

**May 11, 1994**

**P.S. Protest No. 94-02**

## **AMERICAN BANK NOTE COMPANY**

**Solicitation No. 102590-93-A-0082**

### **DIGEST**

Protest against failure to receive a contract for the printing of postage stamps is denied where technical evaluations were reasonable, consistent with the solicitation and supported by substantial evidence; protester's past performance record was not improperly evaluated; and discussions with protester were meaningful under established standards.

### **DECISION**

American Bank Note Company (ABN) timely protests the awarding of firm fixed unit price indefinite quantity/indefinite delivery contracts for the printing of postage stamps to four offerors other than itself. ABN alleges that the Postal Service improperly evaluated its proposal by using an unstated evaluation criterion, and failed to hold meaningful discussions with it.

On July 7, 1993, Solicitation 102590-93-A-0082 was issued to 35 firms by the printing procurement office at Postal Service Headquarters. The solicitation sought proposals for the printing of water activated and pressure sensitive stamps using four printing methods -- offset, intaglio, gravure, and offset/intaglio -- in pane, booklet and coil formats.<sup>1</sup> Proposals

<sup>1</sup> The requiring office wrote the following description of the requirement:

This procurement is for printing of stamps, in single or multiple designs, and the finishing of stamps as panes, booklets, or coils, in one of the four printing methods listed below. The stamps are further classified by their adhesive, either water activated or pressure sensitive. Considering all the printing methods, product formats, designs, and adhesives, the contract can contain over 157 unique items. . . . The total requirement for all stamps from the private sector is estimated to be 12 billion for the first year and potentially increasing by as much as 2 to 3 billion per year for the second through fifth years.

were to be evaluated separately for each printing method and adhesive type. The solicitation called for a maximum of two awards in each type, but stated that there was "no guarantee the maximum number will be awarded. That decision will depend solely on Postal Service needs as determined by strategic considerations."

The term of each contract was to be from date of award through December 31, 1996, with options for two additional one-year periods. The minimum quantity to be ordered per year per contract was 30 million stamps.

Other pertinent parts of the solicitation were:

K.9: Contract Award

a. The Postal Service will award a contract resulting from this solicitation to the responsible offeror whose proposal conforming to the solicitation offers the best value to the Postal Service, considering price, price-related factors, and/or other evaluation factors specified elsewhere in this solicitation.

\* \* \*

K.17: Notice of Preaward Survey

a. Offerors are advised that the Postal Service may contact prospective contractors to determine their capabilities to perform the work specified in this solicitation. In addition to financial statement and credit rating checks, the Postal Service may visit a prospective contractor's facilities to perform reviews or may ask for additional written information. Areas of interest in this regard may include--

1. Performance plans;
2. Quality control plans;
3. Personnel recruitment and training plans;
4. Workload factors for manpower utilization;

\* \* \*

6. Production capability, including--

\* \* \*

(d) Performance record.

\* \* \*

b. Offerors are also advised that accomplishment of this survey is a part of

the evaluation process and is not an indication that an offeror will receive an award.

\* \* \*

### M.3: Contract Award and Proposal Evaluation

a. Award will be made to the responsible offeror whose proposal offers the best value to the Postal Service, (i.e. a combination of price, price-related factors, and/or other factors). Price and non-price factors will be given approximately equal weight in the overall evaluation. The non-price factors and their relative weights that will be used in determining which proposal offers the best value to the Postal Service are listed below:

<u>NON-PRICE FACTOR</u>	<u>RELATIVE WEIGHT</u>
Management Capabilities	
Quality Assurance	
Production Capability	
Security and Accountability	
Distribution Procedures	

b. Award may not necessarily be made to that offeror submitting the lowest price.

### M.4: Price Evaluation

Evaluation of pricing will be conducted in accordance with the instructions contained in Attachment 5 and the following:

Separate evaluations will be conducted for each printing method specified in the offeror's proposal. Pressure Sensitive Adhesive Stamps will also be evaluated separately. Quantity estimates used for the evaluation are provided in attachment 5.<sup>[2]</sup>

Section J addressed the content of proposals. Section J.4 b.(3) listed the required contents of the proposal with respect to each section M factor, and stated that while that information

<sup>2</sup> Attachment 5 contained the following instructions:

On each price evaluation table the offeror will provide prices for various stamp or booklet quantities. For each stamp which the offeror is proposing, the offeror must provide prices for each quantity increment. . . . An evaluation factor will be applied to each incremental price proposed. The resulting composite product sum will become the evaluated price. The evaluated price for each stamp size will be applied to the evaluated stamp quantity found at the bottom of the price evaluation table.

In answer to several questions regarding stamp quantities and the pricing tables of Attachment 5, offerors were told that quantities listed in the solicitation were projected minimum and maximum requirements, as the exact quantity requirements could not be known until later. Offerors were told to base their price offer on the evaluation quantities contained in the Attachment 5 tables. Amendment A01 corrected some evaluation quantity errors and included drawings of some omitted product combinations.

was mandatory, offerors were not limited by the list and could supply additional information. The offerors were directed to identify, in their proposals, "the exact evaluation factors as listed in Section M," each of which was to become a separately tabbed section. For the first evaluation factor (Tab 1), Management Capabilities, section J.4 b.(3) required the proposals to describe, among other things, the "procedures offeror proposes to utilize to manage stamp printing, finishing, and shipping operations." For the second evaluation factor (Tab 2), Quality Assurance, section J.4. b.(3) stated:

Correlate company plan with USPS plan (outlined in USPS Standard Quality Assurance System for Postage Stamps and Related Products, USPS-STD22B). Include subcontract plans. Internal QA controls and final disposition of nonconforming materials and waste should be clearly defined here.

Tab 4, security and accountability, was to contain the details of the offeror's plans for security and accountability "as specified in Attachment 4, Multi-Print Security and Accountability Requirements for Contractors, Revision A. . . ." The solicitation stated that the security plan "should include all phases of production, storage and subsequent processing and delivery. The description of scrap and waste (nonconforming materials) should be outlined in detail. . . ."

Offers were received September 7 from 10 offerors. Seven offerors, including ABN, comprised the competitive range. On October 6, letters were sent to the seven offerors stating that their price proposals had been compared with the Postal Service's price evaluation model. The letters listed, and an attached memorandum explained, any discrepancies found in the offeror's pricing, and asked the offeror to "examine the memorandum and [respond] indicating your agreement or disagreement" with the Postal Service's price analysis, including "any other corrections or changes of which we are not aware. The ultimate purpose here is to ensure that we both agree on what is being submitted and how it is to be interpreted. If you do not agree with our findings, please delineate clearly what the differences are." Responses were due October 18.

Discussions with the seven offerors were conducted between October 25 and November 8. Preaward surveys were held with five of the offerors.<sup>3</sup> On November 12, the offerors were requested to submit best and final offers (BAFOs) by November 24. The BAFOs were further evaluated, and the following awards were made on December 30:

	<u>Water Activated</u>	<u>Pressure Sensitive</u>
Stamp Venturers	Gravure	Gravure
Bank Note Corp. of America	Offset Offset/Intaglio Intaglio	Offset Offset/Intaglio Intaglio

<sup>3</sup> A December 22 memorandum which contained a best value analysis of the proposals and which made award recommendations noted:

We did not visit the facilities of [ABN] or Stamp Venturers because of our extensive familiarity with them. Discussions with both these companies were held in our offices at headquarters on November 8 and 10 respectively.

