

Protest of)
AUTOMOTIVE SERVICE EQUIPMENT) Date: September 2, 1987
Solicitation No. 324800-87-C-0047) P.S. Protest No. 87-74

DECISION

Automotive Service Equipment (ASE) protests the award of a contract for hydraulic lifts to Gary Bloom Sales (Bloom) under Solicitation No. 3244800-87-C-0047. ASE claims that Bloom's quote offered a lift that did not conform to the required specifications.

Request for Quotations (RFQ) No. 324800-87-C-0047 was issued by the Manchester, NH Support Services Office on April 24, 1987, with an offer due date of May 29. The RFQ requested quotes on two "above ground, two post hydraulic lifts in accordance with [the] specifications listed on page 2." The specifications provided, as follows:

1. FRAME LIFT DESIGN
2. 9000 LB. CAPACITY
3. 220 VOLT SINGLE PHASE POWER SUPPLY
4. HYDRAULIC EQUALIZATION SYSTEM
5. FLOOR CLEAR BETWEEN POSTS
6. SAFETY ITEMS
 - A. GRAVITY ACTIVATED MECHANICAL SAFETY DEVICE BOTH POSTS
 - B. PRESSURE SENSITIVE HYDRAULIC SAFETY BOTH PISTONS
 - C. HYDRAULIC LINE BLOWOUT SAFETY BOTH PISTONS
 - D. CHAIN BREAK SAFETY BOTH POSTS

The RFQ further specified that:

YOU MUST COMPLY WITH THE "BRAND OF NAME OR EQUAL" CLAUSE INCLUDED IN THE REQUEST FOR QUOTATIONS. SUBMIT MANUFACTURER'S DATA, DESCRIPTIVE MATERIAL, OR OTHER INFORMATION WHICH IS DESCRIBED IN SPECIFICATIONS.

YOUR OFFICER [sic] WILL BE EVALUATED ON THE BASIS OF INFORMATION YOU FURNISH WITH YOUR OFFER. THE INFORMATION CALLED FOR IS ESSENTIAL IN DETERMINING WHETHER OR NOT THE EQUIPMENT BEING OFFERED MEETS THE SALIENT CHARACTERISTICS OF THIS REQUEST FOR

QUOTATIONS. FAILURE TO SUBMIT THE REQUIRED INFORMATION MAY PRECLUDE CONSIDERATION OF YOUR OFFER.

ANY DEVIATIONS FROM THE SPECIFICATIONS CONTAINED IN THIS REQUEST FOR QUOTATIONS SHOULD BE INSERTED IN THE SPACE PROVIDED BELOW: (IF NONE, SO STATE).

Three quotes were received and, after review by technical personnel in early June, a purchase order was issued to Bloom, the low quoter, on June 16, and acknowledged by Bloom on June 22. ASE's protest, dated July 7, was received by the contracting officer on July 10.

ASE states that the lifts which Bloom identified in its quote are not "hydraulically equalized," but, rather, are "chain equalized."^{1/} ASE also indicates that Bloom's lift met none of the four safety features required by the specification. ASE concludes that award of a contract to a lift which does not meet these important salient characteristics is improper and should be reversed.

The contracting officer first questions the timeliness of the protest, noting that it was received 17 working days after the date the purchase order was issued and is, therefore, untimely under Postal Contracting Manual (PCM) 2-407.8 d. (3) as received more than 15 working days after award. As to the merits of the protest, he notes that the Vehicle Maintenance Facility Manager and Architect reviewed the technical attributes of the lift on which Bloom quoted, and, although they admit that it does not have a "hydraulically equalized A system," it has "equalized hydraulic cylinders on each side." The contracting officer states that Bloom's lift "uses hydraulics and chains to equalize its lift and offers different but acceptable safety features." He further asserts that "[t]he intent of the RFQ was to obtain price quotes for a lift that was other than manually equalized and equal to our required performance and safety specifications," and that Bloom's lift meets the postal needs. The contracting officer has not addressed ASE's claims that the four specific safety features were not included on Bloom's lift.^{1/}

