Protests of	)	
	)	Date: August 8, 1989
COPLON ENGINEERING &	)	
L. PARRY, INC.	)	P.S. Protest Nos. 89-29,
	)	89-32, & 89-33
Solicitation Nos. 104230-89-A-0036 &	)	
104230-89-A-0080	)	

DECISION

Coplon Engineering ("Coplon") and L. Parry, Inc. ("Parry") timely protest the terms of Solicitation No. 104230-89-A-0036 ("Sol. 0036") for corrugated plastic flat trays and lids issued by the Office of Procurement, Washington, D.C. on April 11, 1989, with a due date of May 11. Coplon also timely protests the terms of Solicitation No. 14230-89-A-0080 ("Sol. 0080") for small parcel and bundle ("SPB") trays and lids issued by the Office of Procurement, Washington, D.C. on April 20, 1989, with a due date of May 19. Both solicitations were sent to approximately sixty prospective offerors.

The recently revised specifications for material and testing were identical for both solicitations. The material used for the trays is described in T1154, the specification for testing the corrugated plastic board. It states:

> . . . The material shall be high density polyethylene board, with ultraviolet ray inhibitor, natural or colored, and with the appropriate basis weight. The material shall meet the requirements of this specification, the applicable USPS drawing, and the contract. The board shall be a laminated structure with two facings separated by a corrugated medium, or shall be a profile extrusion with two facings separated by ribs.

There are two varieties of the plastic board involved in these protests. One, laminated corrugated plastic board, resembles corrugated cardboard. It is extruded in three separate sheets which are then thermo-bonded together. The other, profile extrusion board, is extruded in a single piece with rectangular shaped ribs between the facings, resembling a honeycomb.

Specification T1154 employs test methods obtained from the American Society of Testing and Materials. It measures the strength and durability of the board by use of a density test, a melt index test, an environmental stress-cracking resistance test, and an impact resistance test. Specification T1155, used to test the final product, contains tests prepared by the Postal Service. The portions of T1155 pertinent to Parry's protest state:

3.4.3 USPS-Drop Tester - Drop testing shall be performed in accordance with the procedures specified in 4.7.3 using an Accu-Drop Model 500 or equivalent equipment that meets the requirements for test equipment of TAPPI T 802 Drop Test for Fiberboard Shipping Containers. A description of the Tester is included in Appendix 2.

Appendix 2 states in pertinent part: "All drops are performed without rotation of test trays so they land in the same orientation in which they were dropped."

4.6.1 Preparation of Test Mail Trays - The mail trays shall have the following load and sealing requirements:

a. Flat tray - 32 +/- 0.5 pound load, fitted with a lid, and fastened with plastic strapping.

b. SPB tray - 70 +/- 1 pound load, fitted with a lid, and fastened with plastic strapping.

* * *

The mail trays shall have non-shifting loads to accommodate standard test procedures. Mail trays intended for testing in accordance with 4.7.3 shall be prepared and stored in an environmental chamber at 20 +/- 1`F for a period of 24 hours before testing. The mail trays shall be tested immediately after conditioning.

* * *

4.7.3 Impact Resistance When Dropped Test (Drop Test) - the mail trays shall be tested for impact resistance when dropped in accordance with the following procedure.

1. Trays shall be dropped from a height of thirty (30) inches onto a 10 +/- 0.5 pound steel brick with dimensions of 3.00 x 2.50 x 4.75 inch. All burrs and sharp corners of the steel brick shall be removed.
   Once a tray passes or fails the test it shall be removed from further tray testing.

2. Trays shall be dropped from a height of thirty (30) inches on the transverse or longitudinal bottom edges at a testing angle of 30`. Once a tray passes or fails this test it is removed from further tray testing.

For Sol. 0080, the Office of Procurement issued Amendment A02 granting a deviation in the melt index[1/] for the center layer of laminated board produced by Diversi-Plast Products Company ("Diversi-Plast"), provided Diversi-Plast certifies that its board will continue to meet all the requirements of the specifications. A similar deviation request by Diversi-Plast concerning Sol. 0036 is pending.

Protests Against Sol. 0036

In its protest against Sol. 0036, Coplon complains that the specifications restrict the acceptable material for the trays to laminated corrugated plastic board. It alleges that, as a result, the Postal Service has contradicted its policy on competition as stated in the Procurement Manual ("PM") 1.7.1.[1/] Coplon states that there are only two producers of laminated corrugated plastic[1/] which together could not supply enough board to meet the requirements of the solicitation. Coplon suggests that this would allow each producer to contract for whatever quantity and price it desired. Citing PM 1.8.1,[1/] Coplon further contends that under these circumstances, the solicitation possibly violates Federal antitrust laws. Finally, Coplon complains that it has been unable to obtain quotations for the laminated board from either of the two companies, and is thus precluded from submitting an offer.