Ashton-Potter USA Offset  
Offset/Intaglio

Avery Dennison

Gravure

ABN, a long-time stamp printing contractor which had proposed for every stamp category, was notified on January 4 that it had received no award. It was debriefed on January 6; this protest followed.

The protester contends that it learned in its debriefing that the Postal Service used an evaluation criterion, past performance record, that was not disclosed to offerors in the solicitation, and makes the following points about that use:

- The use of an undisclosed evaluation criterion constituted a violation of Postal Service procurement regulations; only a reasonable possibility of prejudice arising from that use is required to sustain the protest.
- The Procurement Manual (PM) and caselaw<sup>4</sup> distinguish between "experience" and "performance," citing PM 2.1.7 c.1.f-g.<sup>5</sup> While the former was an evaluation subfactor under this solicitation, the latter was not. A performance record is a factor in determining contractor responsibility, and may be used as an evaluation factor only if the solicitation clearly so states.<sup>6</sup>
- The evaluators "undertook the evaluation of ABN with less than fully informed perceptions of its past performance." The "positive aspects of [ABN's] past performance far outweigh any problems it has encountered."
- Evaluators may not evaluate offerors technically based on "their personal

<sup>4</sup> The protester, contracting officer, and interested parties all cite numerous Postal Service and Comptroller General protest decisions to support their arguments. With a few exceptions, we have summarized their arguments without repeating the citations.

<sup>5</sup> The cited PM sections discuss evaluation factors. PM 2.1.7 c.1. states in part that "[e]xamples of factors that may apply in various situations are: . . . (f) Experience; (g) Past performance. . . ."

<sup>6</sup> PM 3.3.1 b. states:

Certain key areas must be considered in determining an offeror's responsibility. (At times the same areas may be used as evaluation factors. In such instances, the factors must be clearly stated in the solicitation and evaluated in accordance with its terms and conditions; see 2.1.7.c.3). To be determined responsible, a contractor must:

\* \* \*

3. Have a good performance record.

PM 2.1.7 c.3. provides:

Evaluation factors may cover areas which are also considered in determining an offeror's responsibility, such as experience, when the needs of the procurement warrant their comparative evaluation. When there is such an overlap, the evaluation of proposals in accordance with Chapter 4 must be kept separate from the determination of contractor responsibility in accordance with 3.3.

knowledge of an offeror's capabilities" but must instead evaluate solely on the basis of the offeror's proposal.

-- ABN was "unaware that its proposal needed to overcome its experiences with USPS in its now-proven areas of production expertise in order to be favorably compared or scored with newcomers which in some instances have yet to experience start-up and real world production on various categories of printing methods and adhesion techniques at the significant volumes demanded by these awards."

ABN alleges that the Postal Service treated it unequally in the evaluation process because it "subjected ABN to a much more severe downgrading of its technical proposal than the awardees." On ABN's "information and belief" the awardees "have had technical issues arise under their [past] USPS contracts which are at least comparable in nature and scope to the matters encountered by ABN, given the stamp quantities in each contractor's production." ABN alleges it would be technically evaluated at least as well as the awardees if the Postal Service had not given ABN's proposal disparate treatment. "The [disparity] in the technical scores would be substantially reduced, if not eliminated, with the result that ABN's proposal . . . would provide the 'best value' to the USPS for certain printing methods and thus be entitled to award."

The protester also asserts that the Postal Service failed to hold meaningful discussions with it, making the following points:

-- During discussions, the Postal Service "failed to advise ABN of deficiencies in the proposal and to identify and attempt to correct uncertainties . . . of ABN's proposal."<sup>7</sup> As a result, ABN was "prevented from submitting revisions to its proposal which specifically addressed these matters." Given the opportunity, ABN "could have addressed any perceived past performance deficiencies or at least put them in the proper context" which would have "corrected any possibly skewed perceptions . . . ."

-- At its debriefing ABN was told that its proposal was considered weak in management capabilities, quality assurance and production capability areas. ABN had addressed all of these problems in its BAFO letter/proposal amendment of November 15.<sup>8</sup>

<sup>7</sup> According to ABN, the Postal Service also had an obligation to reopen discussions once it applied an evaluation factor, such as past performance, which had not been evaluated before discussions.

<sup>8</sup> ABN had submitted its written amendment to its proposal by an 11-page letter dated November 15 which commenced with the statement, "This letter will confirm and further clarify many of the issues discussed during our technical review on Monday, November 8, 1993." The letter discussed the moving of the production of certain items to other facilities in connection with the proposed closing of one of its facilities. The letter also discussed the creation of a new staff position, postage stamp program manager:

In the past, it has been our company policy to allow each individual production facility to establish quality control and accountability plans and procedures based on requirements from customers. By doing so, such plans and procedures become working documents, not corporate rhetoric. We still believe that this is fundamentally true. However, as part of his new position, [the postage stamp program manager] has been assigned to coordinate a company-wide quality assurance and accountability plan for the production of postage stamps. . . . This plan will ensure that all facilities involved in the production

-- ABN was not told that its written response to the issues raised during discussions was "other than fully responsive and acceptable," yet at its debriefing it was told that the submission did not improve its proposal and that its technical scores were substantially lower than those of the awardees.

-- "The only possible explanation" for ABN's low technical standing is "that the Postal Service failed to meet its obligation during discussions to notify ABN of all the matters which [were] considered . . . deficiencies and/or uncertainties in ABN's proposal . . . ." Therefore, the Postal Service failed to hold meaningful discussions with the protester.

ABN claims that the procurement also was flawed by an improper price analysis. The protester asserts that during a telephone conversation following the correspondence about pricing discrepancies (footnote 2 *supra*.) "it became clear that USPS had changed -- substantially in some cases -- the evaluated quantity of stamps for several printing methods." The protester states that when it applied the "revised quantities" to its proposal, it reached pricing results "virtually identical to those of the Postal Service." Nonetheless, the protester asserts that "[t]o this day, therefore, ABN cannot be certain that . . . each offeror obtained the revised evaluated quantity information" or that ABN used the correct quantities in its proposal. In the "absence from the record of assurances that the offerors were treated equally regarding price, there can be no confidence that the Postal Service made a proper determination."

ABN further complains that it was "price-competitive in virtually every category of award" yet received no award, and that "in five of eight award categories, the Postal Service did not even award a second contract." In sum, the protester alleges that all of the shortcomings in the Postal Service's procedures and evaluations combined to prevent the contracting officer from determining which proposals offered the "best value" to the Postal Service. "[I]t seems clear that a proper technical evaluation under the criteria established . . . would result in ABN being adjudged the 'best value' in a number of award categories." ABN asks that the awards be overturned, the contracts terminated, and the solicitation amended with respect to the evaluation criteria and the quantities evaluated for price. The protester asks that the offerors be allowed to resubmit their proposals to a different evaluation panel and to have discussions which would allow reasonable opportunities to correct deficiencies.

The contracting officer's report replied to the protester's assertions as follows:

of postage stamps adhere to the requirements of USPS-STD-22B and the security and accountability specifications.

The letter also referred to the fact that in its November 8 discussions with the Postal Service, "[o]ne concern was expressed" over ABN's lack of experience with pressure sensitive adhesive stamps and the state of some of ABN's equipment.

In its protest, ABN contends that the November 15 letter should have made the facility to be closed "including its record on Q[uality] A[ssurance] and security and any negative views of the evaluators with respect thereto . . . irrelevant in the evaluation of ABN's proposal." The protest also asserts that the individual filling the new staff position of postage stamp program manager has developed quality assurance plans for another ABN facility which were approved by the Postal Service. The selection of that manager "should have put to rest any lingering concern of the Postal Service regarding ABN's Quality Assurance Program."

