

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 eBay 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.

- The Postal Service was looking to the industry to submit proposals based on its expertise that demonstrated an understanding of the needs of the Postal Service and how that company could best serve the Postal Service and provide added value.

The contracting officer also discussed the risk factors inherent in this solicitation by explaining the Postal Service determined that the contractors' superior knowledge of the industry placed them in a better position to properly assess the risk and price that risk reasonably and correctly. Finally, the contracting officer discussed why the solicitation is not inconsistent. He pointed out that Provision 2.3.g and the provision for reverse auction can be read harmoniously. The solicitation clearly states that a reverse auction will take place for Lot 1 only through the services of FreeMarkets.com and that process will establish the prices for Lot 1 vehicles. Lots 2 and 3 may be accepted off line or may be subject to negotiation at the Postal Service's option. However, provision 2.3.g gives notice to the offerors that the Postal Service may accept the prices for those vehicles as initially proposed—without negotiation.

On August 13, 2004, the Contracting Officer notified all prospective offerors of Mike Albert Leasing's protest and advised them that if they wished to participate in the protest they could submit their opinions within five days of receipt of the notification. Although it does not mention such notification, on August 17, 2004, apparently in response to the contracting officer's notification, ACME Auto Leasing filed what it called "a protest" with the General Counsel. Because such protest would clearly be untimely under Purchasing Manual § 3.6.4 b., we will treat Acme's submission as a comment on Mike Albert's protest.

ACME contends that the terms of the solicitation and the contracting officer's "adverse actions" are not in the best interest of the Postal Service because although one national price was easier for contracting personnel, the contracting officer's unwillingness to consider the variables in the decision process results in a higher price to the Postal Service. Acme also complained that the mix of vehicles in the postal requirement was one in which most leasing companies lack expertise. It also pointed out that it believed the FreeMarkets computer program dictated the manner in which pricing was generated. Finally, Acme agreed with Mike Albert that regional and timing requirements should have been taken into account because of the differences regarding tax and fees in different states.

DISCUSSION

The standard of review applicable to allegations that the specifications of a solicitation are unduly restrictive is very limited.

Where a protester alleges that a solicitation is unduly restrictive, it is incumbent on the procuring agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. But once the procuring

agency establishes this support, the burden is then on the protester to show requirements complained of are clearly unreasonable.

Once the Postal Service establishes prima facie support for the allegedly restrictive requirements, the protester must present an extremely high level of proof to show that those restrictions are clearly unreasonable.

The determination of what constitutes the Postal Service's minimum needs is properly made by the requiring activity, and is not subject to being overturned in the absence of a clear showing that the determination lacks a reasonable basis. If a specification is otherwise reasonable, the fact that one or more potential offerors may be prevented from participating in the solicitation does not render its terms restrictive if they reflect the legitimate needs of the procuring activity.

This office will not substitute its judgment for that of the technical personnel absence fraud, prejudice, or arbitrary or capricious action.

Memorex Telex, Protest No. 92-73, January 8, 1993.

Section 1.6.2 of the Purchasing Manual addresses what constitutes best value in postal procurements as follows:

It is the policy of the Postal Service to award its contracts to the suppliers offering the best value to the Postal Service. What constitutes the best value will depend on the goods or services being purchased. When purchase is made competitively, best value is determined by the comparative analysis of proposals in accordance with the evaluation factors in the solicitation, taking into consideration such matters as the Postal Service's business objectives, suppliers' past performance and capability, price and total cost of ownership quality and risk (see, generally 2.1.9). Ordinarily, a best value determination is made by the purchase team, subject to applicable review and approval.

Section 1.6.3.b provides that while determining competition, "Contracting Officers . . . take into account both the Postal Service's business objectives and its commitment to identifying new suppliers and providing opportunities for them to join the Postal Service's supplier base."

Mike Albert alleges the solicitation does not provide sufficient information regarding the Postal Service's needs to allow a supplier to submit a competitive bid. We disagree. The solicitation clearly stated that the Postal Service would be renting/leasing a mix of vehicles in different parts of the country; indicated that, if the used vehicles met certain requirements, contractors could use used vehicles; provided an estimate of its requirements; informed prospective suppliers of the type, and number of vehicles under rent/lease during FY2003; set forth the factors that it would use to compare bids; informed all suppliers that it would conduct a reverse auction, and that the contract

would be for an initial three-year term. We find that the solicitation provided sufficient information as to postal requirements for vehicle leasing.

