

Protest of) Date: August 7, 1992
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 EDGERTON-BECKER)
)
 Solicitation No. 104230-92-A-0095) P.S. Protest No. 92-25

DECISION

This is the second of two protests filed by Edgerton-Becker in connection with the procurement of 54 bar code printers to be used in U.S. Postal Service Business Centers. The contracting officer granted the first protest and resolicited the contract. Edgerton-Becker now protests the award made to Rena Systems (Rena) under the second solicitation.

On January 20, 1992, the Office of Procurement at Postal Service headquarters issued letter requests for quotations for printers using the simplified purchasing procedures set out in Postal Service Procurement Manual (PM) 4.2.1 to three companies. The letter described the requested items as "dot matrix printers to support the POSTNET and Business Center Account Management Systems." An attachment described them as "Direct Impression Dot Matrix Printer[s]" in accordance with an attached specification.^{1/} A February letter to prospective offerors revised the specifications to require the capability of printing delivery point bar codes.^{1/}

^{1/}

Specifications for Barcode Printers
To be Used in the Business Centers

1. The printer must be able to connect directly to a PC without the need for special drivers or software.
2. The printer must be able to print on envelopes at a rate of at least 4000 per hour at near letter quality.
3. The printer must be certified by the USPSBarcode Certification program at NAIC [National Address Information Center] in Memphis. (Barcode Certification Vendor List attached.)

^{2/} A delivery point bar code includes eleven digits; it is used to pinpoint delivery to a specific street address.

Three offers were received -- one from Edgerton-Becker and two alternative offers from Rena. The contracting officer's technical evaluator conducted technical and cost evaluations of the three offers which determined that Edgerton-Becker's offer for the model Bryce BOS 7600 was technically unacceptable because it had not been certified by the NAIC under the Postal Service's Bar Code Certification Program to meet the delivery point bar code requirement and that Rena's offer for the Rena DA-300 was technically unacceptable as unable to meet the 4,000 envelope per hour printing requirement. On March 2, the contracting officer accepted Rena's remaining offer for the Rena model DA-306, at a unit cost of \$6929.21.

On March 3, Edgerton-Becker protested the rejection of its offer on the ground that the solicitation did not require that the delivery point bar code function had to be certified of by the NAIC, but that that function of its proposed model was in fact to be certified on March 4. The contracting officer found the protest meritorious, terminated the contract with Rena for convenience, and resolicited.

The new solicitation differed from the original one in various respects, and included an amended specification.^{3/} It was issued as simplified purchase solicitation, number 1-4230-92-A-0095, seeking 54 "Direct Impression Dot Matrix Printers." Like the original, the solicitation was distributed to three firms. Three proposals were received; two from Rena, for the models it had previously proposed, and one from Edgerton-Becker for its

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Business Center Bar-code Printers

The following are the specifications required for bar-code printers to be used for the Postal Business Centers.

1. The printer must be able to connect directly to a PC without the need for special drivers or software.
2. The printer must be able to print on #10 envelopes (4 1/8 inch x 9 1/2 inch) at a rate of at least 4000 per hour at near letter quality.
3. The printer must be certified by the USPS Bar-code Certification program at NAIC in Memphis to generate the following:
 - 1.) A Zip+4 bar-code located within the bar-code read area in the lower right corner of the address side of the mailpiece as specified in DMM [Domestic Mail Manual] 551.22 - 551.24.
 - 2.) A delivery point bar-code located within the bar-code read area in the lower right corner of the address side of the mailpiece as specified in DMM 551.22 - 551.24.
 - 3.) A Zip+4 bar-code located within the address block of the mailpiece as specified in DMM 551.25.
 - 4.) A delivery point bar-code located within the address block of the mailpiece as specified in DMM 551.25.

previously proposed model. The technical evaluator found all models to be technically acceptable.^{4/} The prices of the acceptable units were then analyzed. Rena offered a unit price of \$3,596 for model DA-300 and \$3,648 for model DA-306. Edgerton-Becker's unit price was \$4,847. Rena's DA-300 remained the lowest priced after a six percent Buy American factor was added. On April 21, Contract No. 104230-92-B-3827 was awarded to Rena at a total price of \$194,292.