On ABN's technical evaluation and past performance as an element of it:

- Section K.17 of the solicitation notified offerors that their performance record would be considered as part of the evaluation process.
- The evaluation of proposals had two phases; phase 1 occurred before discussions; phase 2 constituted the final evaluation after discussions and BAFOs. "The last phase also included consideration of price and encompassed the contracting officer's determination of best value."
- During phase 1, past performance was "at best a very minimal factor in the evaluation inasmuch as the pre-award surveys noted in section K.17 had not yet taken place . . . ." The contracting officer adds that "in this regard . . . all offerors were treated exactly alike."
- The evaluation team members performed the initial evaluations independently and submitted their notes and scores to the chairperson. "Only then did they meet to arrive at a consensus evaluation of each proposal."
- "Interestingly, four of the five evaluators, working independently, scored ABN sixth poorest out of the seven offerors. This was also the consensus ranking of the committee.<sup>9]</sup> The consensus opinion was that ABN's proposal was unacceptable, but susceptible to being made acceptable."<sup>10</sup>

<sup>9</sup> The sheets completed separately by the evaluators before discussions identified the following problems with ABN's proposal:

- There was no quality assurance plan consistent with or conforming to USPS-STD-22B (standard plan for all operations) as required by section J.4.b.(3) of the solicitation.
- The security and accountability plans were inadequate, incomplete, and not in the format required by the solicitation.
- ABN lacked experience in pressure-sensitive adhesive stamps, and some of its equipment was outdated.

One evaluator noted that ABN did not submit its proposal "in compliance with the solicitation, material and quality assurance specifications. USPS need[s] ABN's commitment in process control, equipment and total quality management. With the number of years ABN has been in the stamp production business, they should have better systems and seasoned [sic] in all phases."

<sup>10</sup> PM 4.1.5 g.2. states, in part:

- (a) The competitive range must be determined on the basis of the evaluation factors stated in the solicitation and must include all proposals that have a reasonable chance of being selected for award, either as submitted or as revised following discussions.
- (b) The competitive range . . . must reflect the chances of the competing proposals as evaluated, and the potential for improving the competitive proposals through revision following discussions. . . . When there is uncertainty as to whether a proposal is in the competitive range, it must be included.

Thus, when initially rating ABN proposal's "susceptibility" to being rendered technically acceptable, the evaluators were determining that ABN could be included in the competitive range despite flaws in the

-- Phase 2 included the assignment of individual scores to each printing method by adhesive type. The evaluators considered "all available information which could verify, clarify, or otherwise shed light on proposal information, and included the information obtained during site visits, discussions with offerors, amendments submitted by offerors including best and final offers, and information contained in contract files." The contracting officer states that he used the information gathered by the technical evaluation committee in making his best value determination, including "ABN's woeful record of performance."

-- Past performance is a legitimate evaluation concern, citing *Kleinknecht Mechanization Group*, P.S. Protest No. 92-24, October 2, 1992.

-- The contracting officer further states that "[e]xcept for water activated gravure,<sup>11</sup> ABN's technical standing for every print method by adhesive type was so low that it could not provide the best value to the Postal Service."

On meaningful discussions:

-- Discussions were held with all offerors in the competitive range, "and the format of those discussions was the same for everyone." The evaluation committee chairman used lists of weaknesses or deficiencies submitted by each evaluator (from phase 1) for discussions with each firm.

-- In discussions, all offerors were asked questions related to the evaluators'

initial submission.

<sup>11</sup> The December 22 evaluation memorandum discussed the offerors' capabilities by printing method under the heading "Best Value Determination." As to water activated gravure, the memorandum stated that "Stamp Venturers . . . is by far the superior proposal in this category" and went on to discuss ABN as the candidate for any backup award:

ABN is most likely to provide the best value. This conclusion is reached with full recognition of our past experience of suffering both poor quality and accountability as the result of ABN's failure to bring good management to bear on problem areas. Nor does their proposal fully address the key areas where we would look for remedies. For example, plans and management for corrective action are not included. The quality assurance management organization is not adequately addressed. They have a serious accountability problem at [a particular facility] . . . . Because of these and other problems detailed in the technical evaluation, ABN is not being considered for award of any other printing method. . . . ABN has demonstrated the ability, quality, and equipment to print the gravure water activated stamps. Even though we have had management problems which render them ineligible for other awards, the presence of [subcontractor] to do the printing could have provided a quality product and timely delivery if a second source was needed.

Elsewhere, however, the memorandum explained that only one award for water activated gravure stamps would be made:

After consultation with management on the benefit of two awards for those situations where two awards were recommended, management decided not to have a second award for water activated gravure, and water activated intaglio. Sufficient capacity for these categories exists with one supplier . . . .

expressed concerns and all were "invited to present any supplemental information they felt would add to their proposal."<sup>12</sup>

-- "ABN was one of five offerors who chose to submit a written amendment. . . . ABN's response to discussions belie the allegation that we did not hold meaningful discussions."

-- "The most important issue discussed with ABN was the quality assurance issue as it impacts every phase of the manufacturing process including security and accountability, and is a direct reflection of management attention and involvement."

-- The Postal Service did not believe that ABN could cure its accountability problems by appointing a stamp program manager, and that ABN's problems related to management capability.

-- The November 15 amendment/BAFO letter constitutes an admission on the part of ABN that its proposal did not contain the plans required by section J.4 b.(3) of the solicitation. "[W]hat ABN considered 'rhetoric,' we consider essential to this company's proper functioning under the solicitation requirements." [See footnote 8, *supra*.]

-- ABN's BAFO provides "no additional information or an actual documented plan that meets the requirements of the solicitation. No procedures at the management level were provided such as management verification, support and implementation of the plan, control of purchases, flow down requirements, including subcontractors, corrective action processes, and internal quality audit program . . . . In our judgment ABN grasps neither the concept nor the importance of the Postal Service's quality assurance requirements."<sup>13</sup>

<sup>12</sup> The December 22 evaluation memorandum stated:

All companies were advised of the purpose of our discussions and were specifically told that we were not requesting additional written information, but they were free to submit material if they so chose. . . . Following discussions, best and final offers were requested, and a detailed evaluation of each print method proposed by each company was performed. This evaluation gave consideration to the information obtained during discussions, and any revisions as the result of best and final offers.

<sup>13</sup> Following discussions and receipt of ABN's amendment/BAFO, the evaluators made the following observations:

-- "All committee concerns and questions were not satisfactorily resolved and answered during the November 8 verification/clarification session."

-- ABN's proposal still did not contain adequate or consistent quality assurance, security and accountability plans. "Effectiveness of ABN's stamp production management is still in question. Still the Q[uality] A[ssurance] plan in the proposal is very weak and questions were not answered during the interview. Additionally, the Committee noted offset and intaglio pre-press and pressure sensitive printing requirements are not fully understood by ABN."

