

Protest of)
AUTOMOTIVE SERVICE EQUIPMENT) Date: November 10, 1987
Solicitation No. 324800-87-C-0047) P.S. Protest No. 87-74

ON RECONSIDERATION

The contracting officer has requested reconsideration, pursuant to PCM contracting 2-407.8 f. (10), of our decision in Automotive Service Equipment, P.S. Protest No. 87-74, September 2, 1987. In that decision, a request was issued for quotes on hydraulic lifts which called out five specific salient characteristics and four safety features required of the offered items. The decision held that it was improper to issue a purchase order to a quoter whose product did not meet all of the salient characteristics without modifying the request for quotations.

The officer takes exception to our determination that a substantial change was made to the solicitation requirements. He states that the equipment offered by the successful quoter met the requirements of the solicitation and the specifications and equalled or exceeded the safety requirements called out in the solicitation. Therefore, the contracting officer concludes that there was no change in the solicitation requirements.^{1/}

PCM 2-407.8 f. (10) requires requests for reconsideration to state the factual or legal grounds upon which modification or reversal is sought, specifying legal errors made or information not previously considered. Jack Tyra, On Reconsideration, P.S. Protest No. 87-50, July 13, 1987. Reconsideration is not appropriate where the requesting party simply wishes us to draw from the arguments and facts considered in the original protest conclusions different from those reached in the decision, where the request for reconsideration is merely a reassertion of arguments considered and rejected in the initial decision, or where the information on which the request is based was known to the requesting party during the development of the protest but was not presented in the original proceeding. Alan Richey, On Reconsideration, P.S. Protest No. 87-27, July 14, 1987; Fort Lincoln New Town Corporation, On Reconsideration, P.S. Protest No. 83-53,

^{1/} The contracting officer also notes that the protest was timely because it was received 17 days after the purchase order was issued, and that our holding that the protest was timely filed amounts to a modification of PCM 2-407.8 d. (3) of which he was not aware. As we pointed out in the protest decision, the PCM specifically provides that the issuance of a purchase order is not equivalent to the award of a contract, and that a contract only comes into existence when the supplier accepts the order. PCM 16-202.4. Since the acceptance of the purchase order at issue here occurred on June 22 and the protest was received on July 10, the protest was timely filed pursuant to the PCM.

November 21, 1983. Given this standard of review, the contracting officer has not presented evidence which supports a request for consideration. However, since it is evident from his request that the contracting officer does not understand the basis for our decision, we will once again explain the decision's rationale.

When a negotiated procurement for an item is issued with salient characteristics, the Postal Service represents to potential offerors that only those items which meet all of the salient characteristics will be acceptable. PCM 1-1105.1 (a), see Weld-Loc Systems, Inc., P.S. Protest No. 79-16, July 27, 1979 (deviations from specification requirements must be specific and well-defined). A prospective offeror is entitled to infer from the existence of salient characteristics that, if it offers an item which does not have one or more of these characteristics, its offer will be evaluated as an alternate proposal, and may be rejected if it is technically unacceptable. See Eastman Kodak Company, P.S. Protest No. 84-77, February 22, 1985. Even in those cases in which a brand name is called out, with offers allowed on equal products, an equal product must meet all of the material salient characteristics specified in the solicitation. See Rosco Automotive International Corp., P.S. Protest No. 78-52, February 6, 1979.

One of the salient characteristics in the Request for Quotations here was the requirement that the lift be hydraulically equalized. One quoter offered a lift with chain equalization, a different method of equalization. The contracting officer determined, based on the recommendations of his technical support personnel, that the chain equalized unit met the Postal Service's actual minimum needs. At the moment that the contracting officer realized that a lift without hydraulic equalization would meet the actual minimum needs of the Postal Service, he was also, of necessity, aware that the salient characteristics were unduly restrictive of competition.^{1/} At this point, the contracting officer was under the duty, imposed by PCM 3-805.1 (d), to amend the request for quotations and request another round of quotes. See Eastman Kodak Company, supra; Joint Action in Community Service, Inc., Comp. Gen. Dec. B-214564, August 27, 1984, 84-2 CPD & 228. By not doing so, the contracting officer violated the regulatory mandates which govern this procurement and unfairly treated the two offerors who, in good faith, quoted on an unduly restrictive specification and were underquoted by a quoter who did not meet all the requirements called out in the salient characteristics.

On reconsideration, our initial decision is affirmed.

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[Compared to original 3/8/93 WJJ]

^{2/} The same analysis applies to the four safety features required by the solicitation but not offered on the successful quoter's lift.