Protest of	)	Date: August 25, 1992
	)	
ROADWAY SERVICES, R&D	)	
	)	
Solicitation No. TNET-93-01	)	P.S. Protest No. 92-44

DECISION

Roadway Services, R&D (Roadway) timely protests the terms of Solicitation TNET-93-01 (solicitation), which sought proposals for the operation of the Postal Service's Indianapolis, IN, hub facility at which the Express and Priority Mail transported by the Postal Service overnight air transportation network will be sorted. The solicitation was issued on April 7, 1992, by the Air Contracts Management Division, Office of Transportation and International Services, at Postal Service Headquarters with a proposal due date, as amended, of June 29, 1992. The solicitation was issued required in conjunction with Solicitation No. ANET-93-01 (ANET 93-01) which sought proposals for the operation of an overnight air transportation network.[1/]

The solicitation contained the following pertinent provision:

> J.6.b.2 Sort Accuracy Disincentive
>
> For each piece in excess of 18 pieces reported by the Postal Service to have been missorted or misrouted in a given week, the ATHC [the TNET-93-01 contractor] will be assessed a deduction of $50.

In a letter received by the contracting officer on June 17, Roadway protested the inclusion of this term in the solicitation. The protest was forwarded to this office for resolution.

In its protest, Roadway states that a missort rate of 18 pieces or fewer per week amounts to one missort per 11,400 pieces based on the anticipated weekly volume to

[1/] ANET 93-01 sought proposals for the air transportation of Express and Priority Mail by means of a "hub-and-spoke" network linking 32 cities to the Indianapolis hub.

be processed at the facility. Roadway alleges that this sortation accuracy far exceeds the industry standard and suggests that a missort rate of one per 2,500 pieces is an appropriate rate. Roadway states that the high standard of accuracy will require offerors to factor a disincentive cost into its proposals and will cause misconceptions as to what is possible with current technology. Roadway requests that the contracting officer reevaluate the data used to arrive at the sort accuracy requirement.

The contracting officer's report notes that the establishment of a missort rate is within the contracting officer's discretion and that the drafting of technical specifications is primarily a function of the Postal Service's technically qualified experts. He points to previous decisions of this office stating that it will not substitute its judgment for that of qualified experts on a technical matter unless there is clear and convincing evidence of an error.[1/] The contracting officer states that the missort rate requirement of the solicitation is reasonably achievable. In support of this view he states that he understands that a Postal Service competitor has set a missort rate of one in 10,000 pieces and that the current hub operation has achieved missort rates of one in 10,713 pieces, and one in 17,700 pieces in recent accounting periods.[1/] He also indicates that the solicitation's one in 11,400 missort rate is supported by a member on the solicitation development team with expertise in materials handling management.[1/]

In a letter dated July 2 and received by the contracting officer on July 6, Evergreen Aviation Ground Logistics Enterprises (Evergreen) has submitted comments on the protest. Evergreen states that the current hub operation and the previous hub operation for the Postal Service's overnight air transportation network (run by Evergreen) have exceeded Evergreen's current missort goal of one per 10,000 pieces at its own hub operation. However, Evergreen indicates that it believes the monetary sort accuracy disincentive is unrealistically high. Evergreen also urges the contracting officer to amend the section of the solicitation to measure a missort rate per number of pieces instead of a rate per week. Such a change would offer service protection while allowing for seasonal variations in mail volumes. In response to Evergreen's comments, the contracting officer notes that the operator of the current Postal Service hub is exceeding a missort accuracy rate of one in 10,000 pieces.

Discussion

This protest questions the technical judgment of contracting officials concerning the

[2/] The contracting officer cites E-Z Copy, Inc., P.S. Protest No. 88-61, December 22, 1988; Crown Industries, Inc., P.S. Protest No. 85-40, August 12, 1985; and Hydralifts, Inc., P.S. Protest No. 75-41, November 3, 1975.

[3/] The contracting officer notes that the solicitation also has an incentive in the same amount when the contractor exceeds the required missort accuracy rate.

[4/] The protester has not submitted comments on the contracting officer's statement.

feasibility of the required sort accuracy. As we have recently noted:

> The determination of the procuring activity's minimum needs, and the technical judgments upon which those determinations are based, are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the services to be procured have been used in the past and will be used in the future. ... We have often held that "the drafting of specifications is primarily a function of the Postal Service's technical experts and this office will not substitute its judgment on a technical matter in the absence of clear and convincing evidence of an error."

Express One International, Inc., P.S. Protest Nos. 92-28, 92-30 & 92-35, July 15, 1992. Here, neither the protester nor the commenter have challenged the use of the sort accuracy disincentives. Rather, the protester has asserted two chalenges to the specific rate of accuracy - (1) that the rate exceeds current industry standards and will require offerors to factor disincentive payments into their cost proposals and (2) that the rate may create misconceptions concerning what is possible with current technology.

The contracting officer has justified his use of the specific sort accuracy required by the solicitation. Under the current contract providing the solicited service, the contractor has attained the required rate of accuracy. Further, a member of the solicitation development team with expertise in materials handling management supports the use of the required rate. On the contrary, Roadway has offered no evidence for its position that the required rate of accuracy is not attainable.

It is within the discretion of postal employees to determine when it is appropriate to take steps to ensure that high levels of service performance are maintained. See DHL Airways, Inc., P.S. Protest No. 89-36, July 7, 1989. The judgment at issue here is not based on unsupported speculation, but on the attained sort accuracy on the current contract and the opinion of technically qualified personnel. On the record before us,[1/] we cannot say that the required accuracy is clearly unreasonable, and we, therefore, will not substitute our judgment for that of the contracting officer and his technical advisors. DHL Airways, Inc., supra; Owl Resources Company, Comp. Gen. Dec. B-221296, March 21, 1986, 86-1 CPD & 282.

As to Roadway's contention that the required sort accuracy might create misconceptions concerning what is possible with current technology, it is the

[5/] Our review of bid protests is based on the written record before us, the submissions of the parties and the contracting officer, and relevant documentation submitted to us for review. We do not conduct independent investigations or adversary proceedings. See Bingo Motors, Inc., P.S. Protest Nos. 84-40, 84-41, July 25, 1984; Hasselrig Construction, On Reconsideration, P.S. Protest No. 76-2, March 22, 1976.

responsibility of each offeror to determine what accuracy it can attain. Since the record indicates that the required accuracy is attainable, our review is complete. To the degree Roadway suggests that the required degree of sort accuracy would preclude some prospective offerors from submitting proposals, we note that "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.

Concerning Evergreen's suggestion that the missort rate should be amended to allow for seasonal variations in volume, we find the issue untimely raised since it questions the terms of the solicitation after the date set for the receipt of proposals. Procurement Manual 4.5.4 b. Such a challenge is untimely because submissions which raise additional grounds of protest during the course of proceedings before this office must independently meet the timeliness requirement. Evergreen International Airlines, Inc., P.S. Protest No. 86-07, May 5, 1986. We will, however, briefly address the merits of the issue. The determination of the missort rate, as noted earlier, is squarely within the discretion of contracting officials. Evergreen does not offer any basis for overturning the actions of those officials. Evergreen bears the burden to establish an error by clear and convincing evidence. Express One International, Inc., supra. That burden has not been met here.

The protest is denied.

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Office of Contracts and Property Law