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**Comptroller General
of the United States**

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

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Decision

Matter of: Neopost USA Inc.

File: B-404195; B-404195.2

Date: January 19, 2011

Andrew Mohr, Esq., William J. Bainbridge, Esq., Cohen Mohr LLP, for the protester. Grace Bateman, Esq., Caroline A. Keller, Esq., Seyfarth Shaw LLP, for the intervenor. Simon H. Fisherow, Esq., Department of Homeland Security, United States Customs and Border Protection, for the agency. Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated awardee's response to solicitation as technically acceptable is denied where awardee's response did not take exception to solicitation requirements and where record contains no information reasonably known to the agency that should have created doubt as to whether awardee intended to or would comply with solicitation requirements.
 2. Protest that agency inadequately documented its evaluation of responses to solicitation issued pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 is denied where evaluation documentation comports with FAR subpart 8.4 requirements and where record reflects that agency's evaluation judgments were reasonable.
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DECISION

Neopost USA Inc., of Milford, Connecticut, protests the award of a contract to Pitney Bowes, Inc., of Annandale, Virginia, pursuant to request for quotations (RFQ) No. PR20059587, issued by the Department of Homeland Security, United States Customs and Border Protection (CBP) for 240 digital mail meter systems and related support. Neopost contends that the agency should have rejected Pitney Bowes' mailing system as technically unacceptable because, according to the protester, the mailing system does not meet various solicitation requirements. Neopost also contends that the agency inadequately documented its evaluation of responses to the solicitation.

We deny the protest.

BACKGROUND

On September 21, 2010, the agency issued the solicitation to four vendors that offer mail processing equipment through contracts under General Services Administration Federal Supply Schedule (FSS) No. 36, Office Imaging and Document Solutions, Special Item No. 50-163, Mail Processing Machines, Systems, and Related Software. Contracting Officer's Statement ¶ 5; Agency Report (AR), Tab 7, Business Memorandum, § III.A. The solicitation requested fixed-price quotations for the delivery, installation, and testing of 240 mailing systems at various CBP locations throughout the United States. RFQ at 12-13; Statement of Work (SOW) §§ 2.0, 4.0. The solicitation also requested fixed-price quotations for the lease of 240 United States Postal Service (USPS) mail meter heads needed for operation of the mailing systems for a base period of 1 year and three 1-year option periods. RFQ at 12-13; SOW § 2.0. Award was to be made to the vendor that submitted the lowest-priced, technically acceptable quotation. RFQ at 2.

Each mailing system was to include a mail machine, management software, and a scale.¹ SOW § 2.0. The solicitation required, among other things, that the mailing system include the following features:

Processing speed [of] up to 125 letter[s] per minute (LPM), 70 LPM in dynamic processing mode; automatic thickness adjustment up to 5/8 inch, compliance with USPS Shape-Based Pricing requirements, a mixed size feeder that eliminates the need to manually sort mail by size allowing [users] to process mail faster and more efficiently

Id. § 3.7.2 (emphasis in original). The solicitation also required that the mailing system include a “mailing machine with maximum possible automation features to process letter and flat mail” and that the mailing system “minimize the requirement for manual intervention by the user to process mail.” Id. The mailing system additionally was required to “be able to process mail with differential weighing and/or weigh different sized/weighted pieces while being fed automatically, as applicable to the location.” Id.

On September 24, the agency issued amendment No. 1 to the solicitation. Among other things, amendment No. 1 removed the requirement that the mailing system offer a “[p]rocessing speed [of] up to 125 letter[s] per minute (LPM), 70 LPM in

¹ In addition to the mailing system equipment, the successful vendor also was to provide routine maintenance services and initial training and “refresher” training to agency users. SOW §§ 3.7.2, 3.7.5, 3.7.6.

dynamic processing mode.”² RFQ amend. 1, SOW § 3.7.2; see also Contracting Officer’s Statement ¶ 6.

The agency received four proposals³ in response to the solicitation, including proposals submitted by Neopost and Pitney Bowes. AR, Tab 7, Business Memorandum, § VI. Pitney Bowes’ proposal offered the DM525 mailing system. AR, Tab 8, Pitney Bowes Proposal, at 9. Within a section that described the Pitney Bowes “Mail Processing Solution,” the proposal stated that the DM525 “automatically feed[s], seal[s] and imprint[s] postage at speeds up to **150 letters per minute . . .**” Id. at 16 (emphasis in original). This section of the proposal also stated:

The DM525’s self-aligning feed system ensures that envelopes are fed straighter to protect the contents and ensure precise postage imprinting. Thickness and size adjustments are minimized by the DM525’s ability to process various sized envelopes - up to 5/8” thick with sizes ranging from post cards to 10” x 13” flats.

Id. A table of specifications within this section of the proposal included, among other things, “Differential Weighing - 100 lbs,” and an equipment listing within this section of the proposal included, among other things, “100 lb differential scale.” Id. at 17-18.

