

Protests of)	Date: September 17, 1987
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T.J. O'BRIEN COMPANY, INC.)	
& BELL ATLANTICOM SYSTEMS, INC.)	
)	
Solicitation No. 104230-87-B-0077)	P.S. Protest No. 87-83

DECISION

T.J. O'Brien Company, Inc. (O'Brien), and Bell Atlanticom Systems, Inc. (Bell), timely protest the terms of Solicitation No. 104230-87-B-0077 for 50 Postal Answer Line Multifunction Voice Response Systems (MVRS). The protesters contend that the terms of the solicitation are ambiguous and unduly restrictive.

Request for Proposals (RFP) 104230-87-B-0077 was issued by the Office of Procurement, Headquarters, on June 11, 1987, with an offer due date of July 10.^{1/} It sought proposals for the delivery, installation and maintenance of 50 MVRS' with an option for an additional 30 systems.^{1/} Amendment A01, issued June 23, extended the offer due date to July 24. Amendment A02 incorporated 33 questions posed by the vendors and Postal Service responses and extended the offer due date to August 7. O'Brien's protest was filed following its receipt of Amendment A02, and was received in this office July 28. Bell's protest was received August 11. Amendment A03, issued July 29, extended the offer due date to August 21. The date set for the receipt of offers was farther extended to September 4 by Amendment A04, issued August 17, which included responses to the vendors' remaining questions.

We set out the various contentions of the parties, the contracting officer's responses, and the comments of interested parties point by point. O'Brien challenges the solicitation requirements as clarified by the Postal Service's responses to Questions 9, 17, 22, 29, 30, and 31 in Amendment A02 to the RFP.

^{1/} The RFP was issued after an MVRS supplied by APEC Technology Limited, (APEC) was installed in the Atlanta, GA, area for a 16 month test and evaluation period. The success of the system led to this solicitation for an expanded system. The solicitation refers to the Atlanta system only in background and supplemental materials.

^{2/} The MVRS is an integrated telephone answering system which allows callers to receive recorded information regarding various services offered by the Postal Service without the intervention of an operator. The mandatory requirements of the MVRS are set forth in Section C.5 Purchase Description and Specifications - Mandatory of the solicitation. Exhibits A and B to the solicitation explain the services offered by the system, and include the message texts to be used.

Section C.5.1.c, paragraph 10, of the RFP states that the MVRS shall be capable of providing information 24 hours a day/7 days a week without operator assistance. Question 9 asks whether the availability requirements are the same for tone signalling and rotary/pulse phones. The Postal Service answer states that the availability requirements are the same for both phones.^{1/} O'Brien asserts that the majority of homes and offices have access to at least one tone type phone, and that most of the 30% of the population without access to such tone instruments are located on military bases. It asserts that the equal availability requirement for rotary/pulse phones is not cost effective and is largely unnecessary.^{4/}

The contracting officer states that callers using both pulse and tone phones must be able to contact the main telephone number. Once initial contact is made, however, only the tone caller can continue by entering the three digit number of the specific information desired. Pulse phone callers will hear the initial message and then be informed that a tone-type phone is required to access recorded messages. All customers, including the 30% without access to a tone phone, must have equal availability to the initial message.

Section C.5.1.a, paragraph 2, of the RFP (page 21) provides that the system is required to provide prerecorded messages automatically for callers using telephones with tone signaling. Question 17 asks in what situation pulse signaling would not reach the MVRS. The Postal Service answers that pulse signaling would fail to reach the MVRS only if the telecommunications line is inoperable.

O'Brien asserts that the response is incorrect and flippant. The protester claims that while most telephone company central offices translate the pulse signal to a tone signal, a rotary caller would not reach the system if the central office failed to translate the pulse signal.

In response, the contracting officer notes that while most central local offices translate the pulse signal to a tone signal, some do not. The answer given was correct because a pulse signal will access the system initially, whether or not it is translated into a tone signal; thus only an inoperable line would preclude such access.^{1/}

Section C.5.1.b, paragraph 9 (page 24), requires "DTMF [dual tone multifrequency] and

^{3/} The RFP requires that callers using either a rotary or touch phone must be able to reach the main telephone number. Once contact is made, only the tone type phones can access further messages. The initial message so advises callers.