One evaluator wrote:

Closing down [one facility] and moving [its] product lines to other plants is probably a

-- The Postal Service never intended to "use discussions to tell offerors how to improve their proposals. We advised all contenders of our concerns (weaknesses and deficiencies) of their proposals and evaluated their responses. ABN's response, like its proposal, was judged to be fatally lacking."

necessary move in view of the many quality and accountability problems encountered at this site. . . . No clear, concise plan and schedule for [relocatng] was presented. . . . Also of considerable concern. . . is that the decision to [close that facility] was not made until after the initial proposal was submitted. It appeared that this decision was made on a reactionary basis in a 'last resort' attempt to resolve continuing production, quality, and accountability problems which have been plaguing that plant during the previous three-year contract period. ABN management has done little to restore confidence that the above-mentioned production problems . . . will be resolved by [relocation]. ABN must demonstrate that this action is part of a carefully planned management initiative to correct quality problems which occurred in the previous contract and not just a 'quick fix' maneuver to satisfy USPS concerns. . . ."

On the price analysis:

-- Identical models were used to evaluate the price offers of each company; whenever changes were made to the model each offeror's model was updated. ABN was notified [by the October 6 letter] that its stated pricing seemed to be \$90 million higher than the Postal Service's evaluated result. ABN agreed with the Postal Service's assessment.<sup>14</sup>

-- "Because of the existence of competition and to avoid the appearance of auctioning, no substantive discussions of price were held with any offeror."

ABN replied to the contracting officer's statement with the following comments:

-- The contracting officer has admitted that past performance was a factor in evaluating the proposals but could not cite a provision in solicitation section M authorizing the use of such a criterion.

-- The PM requires that only section M identify the evaluation factors; the PM "specifically prohibits" the "bootstrapping" into the evaluation process of a responsibility criterion which is not otherwise clearly identified as an evaluation factor, distinguishing *Kleinknecht, supra.*, as a responsibility case.

-- Section K.17 "merely lists 'areas' that 'might' be 'of interest' in a 'survey' that 'may' be conducted" of a prospective contractor's capability to perform.

-- The contracting officer has indicated that past performance became a factor only during phase 2 of the evaluation process. The Postal Service should have reopened discussions to notify ABN of the newly perceived deficiency and newly applied factor and given it an opportunity to respond.

-- "The Postal Service's evaluation of ABN's past performance was a 'perception' by the agency, not a 'fact,' and thus would have benefitted from meaningful discussions." In discussions, ABN could have demonstrated that the perceptions were erroneous or exaggerated, or could have revised its proposal to "put procedures in place for avoiding the situations which gave rise to the perceived problems . . . ."

-- Attachment E to the contracting officer's report, a folder of correspondence between ABN and the Postal Service concerning performance problems during 1990 through 1992, reveals only negative aspects of ABN's performance which would be balanced by the positive aspects.

-- ABN denies that its accountability plan was deficient but states that the Postal Service's perception that it was should have been brought to ABN's attention during discussions.

-- Attachment E indicates that the past performance problems cited by the

<sup>14</sup> ABN's response, dated October 15, stated: "We have examined your review of our pricing proposal and, for the most part, agree with your findings." ABN resubmitted its pricing sheets for one item to correct an error it identified there.

contracting officer related to the facility which ABN's proposal stated would be closed. The evaluators, therefore, should not have considered that facility when evaluating ABN's proposal or its past performance. Attachment E also contains duplicate documents and descriptions of one-time occurrences. "Taken as a whole, therefore, the documents in Attachment E, when put in context, do not warrant the critical view of ABN's past performance suggested by the agency report. ABN could have made these points to the Postal Service if it had been advised of the perceived deficiencies in its performance, and could have taken further corrective action where needed."

-- ABN was treated unequally in relation to the other offerors because it was more severely downgraded because of past performance problems than the others were. "There is simply no [other] explanation of the substantial disparity between ABN's technical score and the scores of the awardees . . . . If the Postal Service had evaluated ABN's proposal . . . consistently . . . ABN's technical proposal would have received a technical evaluation at least as good as those given to the awardees." ABN complains that the contracting officer offers no evidence to show that all offerors were treated equally.

-- The contracting officer exaggerated certain aspects of ABN's performance record to give undue weight to past performance in phase 2 of the evaluation, as "reflected in the fact that ABN's technical scores did not increase even after ABN submitted its response to the issues raised during discussions." Without the "application of a skewed view of ABN's performance," the protester's technical score "would have increased to the level of the awardees."

Several interested parties have commented on this protest; summations of their arguments follow.

Avery Dennison:

-- Section K.17 of the solicitation expressly advised offerors that prior performance records would be considered in evaluations, and the solicitation did not limit the right of the Postal Service to use the information gathered through the section K.17 survey.

-- Since ABN should have known from the terms of the solicitation that its performance record could be considered by the evaluators, its protest against that consideration now is untimely.

-- ABN's argument that its performance record is letter not reasonably related to its experience would lead to absurd results. "Under ABN's approach, if an offeror has a significant number of prior stamp printing contracts but, for example, was default terminated on each of those contracts, the offeror should nevertheless receive a high score under the experience factor."

-- The Postal Service "could reasonably have considered ABN's performance record in connection with its evaluation of the Management Capabilities, Quality Assurance, and Production Capabilities evaluation criteria."

-- ABN was not prejudiced by consideration of its past performance because ABN's

proposal ranked sixth out of seven before performance records were considered. On the contrary, "ABN actually benefitted from the decision by the Postal Service not to specifically identify past performance as an independent evaluation factor . . . . Indeed, had past performance been listed . . . as a separate evaluation factor here, ABN would have received an even lower technical score . . . ."

-- ABN assumes, "without any factual support whatsoever," that its technical problems "surely were no worse than those of anyone else." There is no evidence that the evaluators did not consider the other offerors' prior performance records.

-- The discussions were "adequate because the questions posed to ABN reasonably indicated the deficiencies in its proposal" and an agency is not required to conduct "repeated rounds of discussion, continuously advising the offeror that the prior response to discussions failed to adequately meet the agency's concerns. Discussions would never end if they had to continue until all of the agency's concerns were 'put to rest.'"

-- A history of poor performance is not a deficiency in the proposal that is subject to correction, but rather a weakness that cannot be corrected through discussions.

-- Agencies are not required to advise an offeror "how it could bring its proposal up to the level of the awardee; such coaching would amount to improper technical leveling."

-- Since there is no support in law or fact for ABN's claims that its proposal was improperly evaluated, its claim of a defective best value analysis must fail.

Ashton-Potter:

-- This office should "afford no weight to ABN's gratuitous, self-serving characterizations of its own accomplishments or its competitors' abilities to perform . . . . It is an anomaly for ABN to trumpet its experience and its opinion of its skill, based on past performance--as it has throughout--and then claim that it was unaware that experience was a relevant criterion."

-- Ashton-Potter "certainly interpreted" the solicitation as placing it on notice that past performance was to be considered as part of the evaluation.

-- ABN's argument "would result in offerors being rewarded simply for having been awarded similar contracts, regardless of the quality of their performance."

-- ABN has not explained adequately how it was prejudiced by the alleged failure to inform offerors that past performance records would be considered; and even if ABN could correct its past problems, "it is clear that it still would not be in line for award . . . [as] its problems had to do with more than just its past performance record."

-- The only "fact" on which ABN basis its contention of unequal treatment is that its proposal was downgraded because of past performance. "To this extent, its protest ground is entirely speculative, and fails to set forth an adequate factual basis."

-- PM 4.1.5 f. directs the contracting officer "not to discuss with an offeror

'deficiencies relative to other proposals [or] deficiencies resulting from the offeror's lack of diligence or competence.' An agency in no way is obligated to afford offerors all-encompassing discussions or to discuss with offerors every aspect of their proposals that are downgraded."

