

Protest of)
) Date: August 2, 1990
DELUXE CRAFT MANUFACTURING)
COMPANY) P. S. Protest Nos. 90-24 &
) 90-33
Solicitation No. 104230-90-A-0058)

DECISION

Deluxe Craft Manufacturing Company ("Deluxe Craft") timely protests the terms of Solicitation No. 104230-90-A-0059, issued by the Office of Procurement, Postal Service Headquarters, on April 6, 1990, for commemorative collections binders. Deluxe Craft alleges that the specifications are insufficient to allow it to submit a meaningful and competitive "bid."^{1/}

The solicitation contains the following pertinent specifications: "Binder Construction . . . six (6) lb. wadding shall be adhered evenly to binder board . . . [t]he finished cover material shall be Lexotone 10 point #41065 tobacco grain mission."

The original offer due date of May 4, 1990, was extended by amendment to May 25. Deluxe Craft's protest, dated May 14, was received May 18. Amendment A02, dated May 22, was issued to inform prospective offerors of the protest and to extend the due date indefinitely. The original protest alleged: 1) specified materials were not readily available from commercial sources; 2) materials were vaguely described; 3) the solicitation did not provide for alternate materials; 4) required brand names were listed without company identification; 5) samples of the binders were not available until after the offer due date; 6) the lead time for the ring metal, made overseas, was longer than the first delivery date; 7) the Procurement Manual ("PM") was not available; and 8) abstracts of previous contract awards were not available.

In an attempt to address these issues, the contracting officer issued Amendment A03 on June 12 and extended the due date to June 29. The amendment contained several clarifications and corrections, including the insertion into the solicitation of Clause 2-21 COMPONENT PARTS (October 1987) and the addition of the phrase "(or equal)" to the specification for the Lexotone material.

^{1/}The use of the term "bid" is incorrect. Bid is a term of art applying only to formally advertised procurement procedures. This solicitation was issued under negotiated procurement procedures where the appropriate term of art is "proposal." See Handling Systems, Inc., P.S. Protest No. 89-70, December 19, 1989.

Prior to the issuance of Amendment A03, the contracting officer called Deluxe Craft and reviewed the contents of the amendment in order to insure that all the issues had been adequately addressed. A cover letter accompanying the amendment stated that samples of the binders are available from any philatelic center and specifically identified two centers near the protester's location. It also stated that the PM is available in most public libraries, or could be obtained through the Government Printing Office. Concurrently, the contracting officer enclosed a copy of the abstract from the previous procurement for the same item. Upon receipt of the amendment, Deluxe Craft did not withdraw its original protest and submitted a new protest on June 25, 1990. In it, Deluxe Craft complains that the manufacturer of the Lexotone material is not listed in the specification and alleges that the six pound wadding material is no longer readily available from commercial sources, contending that the commercial equivalent is one-eighth inch urethane foam.

In her report, the contracting officer states that Amendment A03 and the accompanying enclosures apparently satisfied all the protester's concerns except for the issues regarding the Lexotone and wadding materials. She agrees with the protester that the manufacturer's name was inadvertently omitted from the specifications and states that she will issue an amendment to provide that information. As to the wadding requirement, she states that a market survey conducted by the Postal Service shows that there are currently at least twenty-seven companies specializing in wadding material. In addition, vendors' response to the protest indicate that the material is readily available.^{2/} The contracting officer maintains that this renders Deluxe Craft's allegations of unavailability of the wadding material meritless. She recommends that this portion of the protest be denied.

Discussion

Amendment A03 and the accompanying correspondence to the protester adequately addressed the issues presented in Deluxe Craft's original protest except for those outlined in its June 25 protest letter. Therefore, we agree with the contracting officer that the elements of the original protest not outlined in the protester's June 25 protest letter have been rendered moot. See Hardigg Industries, Inc., et. al., P.S. Protest No. 86-69, October 10, 1986. Furthermore, the amendment providing the manufacturer information on the Lexotone material disposes of one of the two claims in Deluxe Craft's second protest. Id. There remains only the issue regarding the requirement for wadding.

Deluxe Craft's allegation that the required wadding material is not readily available and prevents it from making a meaningful and competitive offer is an allegation that the requirements of the solicitation are unduly restrictive of competition. It is well established that "[t]he determination of what constitutes the Postal Service's minimum needs is properly to be made by the requiring activity, and is not subject to being overturned in the absence of a clear showing that the determination lacks a reasonable

^{2/}Although no comments were submitted in response to the contracting officer's report, two prospective offerors responded to the protest. With respect to the wadding issue, Columbia Loose-Leaf Corporation and Bahn Enterprises both stated that the wadding material is widely available.

basis." Crown Industries, Inc., P.S. Protest No. 82-83, January 6, 1983; Memorex Corporation, P.S. Protest No. 82-51, August 24, 1982. Furthermore:

it is incumbent upon the procuring agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. But once the agency establishes this support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable.

Portion-Pac Chemical Corp., P.S. Protest No. 84-49, August 1, 1984, quoting Amray, Inc., Comp. Gen. Dec. B-208308, January 17, 1983, 83-1 CPD & 43. If the terms of the solicitation reflect the legitimate needs of the procuring activity and the specifications are otherwise reasonable, the fact that one or more potential offerors may be precluded from participating in the solicitation does not render its terms restrictive. International Technology Corporation, P.S. Protest No. 89-21, May 8, 1989; see Willard Company, Inc., Comp. Gen. Dec. B-187628, February 18, 1977, 77-1 CPD & 121.

In this case, the contracting officer has produced substantial evidence showing that the material in question is not restrictive of competition as it is readily available from several sources. Deluxe Craft's unsubstantiated contentions to the contrary are insufficient to show that the requirements are clearly unreasonable. See E-Z Copy, Inc., P.S. Protest No. 88-61, December 22, 1988.

Deluxe Craft's original protest, P.S. Protest No. 90-24, is dismissed as moot, as is the portion of P.S. Protest No. 90-33 concerning the Lexotone material. The remainder of the protest is denied.

This protest is dismissed in part and denied in part.

William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 6/4/93]