On April 23, Edgerton-Becker filed a protest with the contracting officer, on the ground that model DA-300 was not capable of meeting the speed requirement, and that it also did not meet applicable Occupational Health and Safety Administration (OSHA) standards.^{5/} On May 1, the contracting officer denied the protest as obviously without merit on the ground that Edgerton-Becker was not an interested party, since Rena's alternative offer for the Rena DA-306 would be next in line for award.

Edgerton-Becker then filed with this office a protest challenging both Rena proposals. The protest was received on May 15, within ten working days of Edgerton-Becker's claimed receipt of the contracting officer's denial. See PM 4.5.4(e). It asserts that Edgerton-Becker is an interested party in that it challenges both of Rena's offers as well as Rena's general qualification to receive an award.

The protester asserts that model DA-300 should have been rejected for failure to meet the speed requirement, and for failure to comply with the OSHA standards. The protester admits that the model DA-306 is technically acceptable, but challenges Rena's offer for it as "a sham bid [sic^{6/}] to insulate the first bid from attack."^{7/} The protester also asserts that Rena should be disqualified from this procurement for making material misrepresentations in its proposals (i.e., with respect to the speed of model DA-300).

^{4/} Rena's proposal for the DA-300 stated a speed greater than the speed listed in the literature Rena submitted under the original solicitation. In response to the Postal Service's request for clarification, Rena provided literature which satisfied the technical evaluator and the contracting officer that the Rena DA-300 met the speed requirement of 4000 envelopes per hour.

^{5/} The solicitation had incorporated by reference PM clause B-28, Safety and Health Standards, which requires certification that furnished supplies comply with OSHA standards. According to the protester, the Rena-300 was not certified by a "nationally recognized testing laboratory" as OSHA regulations require.

^{6/} The term, "bid," denotes an offer under a formally advertised solicitation. Since this is a negotiated procurement, the correct term is "offer" or "proposal."

^{7/} The protester focuses on the fact that Rena's offer for model DA-306 was at a unit price significantly less than its offer for the same model under the previous solicitation (\$6,921 vs. \$3,648), characterizing this as an effort "to insulate itself from a protest by the bidder that would have been the legitimate second low bidder...." Edgerton-Becker's contentions are somewhat weakened by its incorrect understanding that Rena had not offered model DA-300 on the first solicitation.

After Edgerton-Becker filed its protest with this office, the contracting officer asked the technical evaluator to investigate whether model DA-300 did, in fact, meet all requirements of the solicitation. The technical evaluator advised that investigation revealed that model DA-300 printers, which Rena had already delivered, did not print bar codes at the required rate of 4,000 envelopes per hour. The contracting officer concluded that the specification was ambiguous, since it stated that the printers had to print "on envelopes" at the rate of 4,000 per hour, but did not state that bar codes had to be printed on envelopes at that rate, that model DA-300 was technically compliant with the ambiguous specification, that the specification as so understood did not meet the intended requirements of the Business Centers, and that Rena had not intentionally misrepresented the capabilities of model DA-300. Subsequently, Rena offered to provide model DA-306 in lieu of model DA-300 at no increase in contract price, and the contract was so modified on June 2.

The protester has made additional submissions and has elaborated on its arguments during a protest conference held at this office. At the conference a representative of the protester and counsel for the protester stated that their primary contention was that Edgerton-Becker was prejudiced by the ambiguous speed requirement of the specification. They stated that Edgerton-Becker interpreted the speed requirement as the Postal Service intended (i.e., to print 4,000 envelopes with bar codes per hour), and that they assumed that Rena interpreted the speed requirement less strictly (i.e., to print 4,000 envelopes per hour without bar codes). Edgerton-Becker would have priced its offer lower if it also had believed that the specification called for the lower speed requirement, since the field of competition would have been greater, and Rena gained an unfair competitive advantage by virtue of its less stringent reading the specification. Thus, Edgerton-Becker argues, the contract should have been canceled and resolicited.