-- The Postal Service was not obligated to discuss with ABN its past performance problems because it was a "weakness resulting from ABN's lack of competence" which "could not have [been] corrected."

-- To the extent that ABN contends that the price analysis was improper due to all offerors not having based their prices on the same quantities, the protest is untimely and speculative. "In fact the Postal Service issued amendments to the solicitation which included the changed quantities. In addition, all offerors received letters from the Postal Service explaining any inconsistencies in the estimated quantities proposed. Like ABN, Ashton-Potter received such a letter. Clearly, all offerors were treated equally in this regard."

#### Banknote Corporation of America:

-- The solicitation advised offerors that pre-award surveys would be part of the evaluation process and that performance records would be considered in relation to production capability.

-- ABN "cannot reasonably expect to receive credit for its loudly trumpeted past performance without accepting responsibility for its past problems." ABN had "ample opportunity" to "put those problems in perspective" in its proposal and cannot "blame others for its failure to explain how it intended to address and ensure that such problems would not be repeated on any new contract."

-- In evaluation phase 1, before past performance was considered, ABN's proposal was considered technically unacceptable, but susceptible to being made acceptable. "Thus, ABN's initial low technical ranking had little to do with ABN's past performance problems, but rather was based on the evaluators' uniform judgment that ABN's proposal was inadequate . . . as submitted."

-- ABN provides no evidence of unequal treatment with respect to downgrading for past performance problems.

-- The record released to the interested parties shows that during discussions ABN clearly was put on notice that its proposal was inadequate in the areas of management capabilities, quality assurance, production capability and security and accountability. ABN then failed to amend its proposal adequately or otherwise respond to the concerns raised in discussions.

-- The letters sent to all offerors verifying prices and noting price discrepancies assured that all offerors' prices were being evaluated on a common basis.

-- In order to be eligible for award, ABN would not only have to "make up the huge technical point difference" but also would have to receive a higher technical score to offset most of the awardees' cost advantages. "ABN simply cannot accomplish this on the basis of its stated protest grounds"; therefore, ABN lacks standing to bring

this protest.<sup>15</sup>

Finally, American Security Printers, an unsuccessful offeror, stated that "[w]e believe it is supportive of ABN's request for relief to note that, as a consequence of the meeting conducted at our production site, we were lead to infer that our proposal was technically superior and could not benefit from revision . . . . The request for best and final offers . . . appeared to have no specificity with regard to our proposal." ASP also complains that there were no "indications that our prices should be reduced in order for us to have a reasonable chance of success."

In rebuttal, the contracting officer makes the following arguments:

-- He never intended to suggest that prior performance "was treated as an evaluation factor . . . [which was] separately evaluated and scored as an evaluation factor." Rather,

[T]he evaluators' knowledge and experience of the offerors' prior performance was used to inform their judgment in the evaluation of proposals as they related to the evaluation factors stated in section M . . . namely Management Capabilities, Quality Assurance, Production Capability, Security and Accountability and Distribution Process.

-- Attachment E was included with the contracting officer's report only as a "documentary rebuttal to the claims made by ABN in its protest . . . that the company has a long and sterling record of printing postage stamps for the Postal Service." The evaluators did not have those documents before them during evaluations. The evaluators were "generally familiar with ABN's prior performance record from day-to-day experience of working with ABN."

-- Past performance was considered more in the post-BAFOs evaluation than in the initial evaluations because the evaluators' written notes indicated that such comments were "addressed to the BAFOs." However, ABN's evaluation scores changed little after it submitted its BAFO, which "was very little changed from its initial proposal. Major areas of the proposal, including the Q[uality] A[ssurance] Plan continued not to be fully responsive to the clear requirements of the solicitation."

-- After BAFOs, the evaluators were able to take into account, in addition to the proposals, the information obtained from site visits as well as the prior performance records. "In ABN's case, considering both the magnitude of the difference in scores between ABN and the 'winners' and the overall lack of improvement between ABN's initial proposal and its BAFO, it is evident that its comparatively poor prior perfor-

<sup>15</sup> Banknote Corporation also asserts that one offeror listed as an interested party to this protest lacks standing because it was never in the competitive range. That offeror was invited to comment because it was included in the contracting officer's initial service list for this protest. In its comments, it generally agreed with ABN's allegations and raised other complaints about the procurement which are not germane to ABN's protest. Banknote Corporation is correct that the offeror has no standing to participate in the protest because it has no reasonable chance to receive award if the protest is sustained. See, e.g., *Rickenbacker Port Authority and The Turner Corporation*, P.S. Protest No. 91-78, February 10, 1992; *Airport Systems International, Inc.*, Comp. Gen. Dec. B-252007, 93-1 CPD 249.

mance had, at most, a trivial impact on its BAFO score, and effectively no impact on the award decisions."

-- Past performance also was "of little significance" in the best value determination, because "ABN's BAFO technical scores were so low as to keep it out of the running for any award, except for water-activated gravure stamps." If there had been a second award in that category, it would have gone to ABN. ABN lacks standing to maintain its protest because it was not eligible for award except where the Postal Service decided, for nonprotestable "strategic reasons," not to award.

-- To the extent that prior performance was considered, ABN was not singled out; the evaluators were "equally familiar with the prior performance of all of the other offerors . . . ."

-- To the extent that prior performance was emphasized in ABN's debriefing, it was "a consequence of the focus of ABN's questions." ABN's representatives "seemed unable or unwilling to deal with the possibility [that] their low score was the result of the relatively poor quality of their proposal."

-- ABN lost the competition because it submitted a relatively weak technical proposal, with no offsetting price advantage.

-- The Postal Service was under no obligation to conduct discussions about ABN's prior performance, because it constituted a weakness that could not be remedied through discussions. In discussions, ABN was told that its accountability and quality assurance plans did not meet the requirements of the solicitation. Those discussions were meaningful under the principle that discussions need only be detailed enough to lead an offeror into a deficient area of its proposal, citing *Herley Industries, Inc.*, Comp. Gen. Dec. B-237960, April 5, 1990, 90-1 CPD 364.

In response to American Security Printers, the contracting officer states that "no significant deficiencies were noted in ASP's technical proposal. ASP's failure lay in the best value determination; its prices were not competitive." As for its complaint that the Postal Service failed to inform it that its prices were not competitive, the contracting officer asserts that that comment is irrelevant to ABN's protest, and, as a separate protest, is untimely raised.

Banknote Corporation of America and Ashton-Potter submitted rebuttals in which they reiterated previous positions plus made the following points:

Banknote Corporation of America:

-- ABN's "attack on Section K.17" ignores the fact that "it was wholly proper for the Postal Service to consider ABN's past performance, to the extent the Postal Service did so, under the stated RFP Sections M and J criteria."

-- ABN has "abandoned its protest that price proposals were evaluated on an unequal basis" by failing to address the contracting officer's statements on the matter in his report and "thus must live with the fact that ABN's proposed prices were higher than any of the awardees in all but three categories, and that in each of those instances the higher cost awardee was the top-ranked technical offeror in the respective category with an overwhelming technical superiority over ABN."

-- ABN's protest that the Postal Service failed to discuss its accountability plan, first raised in response to the contracting officer's statement, is untimely under PM 4.5.4 d.

Ashton-Potter:

-- Any "reasonable offeror" would have expected the Postal Service to contact references from prior contracts (thus using information about performance records) to evaluate Management Capabilities, a stated evaluation criterion.