^{4/} APEC, GTE Telemessenger Service (GTE), and Periphonics Corporation (Periphonics) submitted comments in response to O'Brien's protest. APEC states that O'Brien's allegation that most rotary phones are located on military bases is unfounded. In its experience, approximately 30% of phones generally are rotary, and it is important to accommodate rotary phone callers, or a significant portion of the population will be excluded. GTE also accepts the response to Question 9, noting that the central office must pass the pulse signals after connection to the system and the pulse signals must conform to industry standards. Periphonics believes O'Brien's protest to Question 9 meritorious.

^{5/} GTE accepts this conclusion, but Periphonics agrees with O'Brien on this question.

Hook Flash (Centrex) parameters ... be settable at the system to accommodate different central office deviations [of signals]." Question 22 asks to what do the parameters refer. The response is that the parameters are those of the local central office. O'Brien claims that the Hook Flash system is unique to the AT&T Centrex System and the requirement is therefore restrictive. The protester also objects to the DTMF answer, on the basis that the DTMF is a transmit signal which the local central office receives from the calling party, not a signal the MVRS receives from the central office.

The contracting officer states that O'Brien's allegations are factually incorrect. AT&T does not market Hook Flash or operate central offices, but local companies do. The DTMF and Hook Flash parameters referred to are those of the local central offices, which vary from city to city when transmitted to the MVRS. The parameters must, therefore, be adjustable to compensate for the different signals. The requirements are necessary to proper operation of the system.⁴⁷

Section C.5.1.9.6 (page 21), requires that a minimum of four telephone lines be installed at each site. Additional lines are to be provided, as needed, in increments of one or more. Question 29 challenges the efficacy of this requirement, noting that only one manufacturer adds lines one circuit at a time, while all other vendors provide circuits in increments of four or more. In its response, the Postal Service states that the requirement will not be modified or changed. O'Brien asserts that the requirement is restrictive since only one manufacturer can supply single line additions.⁴⁸

The contracting officer maintains that a traffic analysis conducted for the Atlanta test system reveals that the one additional line requirement is cost effective. The requirement will not preclude any vendor from submitting a competitive proposal, as vendors who add lines four at a time in one line card will include the cost of one such line card to meet the one additional line requirement.

Question 30, Amendment A02, does not refer to a mandatory requirement of the RFP. Rather, it suggests that the "research and development contractor" (an apparent reference to APEC) will have a cost advantage, and asks for an equalizing provision to evaluate this offeror's proposal. O'Brien claims the Postal Service's response, refusing to include an equalizing provision, allows the incumbent contractor to have an advantage, unfairly restricting competition.

The contracting officer states that there was no research and development contract for the Atlanta test system. Therefore, no requirement for equalizing competition is

⁴⁷ APEC and GTE concur with the contracting officer. APEC notes that the duration and timing of DTMF and Hook Flash signals can vary between central phone offices which have different manufacturers' equipment in place, and their variations must be accommodated by the MVRS to be usable at all locations. Periphonics agrees with this aspect of O'Brien's protest.

⁴⁸ APEC claims that adding one line at a time can be done by any manufacturer although the charge may be affected. It states that it is not cost effective for the Postal Service to be forced to purchase four lines where only one is required. GTE agrees that the requirement is not technically restrictive but claims it places most vendors at a financial disadvantage, as most provide additional lines in groups of two or four.

necessary.^{4/} Section C.5.3.D.2 (page 41) requires that the technical proposal include an economic feasibility study comparing the cost of repair to replacement ("throw-away") for all repairable items. Question 31 asked whether this study could be provided after contract award rather than with the proposal. The Postal Service response declined to change this requirement.

O'Brien claims that an economic feasibility study is unduly burdensome at the proposal stage. It asserts such data should have been obtained from the test contractor.

The contracting officer states that the economic feasibility information is critical to the evaluation of proposals, as it affects the Postal Service's ability to determine which proposal is most cost effective. She reiterates that no research and development contract existed for the system. The alleged financial hardship caused by the requirement is disputed.

Bell submitted comments to O'Brien's protest which amount to additional protests. It claims that the mandatory specifications are ambiguous or restrictive and that the Postal Service has failed to answer properly the questions which Bell submitted. It asks that the RFP be cancelled and resolicited. The contracting officer asserts that the Postal Service has responded to Bell's questions in Amendment A02, which was issued August 17, subsequent to Bell's submission.

