

Protest of ) Date: January 24, 1992  
PERINO'S TRUCK & AUTO BODY, INC. )  
Solicitation No. 129990-92-A-J051 ) P.S. Protest No. 91-93

### DECISION

Perino's Truck & Auto Body, Inc. ("Perino") protests the award of an ordering agreement to perform vehicle maintenance to Readeau's Body Shop, Inc. ("Readeau"). Perino alleges that the solicitation terms are ambiguous, that a conference was needed prior to award and that the awardee's price is too low.

Solicitation No. 129990-92-A-J051 was issued by the Atlanta, GA Procurement Service Office on October 18, 1991, with a return date of November 15. The solicitation sought a contractor to perform body repair and to sand, mask, tape and restrip six different types of vehicles on an as-needed basis in the New Orleans, LA vehicle maintenance facility. The solicitation stated that all stripping materials and decals would be provided by the Postal Service and that painting was to be performed according to specifications outlined in a solicitation attachment.

Section A.2 of the solicitation provided space for the offerors to provide their hourly labor rates for each of the six vehicle types. It also provided space for offerors to list the percentage discount offered to the Postal Service from the manufacturer's price for any parts or materials needed for body repair. Section A.4 of the solicitation informed offerors that their labor charges "must not exceed the manufacturer's flat rate or rates from a standard manual, such as Chilton's." Section G.3 informed offerors that the agreement was subject to Service Contract Act provisions, which were incorporated by reference. A U.S. Department of Labor wage determination for the relevant geographical areas was included with the solicitation.

The Postal Service stated, in Section M of the solicitation, that award would be made "only [to] those offerors whose proposals represent the best overall value to the Postal Service." Offerors were further informed that "[d]istance from the postal installation (deadhead time), hours of operation of both the postal installation and the offeror (ability to service when postal vehicles are idle); and availability and cost of emergency road service are some of the criteria used in arriving at the best overall value." The solicitation advised that the Postal Service "may enter into one or more vehicle maintenance agreements to perform maintenance, repair and servicing of vehicles assigned to an individual Postal Service installation."

The Postal Service received offers from Readeau and Perino. Readeau offered a \$16.00 hourly rate for both body repair and painting of each of the six different listed vehicles. Perino offered the following prices for body repair:

<u>Make, Model of Vehicle</u>	<u>Hourly Labor Rate</u>
AM General 1/4 Ton	\$16.00
1/2 Ton	\$15.75
1 Ton	\$25.00
2 Ton	\$25.00
2 1/2 Ton	\$25.00
Passenger Sedans	\$20.00

Perino's prices for painting were as follows:

<u>Make, Model of Vehicle</u>	<u>Hourly Labor Rate</u>
Am General 1/4 Ton	\$16.00
1/2 Ton	\$15.75
1 Ton	\$20.00
2 Ton	\$22.00
2 1/2 Ton	\$22.00
Passenger Sedans	\$20.00

Both Readeau and Perino offered a 10% discount off the manufacturer's list price for parts. Readeau indicated that it was located 2 miles from the postal installation, while Perino indicated that it was located 20 miles away. Both offerors had the same hours of operation, although Readeau indicated that it was closed on Saturdays and Sundays, while Perino stated that it closed only on Sundays. Readeau was awarded a vehicle maintenance agreement<sup>1/</sup> for an estimated price of \$60,000. Perino was notified, by letter dated November 25, 1991, that award was made to Readeau. Perino's protest, addressed to the General Counsel but mailed to the contracting officer, was received on December 13. The contracting officer forwarded it to this office for resolution.

In its protest, Perino alleges that the solicitation is ambiguous in its definition of the work to be performed and the degree of quality. The protester complains that performance is left to the working relationship between the contractor and the postal employee. Perino also contends that a conference is needed prior to the submission of bids<sup>2/</sup> to explain the classes of service employees that could be utilized to meet the

<sup>1/</sup> "A [vehicle maintenance agreement] is an ordering agreement entered into by the Postal Service and a supplier of vehicle maintenance services. It sets forth the terms and conditions upon which a binding contract may be entered into at a later date, through placement and acceptance of an order." Contracting for Vehicle Maintenance Agreements United States Postal Service Handbook AS-707A, March 1990, {1.1.

<sup>2/</sup> The term "bid" is incorrectly used here. That term is used in formally advertised procurement procedures. The correct term of art in a negotiated procurement like this one is "offer." See Consultants & Designers Inc., P.S. Protest No. 90-11, May 18, 1990.

quality expectations, the degree of insurance protection expected and the meaning of various solicitation sections.