Mike Albert's asserts that the solicitation was inconsistent because provision 2.3.G, Contract Award, required that the initial price include the offerors' best terms. Yet, the Postal Service intended to conduct a reverse auction and during the FreeMarket's question and answer period suppliers were told to start their bids at their highest price. At first glance the instructions appear contradictory, particularly because Attachment A, Pricing Structure, stated that "[p]rices provided on the spreadsheet . . . should represent your best initial price, however a final price may be obtained through a reverse auction." On the other hand, the contracting officer argues that the language can be read harmoniously because the FreeMarkets cost breakdown sheets clearly stated that a reverse auction would be conducted only for Lot 1--the minivans and that he expected the suppliers' best price for the other vehicles.

To be reasonable, an interpretation of a solicitation's provision must be consistent with the solicitation as a whole. *Pitney Bowes, Inc.*, P.S. Protest No. 89-86, December 20, 1989.

Although, arguably, the pricing language could have been clearer, we concur with the contracting officer that the FreeMarkets cost breakdown sheets amended the language in question as it applied to Lot 1, the minivans. Only Lot 1 was subject to the reverse auction and thus suppliers were expected to present their highest bid only for that Lot. They were expected to submit their best price for the other Lots and received notice that an award may be made without further negotiations as to those Lots. Consequently, we find that the solicitation was not inconsistent because all provisions must be read as part of a whole.

Mike Albert's other contentions approach the issue from different angles but all support its principal argument that suppliers should have been allowed to submit different prices for used and new vehicles and that the Contracting Officer's refusal to do so presented an unreasonable risk and would result in higher prices. Similarly, ACME contends that the contracting officer's refusal to consider all the variables that are entered in a pricing determination would result in a higher cost to the Postal Service. ACME also contends that most leasing companies do not have expertise on the mix of vehicles requested by the Postal Service.

The contracting officer states that the Postal Service is aware of all the variables involved in pricing decisions. However, because of the uncertainty as to the number of vehicles and the locations where they would be delivered, it decided to rely on the prospective suppliers' superior knowledge to accurately assess the risk and submit their prices accordingly. One national price would reduce the Postal Service's administrative costs and produce an uncomplicated pricing structure. Therefore, it was willing to pay a higher price for the rental of the vehicles. The solicitation does not create an unreasonable risk; it splits the risk between the parties. In fact, the solicitation provides

flexibility by allowing suppliers to fulfill the contract with used, new, or a combination of vehicles. Such flexibility allows the suppliers to offer vehicles from their existing fleets or vehicle pools.

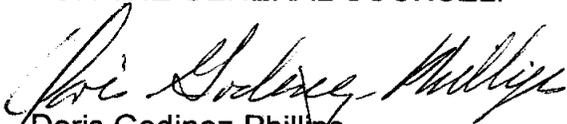
A protester's mere disagreement with the contracting officer's position and judgment is not sufficient to invalidate a contracting officer's reasonable determination. *Wiltel Communications Systems, Inc.*, P.S. Protest No. 93-19, February 9, 1994. In the absence of fraud, prejudice, or arbitrary and capricious action, this office will not substitute its judgment for the contracting officer's if the determination has a reasonable basis. *Pitney Bowes Corporation*, P.S. Protest No. 00-16, December 1, 2000.

Acme's contentions that few prospective lessors have expertise on the mix of vehicles required by the Postal Service and that the contracting officer's actions were not in the best interest of the Postal Service also lack merit. "If a specification is otherwise reasonable, the fact that one or more potential offerors may be precluded from participating in the solicitation does not render its terms restrictive if they reflect the legitimate needs of the procuring activity." *International Technology Corporation, P.S. Protest No. 89-21, May 8, 1989.*²

Here, the Contracting Officer has clearly articulated his reasons for structuring the one-vehicle-pricing and mix of vehicles required by the solicitation. Even were we to disagree with his analysis, we do not believe his rationale is unreasonable.

The protest is denied.

FOR THE GENERAL COUNSEL:



Doris Godinez-Phillips
Managing Counsel
Southwest Law Department

*We apologize for not responding to your bid protest in a timely manner. Due to unforeseen circumstances, we were unable to process your protest sooner. We apologize for the delay.

² In fact, the contracting officer has informed us that in addition to Mike Albert, at least three bidders submitted competitive bids response to the solicitation.