-- ABN has not demonstrated that the Postal Service should have held discussions about its past performance record, or that it was prejudiced by the Postal Service's consideration of that record, which is "a historical fact" that cannot be changed.

-- ABN has not established that it was treated unequally in any respect or that the best value analysis was in any way improper.

ABN submitted the following additional rebuttal to the comments of the interested parties:

-- ABN's standing "should not be an issue here" because its protest "goes to the heart of the Postal Service's evaluation" and could result in a re-evaluation of all proposals.

-- The intervenors' "creative interpretations" of the solicitation in order to include past performance as an evaluation factor "serve only to highlight [its] absence as a clearly stated evaluation factor" and ignore the "very clear distinction" between past performance and experience drawn by the PM.

-- ABN "was, in fact, seriously prejudiced by the Postal Service's failure to notify it that its performance was deemed a deficiency. . . . ABN could have responded fully to the performance issues. . . ." The intervenors also assume that with a properly conducted best value analysis "there would be no movement in technical scores. . . . They . . . disregard the possibility that ABN could have increased its technical score . . . and qualified for award as the best value."

-- ABN's quality assurance plan met the requirements of the solicitation, which only required the offeror to "correlate" its plan with the Postal Service plan. A "fully developed, final and implemented plan was not required to be submitted with the proposal. The RFP requirement was for the plan to be in place for performance." The Postal Service led ABN to believe that its plan was "correlated" and acceptable.

-- ABN's protest is not "speculative" as the record shows that only ABN's past performance was evaluated.

Protest conferences were requested by and held separately with the protester and with Avery Dennison. During its conference, Avery Dennison made the following points:

-- ABN's argument that all evaluation factors must be in solicitation M is incorrect; the solicitation must be reviewed "as a whole." This solicitation contained several criteria, including management capabilities, under which consideration of past

performance would be appropriate.

-- ABN was not prejudiced by consideration of its performance record because its technical score hardly changed once past performance was considered. ABN could have benefitted from the fact that past performance record was not a separate evaluation criterion.

-- Past performance problems do not constitute appropriate subjects for discussions because they cannot be corrected in the present proposal.

During its conference and in subsequent comments, ABN reiterated its various arguments and stated the following:

-- Even if the Postal Service could properly consider past performance during the evaluation process, it failed to accord ABN "equal and consistent treatment on this factor." ABN's sole allegation of unequal treatment is that its proposal was downgraded more than the others' for past performance.

-- ABN "stands by its position that the Postal Service improperly relied on past performance as an evaluation factor" and alleges that in a new (March) solicitation, for "Commemorative Panels," the Postal Service "has corrected the very errors that ABN pointed out in its protest." The new solicitation "recognizes both the distinction between the 'evaluation process' and the 'technical evaluation process' and the distinction between 'past experience,' an evaluation factor, and 'past performance,' a responsibility factor. . . ." In contract law, "there is no prohibition against drawing adverse inferences against subsequent remedial actions."

-- For the evaluators' actions with respect to ABN to be considered proper, the record must show that evaluations were consistent among the offerors; that the weight accorded to past performance was consistent with Section M (that is, "relatively small"); that evaluations of past performance was based on objective evidence; that the evidence of each offerors' past performance "was actually before the evaluators" that the evaluation sheets indicated a deficiency in ABN's past performance; and any "comparable problems" among the other offerors were treated similarly.

-- During the course of its contracts, ABN "undertook substantial research and development work for the Postal Service of an extra-contractual nature . . . . To the extent the evaluators downgraded ABN's proposals for problems that related to these research and development and extra-contractual efforts, ABN was prejudiced."

-- ABN denies that it focused the debriefing discussion on past performance, and alleges that the contracting officer's statement and rebuttal indicate that the Postal Service has "vacillated throughout these proceedings as to the role past performance played in the proposal evaluations here." Contrary to his assertion in his initial statement, the contracting officer now states that past performance was not a separate evaluation factor. The protester asserts that the General Counsel "can have no confidence from the record that the Postal Service treated ABN equally or applied past performance consistently with the solicitation or any evaluation plan. Even though the evaluation was done by point scores, *no score* was attributed to

past performance and *no written documentation* on this criterion is apparently in the record." [Emphasis in original.]

-- "Because there was no written record of the offerors' past performance before the evaluators, there can be no determination that the Postal Service gave past performance 'proper weight' or consistent treatment. . . ."

-- The evaluators' reliance on "general familiarity" with the offerors' performance records is a "recipe for idiosyncratic and inconsistent treatment." Further, such general knowledge would not reflect the fact that ABN's most recent performance was free of corrective action requests and quality defects.<sup>16</sup>

-- That ABN's score did not increase after BAFOs evidences the lack of meaningful discussions. ABN suggests that a comparison of the evaluators' score sheets with the "rather limited issues raised" in discussions will show that the Postal Service "failed to meet its obligation during discussions to notify ABN of all matters which the agency considered to be deficiencies and/or uncertainties in ABN's proposal." ABN claims that it still does not know what the evaluators considered deficiencies.<sup>17</sup>

-- ABN takes issue with comments of Ashton-Potter and Banknote Corporation to the effect that "a preaward survey may have some purpose beyond a determination of responsibility." ABN alleges that any comments on the use of factors identified for a preaward survey in the evaluation of proposals should be disregarded.

-- ABN offered lower prices than four of the awardees; the second contractor in the water-activated offset intaglio category; both awardees in the water activated offset category; and the second awardee in the pressure sensitive gravure category.

## DISCUSSION

We do not agree with the contracting officer's assertion that ABN lacks standing to maintain this protest. While no second award was made in the water-activated gravure category for nonprotestable reasons,<sup>18</sup> ABN raises challenges which, if sustained, could necessitate a

<sup>16</sup> ABN has submitted an affidavit from its vice president of government sales which discusses ABN's experience and claims that ABN's most recent "quality performance" was such that "ABN has not had a single [corrective action request] in any of the four most recent stamp issues, for the period August 1992 to August 1993." The affidavit also states that at "no time during the discussions did the Postal Service advise ABN that its proposal contained any deficiencies." The vice president states that he was unaware that the accountability plan concerned the Postal Service until he read the contracting officer's report. He also asserts that the correspondence in the contracting officer's Attachment E does not give a fair or accurate view of ABN's past performance.

<sup>17</sup> ABN asserts that it should not suffer in comparison with other proposals, even those that were well-written and more complete, because the evaluators should keep in mind that ABN is a more experienced company than the others.

<sup>18</sup> While ABN has complained about the lack of a second award in this category, the solicitation specifically put offerors on notice that the maximum number of awards might not be made, and this office has no authority to order a second award. *Cf. W.M. Schlosser Co.*, P.S. Protest No. 93-30, March 9, 1994.

recompetition for all awards between those offerors in the competitive range. *Cabletron Systems, Inc.*, P.S. Protest No. 93-23, December 23, 1993. A protester has standing to challenge aspects of the procurement which affect its relative standing, since "[i]f, in fact, the evaluation of its proposal should have yielded a substantially higher score, it could be eligible for award . . . on the basis that its score surpassed that of [the successful offeror]. . . ." *Id.*, quoting *Mid Pacific Air Corporation*, P.S. Protest No. 92-62 November 23, 1992.<sup>19</sup>

We therefore turn to the merits of ABN's protest, the thrust of which is that ABN's proposal was improperly evaluated. Our standard of review of a contracting officer's technical evaluations is narrow. This office will not substitute its judgment for that of the technical evaluators unless it is shown to be arbitrary or in violation of procurement regulations. *Standard Register; Moore Business Forms, Inc.*, P.S. Protest No. 92-68, November 23, 1992.