In addition, Perino asserts that Readeau's bid of \$16.00 across the board is inconsistent with Section G.7 of the solicitation which states that "[w]orkmanship must be in accordance with best commercial standards." Finally, the protester alleges that it is impossible for the awardee to pay the base pay required in the solicitation's wage determination and fringe benefits and meet federal, state and local requirements like taxes and licenses, and maintain insurance and a physical plant at a \$16.00 hourly rate.

The contracting officer reports that the solicitation and its provisions were generated by a computer program whose use is mandated by Handbook As-707A, the Postal Service handbook that controls these types of procurements. He adds that Attachment 2 of the solicitation outlined specifically what was expected under the agreement. The contracting officer explains that the Postal Service does not control the classes of employees which may or may not be used under the agreement. He refers Perino to the Department of Labor for a definition and explanation concerning employee classes. The contracting officer further asserts that it is the responsibility of the Department of Labor to ensure that a contractor complies with wage requirements.

The contracting officer notes that the solicitation does not require a contractor to carry insurance. Regarding Perino's complaint about the lack of a pre-proposal conference, the contracting officer states that such conferences are not customarily held for vehicle maintenance agreement solicitations. He reminds the protester that the front page of the solicitation listed the name and telephone number of the procurement person to contact if it had any questions or clarifications. The contracting officer adds that Section K.6 of the solicitation requires that such questions be made in writing. He notes that he never received a written inquiry from Perino concerning the solicitation. As a last point, the contracting officer states that it is not the Postal Service's concern what a particular offeror's operating expenses might be.

### Discussion

Perino's protest is primarily a challenge to the terms of the solicitation. This is evidenced by its claim that the solicitation was ambiguous and by its statements that it did not adequately explain the requirements of the prospective awardee. Procurement Manual ("PM") 4.5.4 b. states that "[p]rotests based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals must be received by the date and time set for the receipt of proposals."

The alleged solicitation ambiguities raised by Perino were readily apparent upon receipt of the solicitation. If the protester thought the solicitation language was ambiguous or required clarification, it should have contacted the procurement office, in writing, as required by Section K.6. of the solicitation provisions. That section clearly advised that "[a]ny prospective offeror desiring an explanation or interpretation of the solicitation, drawings, or specifications must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their proposals."

Moreover, "[o]ur protest regulations require the prompt raising of protests and do not

allow an offeror to sit quietly with a possible basis for a protest to see how he fares in the competition, raising the protest only if he does not succeed." Donald Clark Associates, Inc., P.S. Protest No. 91-34, September 4, 1991. Proposals were due on November 15. Perino first protested the alleged solicitation deficiencies in its protest letter received on December 13. Since the protester did not file this protest until after the offer due date, this part of the protest must be dismissed as untimely.

Perino's other contention, concerning the awardee's ability to perform this contract at the offered price, is timely under PM 4.5.4 d.<sup>1/</sup> However, that contention carries no weight. The fact that the awardee may have proposed a price below its apparent cost of performing the contract is not grounds for rejection of the offer. See Lightron of Cornwall, Inc., P.S. Protest No. 84-6, February 27, 1984; accord Shirley J. Slusher, P.S. Protest No. 84-60, July 30, 1984. Further, the protester's argument that Perino's low prices preclude the discharge of its obligation to pay SCA wage rates is also unconvincing. There is no legal basis to object to even a below-cost award if the offeror is otherwise responsible.<sup>1/</sup> United HealthServ Inc., Comp. Gen. Dec. B-232640, B-232642, B-232643, 89-1 CPD & 43, January 18, 1989. This portion of the protest is denied.

The protest is dismissed in part and denied in part.

**[Signed]**

William J. Jones  
Associate General Counsel  
Office of Contract & Property Law

**[Compared to original 5/18/95 WJJ]**

<sup>3/</sup> "[P]rotests must be received not later than ten working days after the information on which they are based is known or should have been known, whichever is earlier . . ." Perino filed its protest within ten working days of discovering what Readeau's prices were.

<sup>4/</sup> Since Perino has failed to allege fraud, bad faith or failure to apply definitive responsibility criteria, we will not overturn the contracting officer's affirmative determination that Readeau is a responsible contractor. Canteen Service Inc., P.S. Protest No. 90-68, November 15, 1990.