

ISSUE DATE: February 24, 2005

P.S. Protest No. 04-08

MIKE ALBERT LEASING, INC.

Solicitation No. IDVPLE-04-A-1092

DIGEST

Protest of solicitation terms is denied. Protestor has not established that the one price requirement to include new or used vehicles is unreasonable; other grounds for protest also lack merit.

DECISION

Mike Albert Leasing, Inc. protests the terms of solicitation 1DVPLE-04-A-1092 for national vehicle leasing/rental and the Contracting Officer's decision dated July 19, 2004, denying its protest of July 7, 2004.

On June 7, 2004, the Philadelphia Supply Management Office issued the above solicitation for mail delivery vehicles to be leased/rented between the period of September 1, 2004 and August 31, 2007 at various locations throughout the country. The proposals were due July 7, 2004.

PS Form 8203, item 19, emphasized that the bids would be accepted by using FreeMarkets® online bidding and using a reverse auction process. The Cost Breakdown Update attached to the solicitation listed the type and expected number of vehicles required by the Postal Service and divided the vehicle requirement by lots. It stated that Lot 1 consisted of minivans that would be subject to bidding "on line." A second Lot 1 consisted of cargo vans and other types of trucks that would be subject to bidding "off line." Lot 2 consisted of tractors, single and tandem axle and would also be subject to bidding "off line." Lot 3 would also be subject to "off line bidding" and required a yard/tractor/spotter.

Clause B-3 stated that the award would be a Firm-Fixed Price contract. Provision 2.3 g., Contract Award, included in the solicitation provides:

The Postal Service will evaluate offers and may award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. Discussions will be conducted if determined by the contracting officer as necessary. The Postal Service may reject any or all offers if such action is in the best interest of the Postal Service;

accept other than the lowest offer, and waive informalities and minor irregularities in offers received.

Attachment A to the solicitation, Statement of Objectives, listed the Postal Service's intention to establish a single or a select few national contract(s) for the rental and leasing of various types and capacities of motor vehicles. The purpose was to allow different facilities across the country to rent/lease any vehicles they required using delivery orders that would be placed through the eBuy System. Attachment A also stated that the prices provided by the offerors should represent the best initial price but that a final price may be obtained through a reverse auction and that the pricing evaluation would be weighted in importance at 35% for monthly, 35% for year one, 20% for year two and 10% for year three and would be based on pricing provided for minivans. The price would include delivery to any postal facility.

In addition, various provisions in the solicitation indicated that new vehicles would not be required unless specifically requested or necessary to meet Energy Policy Act regulations or other laws or regulations.¹

The solicitation estimated that for FY 2003 there were 284 active leases accounting for 1,654 vehicles and stated that current leases would continue with their present supplier until expiration of the lease period or early termination. The type and number of existing vehicles were further described as follows:

Mail Hauling Vehicles

Minivans (1,100)
Step Van 9'-12' (27)
Cargo Van 7 ton without lift gate (7)
Cargo Van 9 ton with lift gate (2)
Spotters/Yard Tractors (8)
Cargo Van 1-2 Ton (79)
Trucks/Step Vans (Bread Trucks) (56)
Cargo Van 9 ton without lift gate (12)
Tractors – Single (62) & Dual Axle (60)

Nonetheless, it also added a cautionary note that “(. . . Quantities are based on active leases from Postal Fiscal Year 2003 and is not a guarantee of actual numbers and types of units to be rented or leased).”

¹ ATTACHMENT A required that all minivans rented for more than ninety (90) calendar days had to meet Energy Policy Act (EPACT) guidelines.

Mike Albert Leasing, Inc. submitted a bid by the required date but timely filed a protest with the contracting officer alleging among other things, that the solicitation did not provide sufficient information regarding postal vehicle needs to enable a supplier to offer a competitive bid. In particular, the protester complained that the way the solicitation was structured, it did not allow it to submit separate pricing for new and used vans or to even offer used vans, forcing offerors to offer and provide only new vans, at higher prices. Mike Albert also stated that the solicitation lacked information about where the vehicles would be located--a crucial piece of information for offerors in order to determine taxes and licensing requirements and costs. Finally, the protester alleges that some of the solicitation terms conflict with the oral information presented during the pre-bid teleconference.

The contracting officer denied Mike Albert's protest, stating that the solicitation expressed no preference between new and used vans. He reemphasized that the solicitation required a single price whether new, used or a combination of vehicles was being offered to meet the requirements. The contracting officer clarified that the reverse auction and the solicitation provisions should be read together and that reverse auction instructions would only pertain to the conduct of the reverse auction as applied to Lot 1, minivans.

Pursuant to Purchasing Manual § 3.6.4.e, Mike Albert filed a subsequent protest with the General Counsel, reiterating the arguments it presented to the contracting officer and adding the allegation that the solicitation created an unreasonable risk to offerors that could be eliminated without harm to the Postal Service.

The Contracting Officer filed his required statement and responded that:

- The Postal Service will accept new or used vehicles or a combination of the two types of vehicle and that different offerors, may be differently situated with regard to their ability to furnish used vehicles on short notice.
- The Postal Service is aware that taxes and fees imposed from state to state vary but it is unable to forecast its demand for vehicles by state.
- The solicitation allows the prospective suppliers to use their knowledge of the marketplace to offer and price vehicles for a wide range of geographic areas and include that in the price they will propose.
- The national price is required for administrative purposes and for uniformity of price.
- An offeror was free to explain in its proposal how it would meet the needs of the Postal Service.