The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals.

In reviewing a technical evaluation, we will not evaluate the proposal *de novo*, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable.

*Id.*, quoting *Computer Systems & Resources, Inc.*, P.S. Protest No. 86-4, March 27, 1986.

The technical determinations of a contracting officer will not be overturned unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. *W.M. Schlosser, Inc.*, *supra*; *Southern Air Transport*, P.S. Protest No. 89-56, October 3, 1989. Protests against technical evaluations often revolve around disputes of fact, in which it is well settled that the protester bears the burden of overcoming the "presumption of correctness"<sup>20</sup> which

<sup>19</sup> Some of the interested parties have alleged the untimeliness of various aspects of ABN's protest. Avery Dennison suggests that ABN's protest against the use of past performance records in the evaluation process is an untimely challenge to the terms of the solicitation; Ashton-Potter claims that ABN's protest concerning the evaluation pricing quantities was untimely raised; Banknote Corporation argues that in the original protest ABN did not raise its claim that there were no discussions of its accountability plan. These allegations of untimeliness are without merit. ABN's initial protest raised the issue of the improper use of past performance as an evaluation factor as well as the issues of improper price analysis and inadequate discussions, which encompass the evaluation quantities question and the claim that certain deficiencies in ABN's proposal were not discussed.

<sup>20</sup> ABN has complained repeatedly of insufficient access to the evaluations and other privileged documents on this protest record. This office does not resolve conflicts between contracting officials and protesters about the release of information. *Service America Corporation*, P.S. Protest No. 91-56, October 30, 1991; *Dataware Systems Lease, Inc.*, P.S. Protest No. 91-41, October 10, 1991. Moreover, unlike a court, our protest forum does not provide a mechanism for formal discovery or other adversarial methods of resolving factual disputes. See *International Business Machines Corporation, On Reconsideration*, P.S. Protest No. 90-66, February 22, 1991; *Cohlmia Airline, Inc.*, P.S. Protest No. 87-118, April 13, 1988. This office has reviewed the entire record *in camera* to determine whether the allegedly privileged documents reflect the protester's concerns. That review is reflected in this decision. See, e.g., *CACI Systems Integration, Inc.*, P.S. Protest No. 87-79, August 27, 1987.

accompanies the statements of contracting officers. *Id*; see also, *T&S Products*, P.S. Protest No. 90-06, March 9, 1990. Accordingly, we reviewed the evidence on the record to determine whether it supports ABN's contentions of arbitrariness, inconsistency or unequal treatment. In this case, it does not.

ABN alleges that the evaluators improperly downgraded its proposal because of their perceptions of its record of past performance. Since past performance was not specifically listed as an evaluation factor in solicitation section M, ABN asserts that evaluations were not conducted in accordance with the solicitation. There are several flaws to this reasoning. As the contracting officer and the interested parties have noted, the solicitation put offerors on notice that the survey to be conducted under section K.17 would include the gathering of information about previous contract performance, and that such information would be used in the evaluation process. Further, past performance is directly related to the top three evaluation criteria, which comprise 85% of the points allocated for non-price factors, and the evaluators were entitled to treat it accordingly. Finally, past performance is always a legitimate factor to be considered in the evaluation of a prospective contractor's technical proposal; to expect the evaluators to determine whether an offeror's proposal evidences ability to comply with the technical requirements while ignoring readily available information on whether the offeror has complied in the past would not be reasonable. *Kleinknecht*, *supra*.<sup>21</sup>

While the evaluators could consider ABN's past performance record without the solicitation having expressly listed past performance as a separate evaluation criterion, ABN is correct that it would have been erroneous for the evaluators to have assigned that factor undue weight, or to have considered it in an unequal manner with respect to the other offerors. *Id*. Therefore, we looked at the awardees' submissions and their respective evaluations *in camera*, as well as the submission and evaluation of the protester. That record does not support a finding that past performance played an inappropriate role in the evaluation process or that the protester was unfairly or inconsistently evaluated. To the contrary, the record supports the contracting officer's position that past performance had very little effect on ABN's technical scores. ABN's proposal ranked sixth out of seven in the competitive range after the initial evaluation, based solely on the extent of ABN's compliance with the requirements of the solicitation, and its technical standing was not lowered in evaluation phase 2 by consideration of its past performance.

The initial evaluations listed the strengths and weaknesses of each offeror's proposal and concluded with each being termed technically acceptable, unacceptable and unsusceptible to being made technically acceptable, or, as was ABN's, unacceptable but susceptible to being made technically acceptable. Text at footnote 10, *supra*. After discussions, the evaluators commented on each offeror's response to the evaluators' concerns about their proposals.<sup>22</sup>

<sup>21</sup> ABN attempts to distinguish *Kleinknecht* as a responsibility case. In fact, *Kleinknecht* was a prequalification case, in which the protest was sustained because the contracting officer's decisions, unlike those at issue in ABN's protest, were not supported by the evidence on the record. While *Kleinknecht* contains language discussing the appropriateness of considering past performance records in responsibility determinations, it also plainly states that any technical evaluation process would be "hollow and artificial" if past performance were required to be ignored.

<sup>22</sup> For example, the evaluators initially noted that one offeror "followed proposal submission instructions, and the Committee was very impressed." Later, they complimented that offeror for its "comprehensive

Clearly, the offerors' understanding of the detailed requirements of the solicitation as reflected by provisions in the major sections of their proposals was very important to the evaluation committee. ABN gave the evaluators a proposal which one described as a "disappointment" and which barely brought ABN into the competitive range; the evaluators noted that ABN's proposal gave "very little or no reference to STD 22B," offered inadequate security and accountability plans, and that ABN had not evidenced either sufficient commitment to management capability or a sufficient understanding of the solicitation requirements for most of the printing methods. Following the discussions and the submission of ABN's BAFO, the committee noted that its concerns had not been adequately answered.

On the other hand, the past performance records of the offerors were noted only in generalized observations. There is no indication that specifics of ABN's performance record were considered while others' were not. The format of the evaluations, including the space devoted to past performance, was substantially the same for every offeror; only the specific comments changed. However, the most revealing evidence that past performance had little or no impact on the technical scores is the evaluators' explicit statement that if a second award had been made in the water-activated gravure category, it would have gone to ABN<sup>23</sup> despite its past performance problems.<sup>24</sup>

Instead, it appears that ABN was downgraded in comparison to the awardees because of the quality of its proposal--the failure to address STD 22B and its inadequate or incomplete response to requirements for management, security and accountability plans--and the lack of a coherent response from ABN during or after discussions addressing the solicitation's requirements and the evaluators' concerns. ABN asserts that appointing a postage stamp program manager should have satisfied the Postal Service in the quality assurance area, and argues that the solicitation did not require ABN to implement a plan before performance. Although ABN is correct that an offeror did not have to implement its plans before commencement of performance, the solicitation required that an offeror detail its pertinent plans in its proposal in the form required by the solicitation. Elsewhere on this protest record, ABN has asserted, correctly, that an offeror's technical score is based upon an evaluation of the technical proposal submitted. See *Five Star Catering*, P.S. Protest No. 88-68, January 31, 1989. Yet ABN apparently believes that the Postal Service should have known it was capable due to its status as a long-time contractor notwithstanding its

and well thought out management plan," stated that the committee's "concerns and questions were answered satisfactorily" and concluded that its management "provided an outstanding presentation which demonstrated their understanding of [solicitation requirements]." Another offeror "impressed" the committee with its "understanding of the solicitation and knowledge" and because it "demonstrated a strong commitment to quality and the management team was outstanding."