[1/]The melt index is a means of testing the effects of high temperatures on the board. The original melt index required by the solicitations stated in pertinent part:

> The composite plastic shall have a melt index of .28 +/- .06 grams per 10 minutes . . .

Amendment A02, allowing a minor deviation applicable to the center layer of Diversi-Plast's board, states:

> Laminated corrugated plastic board is extruded in three layers, outside, center, and inside. The outside and the inside must meet a Melt Index of .28 +/- .06. The center layer may be changed. The Melt Index for this layer must be 1.5 +/- .06.

This deviation was necessary to allow for Diversi-Plast's method for producing the board. Although the deviation permits the center layer to meet the new melt index, the finished board must still meet the requirements of the original melt index.

[2/]PM 1.7.1 states, in pertinent part:

> Purchases must be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation and participation of a sufficient number of sources to ensure that the price paid by the Postal Service is fair and reasonable.

[3/]The two producers are Diversi-Plast and U. S. Corrulite Corporation ("Corrulite").

[4/]PM 1.8.1 states, in pertinent part:

> An anticompetitive practice is any practice designed to eliminate competition or restrain trade. Such practices include collusion, follow-the-leader pricing, rotated low price proposals, sharing of business, identical prices, and any other device intended to deprive the Postal Service of the benefits of competition. These practices may violate Federal antitrust laws and be subject to prosecution by the Attorney General. Proposals suspected of reflecting anticompetitive practices may be rejected . . . .

In its protest, Parry also objects to the alleged monopolizing effect of the test requirements which limit the solicitation to laminated corrugated plastic board and complains that it too has not been able to receive quotations from either of the two producers of the board. Additionally, it contends that the testing procedures of T1154 and T1155 are incompatible in that they use different impact testing methods.

Parry also alleges that portions of T1155 are ambiguous and unduly stringent. First, it states that the T1155 ' 4.7.3.1 drop test is ambiguous because it does not indicate the angle or direction of travel of the dropped tray and does not indicate which surface of the tray is intended to come into contact with the steel brick. Second, Parry contends that the orientation of the steel brick is not specified. Third, Parry complains that the specification does not indicate on what type of surface the brick is to rest. Fourth, Parry finds fault with ' 4.7.3.2, stating that it does not specify whether a steel brick is required for this test, and that, as with ' 4.7.3.1, the type of floor surface is not designated. Parry concludes that these ambiguities prevent the tests from being duplicated accurately.

Parry further suggests that the tests are too stringent, alleging that the combination of low temperature and a 30 inch drop would be unlikely to occur simultaneously in normal use. Finally, Parry states that the various drop tests do not clearly identify whether each tray is to be subjected to more than one drop test. Parry asks for a clarification of this matter.[1/]

In her reports on these protests, the contracting officer states that, although the specifications do not specifically exclude profile extrusion board, after extensive testing of all known types of corrugated plastic, laminated corrugated plastic board is the only type that meets specifications T1154 and T1155 at the present time. She contends that to allow offers using profile extrusion corrugated plastic would be detrimental to the Postal Service. Past experience and lab experiments with profile extrusion board show that the failures encountered with profile extrusion board would endanger the security of the mail. She notes that the Postal Service is aware that only two companies are presently capable of producing the laminated type of board, but states that other companies with film and extrusion capabilities are considering whether to produce it. The contracting officer also states that the Postal Service has had discussions with known producers of profile extrusion corrugated plastic and has stated its willingness to work with these producers in order to increase the vendor base in the future.

Next, the contracting officer disputes Coplon's allegation that the two suppliers of laminated board can offer any price and any quantity they desire because the contracting officer must reject all proposals determined to be unreasonable. As to the allegation that the solicitation violates Federal antitrust laws, the contracting officer points out that the Comptroller General has held that such allegations lie outside the

[5/]Parry also asks for clarification to a discrepancy in Section A, Line Items, page 5, noting that the stated total for items 3, 3A and 4 is 2,387,732, whereas the actual total is 3,387,232. The contracting officer did not respond to this incongruity in her report, but has stated that the matter will be resolved before award.

scope of the bid protest function. With respect to Coplon's and Parry's complaints that they cannot obtain quotations from either of the two producers of laminated corrugated plastic board, the contracting officer states that the Postal Service will not interfere with another company's business relationships.