Discussion

Since the contracting officer has determined that Rena's model DA-300 would not meet the Postal Service's needs, it is no longer necessary for us to decide whether it meets the requirements of the specifications. We first consider whether the protester's main contention that it was prejudiced by ambiguity in the specifications is properly before us. Protests based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals in order to be considered timely. PM 4.5.4(b). Accordingly, we believe that Edgerton-Becker's claim of ambiguity is untimely.

However, considering the solicitation as a whole, we believe that the contracting officer erred in finding the speed requirement of the specification ambiguous. Solicitation provisions must be:

[S]ufficiently definite and free from ambiguity to permit competition on a common

basis [A]n ambiguity exists if the specifications are susceptible to two reasonable interpretations. To be reasonable, an interpretation must be consistent with the solicitation read as a whole.

Equipment Marketing Consultants Corp., P.S. Protest No. 90-07, April 17, 1990. (Citations omitted.) In the context of this very brief specification, which required the printing of four specific types of bar codes on envelopes, and spoke of no other printing of any kind, it is unreasonable to read the specification as requiring anything other than that the printer be capable of printing those four types of bar codes on envelopes at the rate of 4,000 envelopes an hour.

If, as we conclude, the specification is not ambiguous, the failure of model DA-300 to meet the specification requirement was a matter to be dealt with as a matter of contract performance. York International Corp., P.S. Protest No. 87-111, November 23, 1987. It appears that Rena has viewed the matter this way, since it offered to substitute a compliant printer for the noncompliant one with no change in the contract price. We perceive no prejudice to Edgerton-Becker in this regard.

Edgerton-Becker challenges the award to Rena on the additional ground that Rena's use of improper practices associated with the pricing of its two offers should prevent it from receiving contract award. The contracting officer suggests that the change in prices occurred because under the first solicitation Rena Systems assumed it had the only NAIC certified printer, and priced its proposal accordingly. It knew of Edgerton-Becker's certification for the second solicitation.

Our standard for review of determinations of price reasonableness is similar to that for those of responsibility. They will not be overturned unless clearly unreasonable or there is a showing of bad faith or fraud. Monarch Marking Systems, P.S. Protest No. 91-49, January 14, 1992, p. 21. The protester does not challenge Rena's capability to deliver model DA-306 at the contract price, but alleges bad faith, i.e., that Rena really did not intend perform if its offer for model DA-306 were accepted, but offers nothing other than the disparities in price to support it. These facts alone do not provide a basis for us to conclude that Rena did not intend to perform if its second low offer were accepted, and circumstances since the protest was filed further refute that conclusion. Even offers priced so low as to fail to cover the contractor's costs are acceptable as long as the contractor is capable of performing the work. Lightron of Cornwall, Inc., P.S. Protest No. 84-6, February 27, 1984; Edward B. Friel, Inc., P.S. Protest No. 82-8, May 4, 1982.^{1/}

^{1/} The protester also asserts that it was improper for Rena to offer the DA-306 at such a high price under the first solicitation, and that by so doing Rena did not comply with the requirement of the clause, Award Without Discussions (Provision A09) (October 1987), which states:

The Postal Service may award a contract on the basis of initial proposals received, without discussions. Therefore, each initial proposal should contain the offeror's best terms from a cost

Edgerton-Becker also asserts that Rena's revision of the specification sheet to indicate that the Rena DA-300 could print addresses at the rate of up to 4,300 per hour constituted an improper bid practice, since previous literature on the model indicated a speed of up to 2,800 addresses per hour. When the contracting officer made an inquiry about the change in the literature, Rena responded that the machine had always been capable of meeting the higher speed requirement but that the lower speed had been listed for marketing purposes, with another model being advertised as having a higher speed. The contracting officer accepted Rena's explanation and there is no evidence indicating that the information was false.

The protest is dismissed in part and denied in part.

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or price and technical standpoint.

That provision, however, offers no sanction other than the offeror's risk that another offer's proposal will be accepted without its having the opportunity to provide its best offer.

In any event, Edgerton-Becker's complaint about action taken with respect to the first solicitation is both untimely and moot.