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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Pitney Bowes Inc.

File: B-294868; B-294868.2

Date: January 4, 2005

Grace Bateman, Esq., and Amanda B. Weiner, Esq., Seyfarth Shaw, for the protester. Carmody A. Gaba, Esq., and Michael I. Goulding, Esq., Department of Homeland Security, Customs and Border Protection, for the agency. Carl L. Vacketta, Esq., Richard P. Rector, Esq., William J. Crowley, Esq., and David E. Fletcher, Esq., Piper Rudnick, for Neopost, Inc., an intervenor. Paul N. Wengert, Esq., Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly canceled delivery order initially issued to protester is denied where protester's response to solicitation did not contain prices for all required line items.
2. Protest that agency improperly permitted successful vendor to submit revised pricing following initial submissions is denied where agency sought and received revised pricing from both protester and successful vendor.
3. Protest that successful vendor failed to acknowledge material amendments to solicitation is denied where successful vendor's submission indicated compliance with all material terms.
4. Protest that successful vendor's equipment does not comply with the solicitation requirements is denied where solicitation did not require detailed technical submissions and agency reasonably relied on general statements of compliance and descriptive literature submitted by successful vendor to conclude that its equipment complies with solicitation requirements.

DECISION

Pitney Bowes Inc. protests the issuance of a delivery order to Neopost, Inc. by the Department of Homeland Security, Customs and Border Protection (CBP), under request for quotations (RFQ) No. 48269 for mailing system equipment and

installation, maintenance, and training services. Pitney Bowes also objects to the cancellation of an initial delivery order that had been issued to Pitney Bowes.

We deny the protest.

The RFQ was issued in August 2004 and, as amended,¹ sought quotations from vendors holding Federal Supply Schedule (FSS) contracts for commercial mailing equipment.² The RFQ provided that the mailing systems to be obtained under this solicitation must include the following line items: meter head, meter head base, scale, effective interface, software, training, training guides, removal/return of existing equipment, and equipment repair/replacement support. The RFQ provided specific quantities for each line item with regard to a base year and for each of four 1-year option periods. For each line item, the solicitation provided a space, under the heading “unit price,” for the vendor to submit its quotation and at the top of the pricing schedule vendors were directed to “complete the following pricing.” AR, Tab 3, at 1. The RFQ also advised offerors as follows: **“The number of units to be provided in the option years has not been determined[;] therefore the quantities identified in the option years are included only for the purpose of evaluating bids.”** AR, Tab 3A, at 1 (bold in original). Finally, under the heading “evaluation of offerors,” the RFQ stated: “The vendor who submits the Low bid, and obtain[s] a satisfactory past performance evaluation will be awarded subject contract.”³ RFQ at 3.

Only Pitney Bowes and Neopost submitted quotations. After reviewing the initial quotations, the contracting officer invited both vendors to submit revised pricing. Neopost submitted a set of revised pricing sheets on August 26. AR, Tab 5B, Neopost Pricing, at 6-7. Pitney Bowes submitted its revised pricing, which it referred to as pricing “correction,” on August 29. AR, Tab 4B, Pitney Bowes Pricing, at 1-2. Thereafter, CBP determined that the quotation submitted by Pitney Bowes was lower-priced, and issued a delivery order to Pitney Bowes on August 30. AR, Tab 8, Delivery Order, at 1.

On September 7, CBP canceled the August 30 delivery order on the basis that Pitney Bowes had failed to submit pricing for several line items. Specifically, Pitney Bowes’s submission did not reflect any pricing for the purchase of meter head bases

¹ CBP issued three amendments to the RFQ.

² Specifically, CBP distributed the RFQ using “e-Buy” to firms holding contracts under FSS Schedule 36, titled “office imaging and document solution.” AR, Tab 3, e-Buy Posting Confirmation, at 5.