Turning to the Parry protest against the testing specifications, the contracting officer states that T1154 and T1155 are separate documents, the first representing the requirements for testing the plastic board itself, and the second for testing the finished product. Since the trays may not always be manufactured by the producer of the plastic board, two specifications are necessary to assure that the proper material is used. The contracting officer states that in T1155 ' 4.7.3.1, the tray is dropped from an upright position, indicating that the bottom surface of the tray will strike the brick. She states that the surface upon which the steel brick rests can be any of several materials, including masonry, steel or wood. The 3.00 x 4.75 surface rests on the floor. Section 4.7.3.2 imposes a separate test in which the tray may be dropped on any one of a variety of floor surfaces.[1/] The contracting officer does not specifically address Parry's allegation that the combination of low temperature and a 30 inch drop are unlikely to occur, but generally disagrees with Parry's conclusion that the tests cannot be repeated, stating that they effectively emulate real world situations.

The contracting officer finds no confusion in the specifications with respect to either the frequency or the variety of the tests each tray is to undergo. Each test will require a new tray, so that no one tray will undergo more than one drop test. Section C of the solicitations describes First Article as consisting of 50 trays and 50 lids. If any tray fails any of the required tests, the product will fail First Article.

The protesters submitted supplemental arguments in response to the contracting officers' statements. Coplon states that it does not know of any profile extrusion corrugated plastic producers who are planning to manufacture laminated board. Furthermore, it complains that even if the Postal Service has agreed to work with these producers, it has not allowed enough time for them to prove their capabilities in time for this procurement. It notes that given time, producers could provide profile extrusion board that meets the current specifications. It agrees with Parry that the drop tests must specify the angle at which the tray is to strike the surface and that, due to the different densities of various floor types, the surfaces must be delineated, contending that the test conditions for every sample to be tested must be identical to the test conditions under which the acceptable criteria were established.

In its comments, Parry disagrees with the contracting officer that the tests can be repeated accurately. It also states that it has conducted its own tests according to established international standards, the results of which it would be willing to make available to the Postal Service. It states that, like Coplon, it had no opportunity to provide input before the Postal Service made changes in the specifications and

[6/] At the request of the contracting officer, the Engineering Support Center further clarified this statement, explaining that because of the transfer of stress caused by a moving object striking an immovable object, if the tray is going to fail, it will do so regardless of the type of floor surface it strikes.

requested more time to prove its capabilities. Finally, it requested that the lid be solicited separately. Its opinion is that the lids will not be subjected to the same amount of stress as the trays and should therefore require less stringent testing, allowing for use of either laminated or profile extrusion board.

Corrulite, Diversi-Plast, and Tulip Corporation submitted comments, as interested parties, on the subject protests. Corrulite states that it has quoted and offered its laminated board to converters to enable them to compete for these solicitations, but that it will not quote to those converters unable to meet certain financial requirements of Corrulite. It further states that it did not receive a request from Parry, and admits that it refused to quote to Coplon for business reasons. Diversi-Plast finds no fault with the tests or the testing methods. In response to the protesters' allegation that the two producers together cannot produce enough products to meet the Postal Service's requirements, it relates that more laminated board can be produced during a specified time than can profile extrusion board, making it easier to meet large demands. It also states that laminated board is stronger and more durable than profile extrusion board, which maximizes the number of trips for each tray, thereby saving the Postal Service money. Tulip agrees with both Coplon and Parry that Sol. 0036 should include alternate methods of manufacture.

Protest Against Sol. 0080

Coplon's protest against Sol. 0080 is a duplicate of its protest of Sol. 0036. However, in a postscript to the Sol. 0080 protest it objects to the deviation in the melt index that was granted Diversi-Plast in Amendment A02. Coplon states that if the Postal Service allowed Diversi-Plast a deviation from the specifications, it should grant Coplon a deviation from the test requirements which effectively preclude the use of profile extrusion board.

In her report, the contracting officer notes that the deviation did not alter Diversi-Plast's obligation to meet the specifications. In contrast, the deviation proposed by Coplon, changes the nature of the required material to include its profile extrusion corrugated plastic board, which has been found to be inadequate for the Postal Service's needs.

Discussion

The protesters contend that the revised specifications in both solicitations unduly restrict competition. It is well established that "[t]he determination of what constitutes the Postal Service's minimum needs is properly to be 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." Crown Industries, Inc., P.S. Protest No. 82-83, January 6, 1983; Memorex Corporation, P.S. Protest No. 82-51, August 24, 1982. Furthermore:

> . . . it is incumbent upon 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 agency establishes this support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable."