<sup>23</sup> That statement (footnote 11, *supra*.) also answers ABN's assertion that its deficiencies with respect to one printing method should not reflect on the other methods; it is evident that they did not.

<sup>24</sup> ABN contends that the protest record must prove that all offerors were treated identically with respect to past performance, and that each offeror's past performance record must have been before the evaluators. That view ignores the fact that the protester, not the contracting officer, has the burden of proof, *Southern Air Transport*, *supra*, and that ABN has offered no supporting evidence for its opinion that there is "simply no . . . explanation" other than the misperception of its past performance problems for its lower ranking.

proposal's lack of compliance with many solicitation requirements.<sup>25</sup> To not downgrade ABN for its lack of compliance would have been both inconsistent with the evidence and unfair and prejudicial to the awardees which offered proposals that complied in detail. Our review of the proposals and evaluations thus reveals that the technical rankings of the offerors were reasonable, and that the evaluations were conducted in a consistent manner for all offerors, were consistent with the evidence, and provide no basis on which we may overturn the award decisions of the contracting officer.<sup>26</sup> *W.M. Schlosser Co., supra; Standard Register; Moore Business Forms Inc., supra.*

ABN contends that discussions conducted with it were not meaningful because it was not informed of "all the matters which the Postal Service considered to be deficiencies . . . ." and was not given adequate opportunity to revise its proposal. Our regulations provide that discussions must be conducted so as to "[a]dvice the offeror of deficiencies in its proposal, in terms of Postal Service requirements, but not deficiencies relative to other proposals, nor deficiencies resulting from the offeror's lack of diligence or competence. . . ." PM 4.1.5 g.3. The PM further states that "[t]he content, form, and extent of the discussions is a matter of the contracting officer's judgment." PM 4.1.5 g.3.

The contracting officer has disputed ABN's allegation, stating that its November 15 proposal amendment belies its allegation that deficiencies in its proposal were not discussed. As previously explained, in factual disputes we adopt the position of the contracting officer unless the protester rebuts the presumption that the contracting officer's position is correct. *Southern Air Transport, supra.* ABN's November 15 letter seemed to acknowledge that the evaluators communicated their concerns to ABN; the letter expressly stated that it would address "issues discussed"<sup>27</sup> and went on to refer to STD-22B and the

<sup>25</sup> ABN also argues that "experience" and "performance" are two different concepts under the PM (footnote 5, *supra.*), seeming to state that since it was not found nonresponsive, evaluators not only should have disregarded its performance record but also should have given ABN higher scores than other offerors with fewer years of experience. While that proposition strikes us as illogical because it gives credit for having had a postal contract while ignoring poor performance on that contract, it appears that the evaluators may have adopted it, since they ranked ABN second in line for award in the water-activated gravure category because of its past experience and equipment despite flaws in its performance record.

ABN also alleges that a new postal solicitation corrects the "mistakes" made in this case by making distinctions between past experience, an evaluation factor, and past performance, a responsibility factor, and argues that we should draw an adverse inference against the Postal Service in ABN's protest because of what it terms the "subsequent remedial action" taken in the new solicitation. We cannot draw such an inference because each solicitation's terms must be evaluated on its own merits, and the Postal Service's only obligation in this case was to evaluate ABN in accordance with this solicitation, as we find it did. To the extent that ABN is claiming that the terms of the new solicitation prove that the one at issue here was defectively drafted, its protest is untimely under PM 4.5.4 b. In any case, we do not agree that such a language change necessarily would indicate that the Postal Service knows it made a mistake; it easily could be interpreted as an attempt to preempt protests such as ABN's whether they are meritorious or not.

<sup>26</sup> Nor does the record support ABN's claim that offerors might have been pricing different stamp quantities. The evaluators made adjustments to each offeror's prices to ensure that the evaluations were equivalent. These adjustments were explained to ABN in the October 6 letter requesting verification of prices, and ABN agreed with them. Our review indicates that all offerors were treated similarly.

<sup>27</sup> The contracting officer does not dispute ABN's allegation that its past performance record was not discussed. However, as previously noted, ABN's past performance record was not the reason its

security and accountability specifications. The letter implied that adequate plans would be created at some future time. (Footnote 8, *supra*.)

Further, the solicitation itself had put ABN on notice that it was expected to correlate its quality assurance plan with STD-22B, and to provide complete and detailed plans for quality assurance, security and accountability in tabbed sections of its proposal that corresponded with the solicitation's evaluation factors. ABN should have realized that appointing a new manager was an inadequate substitute for the failure to provide information which the solicitation required to be submitted in its proposal. The burden was on the offeror to submit an adequately written and complete proposal. Any reduction in scoring that results from a lack of diligence in completing a proposal is attributable only to the offeror.<sup>28</sup> See *Government Contract Advisory Services, Inc., B & B General Contracting, Inc.*, P.S. Protest Nos. 93-21; 25, December 16, 1993; *Hill's Capitol Security, Inc.*, P.S. Protest No. 90-25, July 20, 1990. In discussions, the evaluators were not required to go through the solicitation page by page to explain to ABN how to improve its proposal. They were required only to "lead offerors reasonably into those areas of their proposals which are considered deficient in the context of the procurement." *TRW Financial Systems, Inc.*, P.S. Protest No. 91-19, May 29, 1991; *Business Information Management Corporation*, Comp. Gen. Dec. B-238875, 90-2 CPD 45, July 17, 1990. The discussions with ABN were meaningful under the cited standards.

The record shows that ABN submitted a proposal package which was not tailored to the specific format or requirements (especially those of section J.4 b.(3)) of this solicitation and which was not equal in quality to those of the awardees. Both in its initial proposal and in its response to discussions and BAFO, ABN was unwilling or unable to address the requirements in specific detail. Nevertheless, apparently because of its experience with water-activated gravure stamps and its new equipment, it was placed in line to receive one contract had the Postal Service made a second award in that category. It was not ABN's performance record which hurt it, but its lack of a proposal conforming to solicitation requirements that evidenced a commitment to managerial capability and an understanding of and ability to deal effectively with the requirements of the contracts at issue here. There is no reason to believe that if ABN had submitted a complete, feasible proposal conforming and dealing with the requirements of the solicitation it would not have scored higher; in any event, we are unable to see any areas in which ABN was treated unfairly in this procurement.

proposal was rejected.

<sup>28</sup> ABN argues that without a flawed technical and price evaluation, its proposal would have offered the "best value" in several categories. For the reasons discussed above, it is evident that ABN's lower technical scores and, in many cases, higher prices, would have made it unreasonable for the contracting officer to have considered ABN the best value, even in the category in which it was second, since the awardee in that category submitted a more compliant proposal and a lower price. ABN's argument that the quality of its proposal should have been ignored because of its years of experience in that category is unpersuasive, and there is no basis to overturn the contracting officer's best value determinations. *Standard Register; Moore Business Forms, Inc., supra.* (contracting officer has considerable discretion in determining best value; we review for rationality); *Federal Properties of R.I., Inc.*, P.S. Protest No. 93-02, May 20, 1993 ("[t]he choice as to what is in the best interest of the Postal Service is a business decision within the discretion of the contracting officer and will not be overturned unless the contracting officer has clearly abused his discretion").

The protest is denied.

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Contract Protests and Policies