The protest is timely. purchase order, unlike a notice of the award of an IFB or RFP, is effective the date it is acknowledged by the vendor, or when the vendor begins to perform the contract. See, e.g., Neese Floor Covering, Inc., P.S. Mistake Claim No. 74-3, November 5, 1974 ("a purchase order issued in response to a quotation ... is an offer to buy the quoter's goods or services upon specified terms and conditions"); PCM 16-202.4; V. Mueller Hospital Supply Corporation, Comp. Gen. Dec. B-175674, February 27, 1984, 74-1 CPD & 106. Since the purchase order at issue here was acknowledged on June 22, ASE's protest, received July 10, is timely.

^{1/} The difference appears to be over how the lift ensures that a vehicle will be raised level on the lift; a hydraulic equalization system accomplishes this task by means of pistons while a chain equalization system uses both chains and pistons.

^{2/} We note, however, that the purchase order itself did not provide for the four safety features as part of the required specifications.

The PCM requires purchase descriptions such as the one at issue here to "state only the actual minimum needs of the Postal Service and describe the supplies and services in a manner which will encourage maximum competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to one supplier's product, or the products of a relatively few suppliers." PCM 1-1101 (a). Purchase descriptions "should set forth the essential physical and functional characteristics of the supplies or services required." PCM 1-1105.1 (a). (Emphasis supplied.) Therefore, when a purchase description sets forth the salient characteristics which are represented to specify the Postal Service's actual minimum needs, these requirements must be met, unless the purchase description is found to be unduly restrictive. Cf. National Controls, Inc., P.S. Protest No. 84-3, March 14, 1984.

An offer^{1/} which takes exception to or deviates from specification requirements may be considered as an alternate proposal, even if the procurement did not specifically request alternate proposals. See Eastman Kodak Company, P.S. Protest No. 84-77, February 22, 1985; Minority Media Syndicate, Inc., et al., Comp. Gen. Decs. B-200823, B-200823.2, February 12, 1981, 81-1 CPD & 96. Although alternate proposals may be accepted if they are in the best interest of the Postal Service, Ultra Publicaciones, S.A., Comp. Gen. Dec. B-200676, March 11, 1981, 81-1 CPD & 190, Postal Contracting Manual (PCM) 3-805.1 (d) requires that:

When during negotiations, a substantial change occurs in requirements or a decision is reached to relax, increase, or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the request for proposals, and a copy shall be furnished to each prospective contractor.

All offerors within the competitive range must be notified of such a change and be permitted to change or modify their proposals. Joint Action in Community Service, Inc., Comp. Gen. Dec. B-214564, 84-5 CPD & 228, August 27, 1984. When in doubt as to whether a change is a substantial change, the better course to follow is to notify all offerors of such change. Eastman Kodak Company, *supra*.

In the present case, a substantial change was made in the solicitation requirements, namely, the elimination of the "hydraulic equalization" requirement and the four specific safety features. Bloom's quote was accepted for award without giving the other quoters an opportunity to quote on the revised specifications. While we appreciate the need for informal procedures for low dollar value purchases (see PCM 6-100 seq.), allowing new quotes based on the revised specification could have been done quickly and efficiently. Since the situation here was one in which all quoters were not competing on an equal basis, award made under such a competition is improper.

Since the award here was not in accordance with appropriate regulations and legal precedents, we must examine whether any relief may be granted. The contracting officer has notified our office that Bloom has completed performance on the purchase

^{3/} RFQ's are negotiated procurements. See Multigraphics, P.S. Protest No. 87-24, June 12, 1987; Lancom, Inc., P.S. Protest No. 85-48, October 5, 1985.

order on July 17, 1987.^{4/} Since contract performance is complete, we can grant no relief to ASE for these procurement improprieties. See, e.g., Government Products Corporation, P.S. Protest No. 84-58, December 10, 1984.

The protest is sustained.

William J. Jones
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Office of Contract and Property Law

[Compared to original 3/8/93 WJJ]

^{4/} The contracting officer indicates that, because of the cost of cancelling the purchase order, and after conferring with assigned counsel, he allowed Bloom to complete performance.