The Pitney Bowes proposal also included a section in which the firm provided a response to each of the requirements set forth in the solicitation. Id. at 26-34. With respect to the requirement for automatic thickness adjustment and a mixed-size feeder that eliminates the need to manually sort mail by size, the proposal stated: “The DM525 Mailing System fully complies with [this] requirement.” Id. at 28 (referencing SOW § 3.7.2). With respect to the requirement that the mailing system “be able to process mail with differential weighing and/or weigh different sized/weighted pieces while being fed automatically,” the Pitney Bowes proposal stated: “The DM525 Mailing System fully complies with [this] requirement by offering the capability for differential weighing.” Id. at 29 (referencing SOW § 3.7.2).

² The agency removed this requirement in response to the following communication from a vendor: “[T]he SOW requires . . . 70 LPM in dynamic processing mode.’ This is a Neopost feature and so that all bidding vendors clearly offer what the Govt requires, can we better a description [sic] of the actual requirement for this feature?” RFQ amend. 1 at 12.

³ Although the solicitation is an RFQ, throughout the record the parties use the term “proposal” to refer to the vendors’ responses to the RFQ. For purposes of this decision, we generally adopt this usage of the term “proposal”; the distinction between a quotation and proposal is not relevant to our analysis.

A technical evaluation panel (TEP) was convened and reviewed each proposal submitted for technical acceptability. Contracting Officer's Statement § 7. The TEP determined the proposals of Neopost, Pitney Bowes, and a third vendor to be technically acceptable. AR, Tab 6, TEP Documentation, at 2, 4. The TEP noted that the proposals of Neopost and the third vendor offered the same mailing machine and that the two vendors appeared to be the same company. Id.

The contracting officer and contracting specialist analyzed the vendors' pricing. AR, Tab 7, Business Memorandum, § VI. Pitney Bowes' pricing for the combined base requirement and options was determined to be \$1,116,000. Id. The pricing of both Neopost and the third vendor that submitted a technically acceptable proposal was determined to be \$1,968,960 for the combined base requirement and options. Id.

On September 29, the contracting officer selected Pitney Bowes for award on the basis that Pitney Bowes had submitted the lowest-priced, technically acceptable proposal. Contracting Officer's Statement ¶ 9; AR, Tab 7, Business Memorandum, § VIII. This protest followed.

DISCUSSION

Neopost contends that the agency should have rejected Pitney Bowes' proposal as technically unacceptable. According to Neopost, the proposed DM525 mailing system does not offer "mixed mail processing," which Neopost asserts that the solicitation required by virtue of the provision for "a mixed size feeder that eliminates the needed to manually sort mail by size." Protest at 6 (referencing SOW § 3.7.2). We find no merit in the protester's contention.

Where, as here, an agency issues an RFQ to FSS contractors under Federal Acquisition Regulation (FAR) subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Solutions, Inc., supra, at 4; OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4.

Based on our review of the record, we find that the agency reasonably concluded that the Pitney Bowes proposal agreed without exception to meet the solicitation requirement in question. The record reflects that the TEP reviewed the Pitney Bowes proposal and determined it to be technically acceptable because it "properly answered and understood the requirements listed in the [SOW]." AR, Tab 6, TEP Documentation, at 2. The record further reflects that the Pitney Bowes proposal

expressly stated that the proposed mailing system “fully complies” with the solicitation provision referenced by the protester. AR, Tab 8, Pitney Bowes Proposal, at 28. Consistent with this statement, the proposal explained that the DM525 “automatically feed[s], seal[s] and imprint[s] postage,” the DM525 feed system is “self-aligning,” and the DM525 can process “various sized envelopes - up to 5/8” thick with sizes ranging from post cards to 10” x 13” flats.” Id. at 16.

An agency may accept a quotation’s representations regarding compliance with a solicitation requirement where there is no significant countervailing evidence reasonably known to agency evaluators that should create doubt that the vendor will or can comply with the requirement. Spectrum Sys., Inc., B-401130, May 13, 2009, 2009 CPD ¶ 110 at 3; see also TransAtlantic Lines, LLC, B-296245, B-296245.2, July 14, 2005, 2005 CPD ¶ 147 at 3. Representations in Pitney Bowes’ proposal indicate that the proposed DM525 can automatically process mixed-size mail. Although the protester makes arguments as to why publicly available Pitney Bowes technical literature indicates that the DM525 cannot meet this requirement, Neopost Comments at 3-5, the record does not indicate that there was any countervailing evidence known to the agency that should have created doubt regarding Pitney Bowes’ intent and capability to meet the requirement at issue.⁴

Neopost also contends that the agency should have rejected the Pitney Bowes proposal as technically unacceptable because the proposed DM525 does not meet what the protester characterizes as the solicitation’s “mandatory requirement of dynamic weighing.” Protest at 8. In support of this contention, Neopost references solicitation provisions stating that the mailing system must include “the maximum possible automation features”; must “minimize the requirement for manual intervention by the user”; and must “process mail with differential weighing and/or weigh different sized/weighted pieces while being fed automatically.” Id. (referencing SOW § 3.7.2).