Bell contends that the requirement that rotary phones have access to the system is mechanically unsound in view of current technology. It also asserts that the requirement of Section C.5.1.b.2.f. that a display show where a call is at any time, allowing a Postal Service operator to bypass the logical flow of calls for which the system is programmed and to reroute the information flow manually, is too burdensome, requiring the use of a main frame computer.

The contracting officer restates that only initial access to the MVRS is required by the RFP for pulse callers. The initial message advises all callers that a touch tone phone is required to access additional messages. As the system is not required to allow pulse signal callers to receive information from the three digit menu, Bell's objection is groundless.

The contracting officer states that Bell's allegation concerning the call display is factually incorrect, as there are other ways in which the contractor can meet the requirement. Question 45 of Amendment A04 addresses this point, establishing that the requirement is to permit an operator to change the flow of messages which a caller can hear while the system responds to calls on other lines. The change would not occur until initiated by the operator. Bell claims that the completed calls effectiveness measurement, Section C.5.1.c.16, used in the evaluation of the technical proposals, is inappropriate, yielding a low efficiency rating where more calls are made than lines are available, with the number of lines being determined by the Postal Service.

The contracting officer contends that Bell's objection is a misapprehension of the

^{8/} APEC and GTE accept the contracting officer's response.

specification. The effectiveness measurement is a function of system reliability. Contrary to Bell's assumption, calls which do not access the system would not count in the effectiveness ratio. Even if Bell were correct, there would be no prejudice, as all vendors are treated equally.

Bell further alleges that the inclusion of military specification standards (MIL-STD-461) in parts of the Statement of Work are inappropriate since the general requirements provide that the system be of commercial grade.

The contracting officer advises that Question 88 of Amendment A04 responds to Bell's Question 4, by providing that the system shall be of a quality consistent with good commercial and industrial practices, although where military standards are referenced they will control.

Finally, Bell objects to the refusal of the Postal Service to designate the 50 sites at which the system is to be installed, and which five locations are to be grouped for installation in any given week. It claims that a prudent vendor would budget for installation at widely diverse sites while another vendor might base his price on installation within a limited geographic area.

The contracting officer notes that five locations are to be installed monthly, not weekly as Bell asserts. She states that the installation schedule is being reviewed and is not yet final. The Postal Service requires flexibility in its implementation of the system, and as all vendors must submit proposals on this same basis, the contracting officer fails to see how Bell can be prejudiced.

Discussion

Postal Contracting Manual (PCM) 1-1101 provides that specifications shall state only the actual minimum needs of the Postal Service and describe the supplies or services in a manner which will encourage maximum competition and to eliminate, insofar as possible, any restrictive features. Postal Service technical personnel are generally in the best position to know the Postal Service's actual needs and, therefore, to draft appropriate specifications. S.H. Demarest, P.S. Protest No. 84-1, February 9, 1984; Comprehensive Health Services, Inc., P.S. Protest No. 83-46, October 28, 1983, Doehler-Jarvis Division of N.L. Industries, P.S. Protest No. 77-19, July 22, 1977. Accordingly, we will not disturb the requirements of a specification unless they are clearly shown to be without a reasonable basis. Portion-Pac Chemical Corp., P.S. Protest No. 84-49, August 1, 1984; S.H. Demarest, supra. When a specification has been challenged as restrictive, it is generally incumbent upon the procuring agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. Once the agency establishes this support, the burden shifts to the protester to show that the requirements complained of are clearly unreasonable. Portion-Pac Chemical Corp., supra; accord, Action Enterprises, Inc. and American Vending, Inc., P.S. Protest Nos. 87-14, 87-15, March 13, 1987. We apply these standards to the protesters' individual points.

O'Brien's objections to the availability requirement appear to arise out of a misunderstanding of the requirement. The contracting officer states, and the RFP establishes, that availability concerns only initial access to the system, and not to

access the second part of the system in which additional information is provided. As so defined, the requirement is reasonable, and O'Brien has presented no contrary evidence.