Portion-Pac Chemical Corp., P.S. Protest No. 84-49, August 1, 1984, quoting Amray, Inc., Comp. Gen. Dec. B-208308, January 17, 1983, 83-1 CPD & 43. If the terms of the solicitation reflect the legitimate needs of the procuring activity and the specifications are otherwise reasonable, the fact that one or more potential offerors may be precluded from participating in the solicitation does not render its terms restrictive. International Technology Corporation, P.S. Protest No. 89-21, May 8, 1989; See Willard Company, Inc., Comp. Gen. Dec. B-187628, February 18, 1977, 77-1 CPD & 121.

Here, the requiring activity has established specifications designed to meet the needs of the Postal Service. This determination was based on past experience and extensive testing of all known corrugated plastic board. At the present time, only laminated corrugated plastic board meets the requirements of the specifications. Profile extrusion board does not pass either the T1154 or the T1155 tests and its use would endanger the security of the mail. This suffices to establish the Postal Service's prima facie support for its specifications as being reasonably related to the needs of the Postal Service. That, as the protesters argue, the specifications will exclude them from participating in these solicitations is insufficient to show that the requirements are clearly unreasonable. International Technology Corporation, supra.

As to the protesters' arguments concerning noncompetitive practices, this office lacks jurisdiction over such allegations. Liberty Carton Company, P.S. Protest No. 85-35, July 30, 1985; Western Publishing Company, Inc., P.S. Protest No. 84-23, April 10, 1984. If the contracting officer has reason to suspect anticompetitive practices, PM 1.8.2.a requires that she report such practices. The fact that neither protester received quotations from Corrulite or Diversi-Plast is not grounds for a bid protest. The evidence does not support the allegations of anticompetitive practices against the Postal Service and the contracting officer did not abuse her discretion by not invoking PM 1.8.2.a. The protesters may seek relief in another forum from any perceived anticompetitive practice directed against them. See Liberty Carton, supra.

We now address the issues related to the technical specifications for the finished trays where the Portion-Pac standard again applies. Procuring officials of the Postal Service have primary responsibility for drafting the test procedures and we will not object to them unless there is no reasonable basis for them. I. C., Inc., P.S. Protest No. 86-06, April 25, 1986; International Computaprint Corporation, Comp. Gen. Dec. B-207466, November 15, 1982, 82-2 CPD & 440; JBG Enterprises, Inc., Comp. Gen. Dec. B-218430, April 26, 1985, 85-1 CPD & 479. Here, the contracting officer has clarified many of Parry's concerns about the test procedures. Since T1154 and T1155 are completely separate tests, the fact that T1154 uses standard tests and T1155 does not is irrelevant. She has explained the proper orientations of the tray and the brick in the drop test. The angle of the drop is explained in the description of the drop test equipment. The contracting officer states that, as written, the T1155 tests adequately duplicate real world situations. We disagree with Parry's complaint that it would be unlikely for a tray to be dropped in a cold environment. For example, it is entirely possible that trays which have traveled in cargo holds of air planes or unheated cargo trucks could be subjected to usage similar to that tested at 20` F.

Despite the explanations given by the contracting officer, we think that some of Parry's

concerns about the drop test specifications in T1155 are valid. The clarifications issued by the contracting officer should be incorporated into the specification by amendment. In addition, we think that it would not be difficult, and would be useful, to specify at least a range of floor surfaces in both parts of the drop test.

Finally, with respect to the deviation granted to Diversi-Plast, Coplon and Parry want equal treatment in the form of a deviation which would enable them to use their present board, which does not meet the requirements of the solicitations. There is nothing in the record to indicate that Diversi-Plast's board would not meet the specifications without the deviation and, in addition, Diversi-Plast must certify that its board will continue to meet the requirements after the deviation is implemented. The fact that the Postal Service granted this minor deviation to Diversi-Plast does not make it improper for the Postal Service to deny Coplon and Parry such a major deviation in the specifications that they would no longer reflect what the contracting officer has established to be the legitimate needs of the Postal Service.

Parry's protest against the terms of T1155 is sustained to the extent that we direct the Office of Procurement to issue an amendment incorporating the clarifications of the drop test as described by the contracting officer and a designation of the types of floor surfaces to be used for the drop tests. The remainder of Parry's protest and the Coplon protests are denied.

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

[checked against original JLS 5/21/93]