies

Pacific's ACD computer would be acceptable if only it were located off-site. In light of the existence of the phase 1 agreements, it is understandable that the Postal Service explicitly restricted Pacific from offering an EDPBX system; to infer from the less explicit solicitation language the other restrictions requested by WilTel would impose restrictions evidently not intended by the Postal Service when it issued the solicitation.