³ Although the solicitation anticipated issuance of a delivery order under an FSS contract and was posted on e-Buy as an RFQ, the document described itself as an “IFB” (invitation for bids) and referred to vendor responses as “bids.”

or scales for any of the four option periods. AR, Tab 9, Termination Notice, at 1. CBP then issued an order dated September 9 to Neopost, which incorporated by reference the RFQ, and also “Neopost Inc.’s proposal which responded to this RFQ with related FAX; and the three amendments to the RFQ.” AR, Tab 23, Delivery Order, at 2.

In its protest to our Office, Pitney Bowes presents the following assertions: the initial delivery order to Pitney Bowes was unjustifiably canceled; Neopost was improperly allowed to amend its quotation after initial submissions; Neopost failed to acknowledge material solicitation amendments; and Neopost’s equipment will not comply with the solicitation requirements.⁴

Pitney Bowes first protests that the agency lacked a proper basis to cancel the initial delivery order. Pitney Bowes does not dispute that its submission failed to reflect any prices for meter head bases⁵ or scales in the option years. Nonetheless, Pitney Bowes maintains that the RFQ only sought vendors’ quotations to purchase meter head bases and scales during the base year, and that no such purchases were contemplated during the option years. The record is to the contrary.

As noted above, the solicitation expressly advised the vendors that they were to “complete the following pricing,” that “[t]he number of units to be provided in the option years has not been determined,” and that the vendors’ quotations for the option-year quantities would be used “for the purpose of evaluating bids.” RFQ at 1. Accordingly, it is clear that quotations for all line items, including option-period line items was required. To the extent Pitney Bowes viewed this clear solicitation requirement as either unrealistic or otherwise contrary to other aspects of the RFQ, any protest on that basis had to be filed prior to the time set for submission of

⁴ Pitney Bowes also protests that the procurement violated requirements in Federal Acquisition Regulation (FAR) Part 8.4 because the evaluation criteria did not include a “comparative evaluation of the technical merits” of the products. Supplemental Protest at 9. As mentioned above, the RFQ stated that the selection would be based on low price and satisfactory past performance. The challenge that the evaluation criteria were inconsistent with FAR § 8.4 is untimely because it was not protested prior to the time set for submission of quotations, as required under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2004).

⁵ Although meter manufacturers are permitted to sell the “meter head base” portion of a postal meter, under regulations of the United States Postal Service (USPS), the meter mechanism itself (the “meter head”) cannot be sold, but may only be rented from one of the USPS-authorized postal meter manufacturers. Therefore in both the Schedule 36 contract and the RFQ, vendors provided purchase prices for meter head bases, and monthly rental rates for the meter heads.

quotations, in order to be timely under our Bid Protest Regulations.⁶ 4 C.F.R. § 21.2(a)(1). On this record, we find nothing improper in the agency's cancellation of the initial delivery order issued to Pitney Bowes.

Pitney Bowes next protests that the agency improperly sought and evaluated the revised pricing submitted by Neopost on August 26, following submission of initial quotations. As noted above, the record is clear that both Pitney Bowes and Neopost were provided an opportunity to revise their respective quotations, and that both did so.⁷ Thus, we conclude that CBP properly considered the revised pricing from both vendors.

Next, Pitney Bowes protests that Neopost failed to acknowledge amendments 2 and 3 to the RFQ, and maintains that this alleged failure renders Neopost's quotation defective. We disagree because the Neopost quotation complied with all material aspects of the revised RFQ. Specifically, the Neopost quotation specified the correct quantity of 311 systems, and the descriptive literature showed that the Neopost machine would process letters at the specified rate. Further, the Neopost quotation indicated that Neopost would comply with the general requirement to provide sufficient supplies to meet the specified rate of performance.