⁴ Moreover, the technical literature cited by Neopost does not on its face suggest that the proposed DM525 cannot meet the solicitation requirement in question. The technical literature states that the DM525 features an “Automatic” and “Self-Aligning” feeding system that handles material up to 5/8 inch thick and from postcard size to 10 by 13 inch flats. AR, Tab 11, Neopost Response to Agency Request for Dismissal, exh. 1, at 10; see also Neopost Comments, exhs. 1, 4 (describing the DM525 feeding system as automatic and capable of handling mail of varying dimensions). Further, consistent with the representations in Pitney Bowes’ proposal and the information in the Pitney Bowes technical literature, a Pitney Bowes vice president with cognizance over mail finishing products stated in a declaration filed with our Office that the DM525 as configured in Pitney Bowes’ proposal can automatically process mixed mail of various sizes and weights without being manually pre-sorted by the system’s user. AR, Tab 10, Pitney Bowes Response to Agency Request for Dismissal, attach. 1, ¶ 6.

In its report to our Office, the agency asserts that the solicitation did not include a dynamic weighing requirement. Agency Memorandum of Law at 3; see also Contracting Officer's Statement ¶ 6; RFQ amend. 1 at 12. In this regard, the agency states that the solicitation was amended to remove any reference to dynamic weighing because that term is proprietary to Neopost and, therefore, was unduly restrictive. Agency Memorandum of Law at 9. The agency further states that removal of the reference to dynamic weighing shifted the solicitation's focus to "the agency's actual requirement for differential weighing." Id. The protester in its comments on the agency report did not rebut the agency's assertions regarding dynamic weighing. Consequently, we consider this protest ground to be abandoned. Washington-Harris Group, B-401794, B-401794.2, Nov. 16, 2009, 2009 CPD ¶ 230 at 5 n.3; Strategic Res., Inc., B-287398, B-287398.2, June 18, 2001, 2001 CPD ¶ 131 at 10-11.

For the first time in its comments, Neopost asserts that the proposed Pitney Bowes mailing system does not meet what Neopost characterizes as a solicitation requirement that the mailing system have the capability to either perform differential weighing while being fed automatically or to weigh differently sized and weighted pieces of mail while being fed automatically. Neopost Comments at 5-6.

We dismiss this ground of protest as untimely. As discussed above, Neopost's initial protest alleged that the DM525 does not meet the "requirement of dynamic weighing." Protest at 8. Although the initial protest referenced the solicitation provision pertaining to differential weighing, that reference was in support of the assertion that the DM525 as proposed did not offer dynamic weighing. Id. It was not until Neopost's comments that Neopost asserted the distinct argument that the DM525 does not meet a solicitation requirement for the mailing system to have either the capability to perform differential weighing while being fed automatically or the capability to weigh differently sized and weighted pieces of mail while being fed automatically. Neopost Comments at 5-9.

Under our Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2010). Where a protester initially files a timely protest, and later supplements it with independent protest grounds, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 6; L-3 Sys. Co. Wescam Sonoma, Inc., B-297323, Dec. 3, 2005, 2005 CPD ¶ 219 at 4. We view allegations raised for the first time in comments to constitute independent protest grounds if a further response by the agency is needed to adequately review the matter. Raydar & Assocs., Inc., B-401447, Sept. 1, 2009, 2009 CPD ¶ 180 at 4; L-3 Sys. Co. Wescam Sonoma Inc., supra. Neopost's contention that the proposed Pitney Bowes mailing system does comply with what Neopost views as a particularized

solicitation requirement for differential weighing is untimely because it is not apparent why this contention could not have been raised in Neopost's initial protest.⁵

Finally, Neopost argues that the agency did not adequately document its evaluation of the proposals received in response to the solicitation. Neopost Comments at 13. For procurements conducted pursuant to FAR subpart 8.4 and requiring a statement of work, such as this one, FAR § 8.405-2(e) designates minimum documentation requirements. See also USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 8-9. Additionally, our Office has found that in the context of a FAR subpart 8.4 procurement, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. Advanced Tech. Sys., Inc., B-298854, B-298854.2, Dec. 29, 2006, 2007 CPD ¶ 22 at 8. In this case, the record reflects that the agency met the minimum documentation requirements set forth in FAR § 8.405-2(e). See AR, Tab 7, Business Memorandum. Further, the agency documented its evaluation judgments in such a manner that, when the record is considered as a whole, there is no basis to find the judgments unreasonable. See, e.g., AR, Tab 6, TEP Documentation; AR, Tab 8, Pitney Bowes Proposal. Accordingly, this ground of protest is denied.

Lynn H. Gibson
General Counsel

⁵ In any event, adopting Neopost's reading of the solicitation provisions at issue for the sake of argument, Neopost has not established that Pitney Bowes' proposal--or any other information before the agency at the time of the evaluation of proposals--indicated to the agency that the proposed DM525 mailing system could not perform differential weighing while being fed automatically, meaning that there is no basis to sustain this ground of protest. See Spectrum Sys., Inc., supra; TransAtlantic Lines, LLC, supra. Additionally, whether Pitney Bowes actually delivers a product compliant with the terms of the solicitation is a matter of contract administration, which is for consideration by the contracting agency, rather than our Office. 4 C.F.R. § 21.5(a); Nilson Van & Storage, Inc., B-310485, Dec. 10, 2007, 2007 CPD ¶ 224 at 4.