The controversy surrounding Question 17 involves similar misunderstandings. The protester does not appear to acknowledge that the MVRs is not required to enable pulse callers to acquire information from the second stage of the system. The protester's admission that some central offices do not translate pulse signals to tone signals supports the solicitation requirement that the initial message be available to pulse callers. Under these facts, O'Brien's dispute with the responses of the Postal Service is misplaced, and its unsupported contentions provide no basis to sustain its protest. C.f. Concept Office Furnishings, Inc., P.S. Protest No. 85-59, November 18, 1985; Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984.

Much of O'Brien's protest concerning DTMF and Hook Flash parameters appears to involve irrelevant matters. Who operates the Centrex systems which use Hook Flash signals and the precise nature of the DTMF are not significant. On the remaining point, the contracting officer advises that flexibility in setting the parameters is necessary to proper operation of the system. In a factual dispute such as this, the conclusions of the contracting officer are accorded a presumption of correctness which the protester must overcome. See Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986. O'Brien has not met its burden.

O'Brien's protest concerning the addition of lines must also be rejected. The traffic analysis furnished by the contracting officer provides a rational, cost effective basis for the requirement of adding only one line. O'Brien's contention that only one manufacturer can supply a single line modification is unsupported and affords no basis for relief. Vendors offering multiple line cards are not precluded from including the price of such a line card to meet the additional line requirement.

O'Brien contends that APEC has an unfair competitive advantage by virtue of its experience with the Atlanta system. Procurement officials are not required to attempt to equalize competition to compensate for the experience, resources, or skills that one offeror has obtained in the course of performing a prior contract or because of one offeror's own particular circumstances. IBI Security Service, Inc., Comp. Gen. Dec. B-216799, July 25, 1985, 85-2 CPD &85. The test is whether the competitive advantage enjoyed by a particular firm is the result of a preference or unfair action by the government. Id. Here, there is no evidence that any alleged competitive advantage that APEC may have is the result of a preference or unfair action by the Postal Service.

O'Brien's argument that an economic feasibility study would be burdensome at the proposal stage is also unpersuasive. The contracting officer states that the information required is not otherwise available, and that the information is necessary to the evaluation of offers. In the absence of evidence that APEC has prepared such a study for the Atlanta test unit, or that any inherent advantage it may have received under its Atlanta contract was the result of unfair action by the Postal Service, O'Brien has failed to establish that the burden which it alleges would be unevenly shared by the offerors.

With respect to the points raised in Bell's protest, it may be noted at the outset that Bell's questions were not ignored, but were answered in Amendment A04.

Bell's first allegations present the same issues as O'Brien's Questions 9 and 17. Its contentions are rejected for the reasons previously stated.

Bell's protest of the display requirement constitutes a factual dispute. Bell claims that the display requirement would be burdensome while the contracting officer asserts that the actual requirement can be accomplished in ways other than through the potentially burdensome use of a main frame computer. We accept the contracting officer's version of the facts. Edsal Machine Products, Inc., supra.

Bell's complaint as to the completed calls effectiveness measurement is unsound. The contracting officer's interpretation is supported by the solicitation requirements. The effectiveness measurement is defined as the ratio of the number of calls completed to the number of calls placed. Thus, only calls which are completed, that is, reach the system, figure in the ratio.

Bell's claim that military specifications are inappropriate as the system is required to be of commercial grade is also unpersuasive. The contracting officer may require the use of military specifications when such specifications are needed.^{1/}

Bell's objection to the Postal Service's failure to designate the sites and their order of installation is without merit. Where, as here, the sites cannot be established prior to the issuance of the RFP, it is sufficient for the solicitation to place offerors on notice of the fact, permitting them to use their judgment in setting prices to cover the risk of varying installation sites. See Hero, Inc., Comp. Gen. Dec. B-213225, December 14, 1983, 83-2 CPD & 687. The presence of a risk factor does not make a solicitation improper. Applied Devices Corporation, Comp Gen. Dec. B-199371, February 4, 1981, 81-1 CPD & 65.

The protests are denied.

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[Compared to original 3/12/93 WJJ]

^{1/} PCM 1-1102 (a) provides: "[T]he following specifications are mandatory for use in the procurement of supplies and services covered by such specifications: (1) Postal Service specifications; (2) Federal Specifications, unless determined by the Postal Service to be inapplicable for its use; (3) Military specifications unless determined by the Postal Service to be inapplicable for its use; and (4) Industry documents adopted by the Postal Service."