Finally, Pitney Bowes protests that Neopost's equipment will not comply with certain RFQ requirements. In this regard, Pitney Bowes references a provision in the RFQ's statement of work regarding system software that states:

⁶ Pitney Bowes argues that because the RFQ listed the same quantity (311) of meter head bases and scales for each of the 4 option years as it listed for the base year and the agency had indicated an intent to purchase 311 bases and scales in the base-year period, Pitney Bowes reasonably concluded that there would be no purchases of meter head bases and scales during any of the 4 option years. This interpretation is unreasonable because it is directly contrary to the solicitation provision, quoted above, indicating that vendors must submit quotations for all line items for each of the option years, and that such quotations would form the basis for the agency's evaluation of price. At best, the solicitation contained a patent ambiguity that Pitney Bowes was obligated to protest prior to submitting its quotation. Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003 CPD ¶ 96 at 8.

⁷ On September 29, apparently after issuance of the delivery order, Neopost submitted a third set of pricing sheets, which only added an extended price for purchase of meter head bases in option years (where the prior version had listed only a quantity and unit price). AR, Tab 5Bii. Since this final submission was simply the mathematical product of the previously-submitted prices for the stated quantities, the agency's acceptance of this submission does not provide a basis for sustaining the protest.

CBP requires the ability to account for postal expenditures. It is necessary to track how the USPS and other carriers send mail. The software should provide ad hoc reporting, monitor postage usage, establish business rules, create mail accounts and manage mail accountability.

RFQ at 1.

Pitney Bowes complains that Neopost's equipment will not comply with the requirement that the software "establish business rules." The phrase "establish business rules" was not defined in the RFQ. CBP explains that by "business rules" it meant the ability to "create passwords, short-cut keys, and custom rates," and notes that the descriptive literature submitted by Neopost demonstrated that its equipment had the ability to "perform custom rates and accommodate shortcut keys . . . [and] perform functions including tracking costs for up to 50 departments." Supplemental Report at 24. Accordingly, the agency concluded that Neopost's equipment complies with the RFQ requirements, including the requirement regarding business rules.

To the extent Pitney Bowes disagrees with the agency's interpretation of the term "business rules," we view the solicitation as patently ambiguous.⁸ As noted above, an offeror has an affirmative obligation to seek clarification prior to the first due date for submissions responding to the solicitation following introduction of the ambiguity into the solicitation. 4 C.F.R. § 21.2(a)(1). Where a patent ambiguity is not challenged prior to such submissions, we will dismiss as untimely any subsequent protest assertion that is based on an alternative interpretation. Kellogg Brown & Root, Inc., supra; Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10. Our rule that protests of patent ambiguities must be filed prior to responsive submissions is intended to facilitate clarification of legitimate questions prior to preparation of submissions. Since Pitney Bowes sought no clarification of this

⁸ Our conclusion in this regard is supported by Pitney Bowes' own submissions in pursuing this protest. Specifically, Pitney Bowes has provided two different definitions of the term "business rules." In its comments on the initial agency report Pitney Bowes argued that business rules meant "software that enables the agency to restrict the user of the mailing system from incurring certain types of postage costs, or that caps the amount of postage that a particular user may incur." Protester's Comments at 11. In its comments on the supplemental agency report, Pitney Bowes attached a declaration from an employee and argued that in the mailing and freight-handling industries, "'Business rules' is a specially-defined term that means a routing guide that specifies shipping methods, carriers, and/or services based on customer preferences, negotiated contracts, or other specific criteria." Protester's Supplemental Comments at 7. Since Pitney Bowes itself has provided two divergent definitions of the term, we decline to conclude that the agency's definition of the term is unreasonable.

matter prior to responding to the solicitation, it may not now assert that the only permissible interpretation of this term is its own.

The protest is denied.⁹

Anthony H. Gamboa
General Counsel

⁹ Pitney Bowes also protests that Neopost's submission did not explicitly address the RFQ requirement that equipment be capable of calculating correct charges for various carriers. Specifically, Pitney Bowes complains that, while Neopost's submission certified that it "acknowledge[d] and will comply" with this requirement, its descriptive literature "is silent on the capability" of correctly calculating various rates. Supplemental Protest at 4. Since the RFQ did not require a detailed technical submission, in our view, CBP reasonably accepted Neopost's general assurance that its equipment was capable of calculating the appropriate rates.