

Protest of )  
THE OFFICE PLACE, INC. ) Date: May 11, 1990  
Purchase Order No. 020312-90-N-0147 ) P.S. Protest No. 90-15

### Decision

The Office Place timely protests the solicitation procedures leading to the issuance of Purchase Order No. 020312-90-N-0147 for photocopiers at the General Mail Facility in Anchorage, AK. The copiers were solicited by means of simplified purchasing procedures pursuant to Procurement Manual ("PM") 4.2.2. The protester complains that its offer was improperly evaluated.

The requirement from the Support Services Office of the Anchorage Division was for three copiers. The contracting officer used oral solicitation procedures. Written quotations were received from Xerox, Ricoh (represented by The Office Place), Pitney Bowes, IBM and Kodak. Postal personnel attended demonstrations of both the Xerox and Ricoh equipment. The contracting officer issued one purchase order to The Office Place for one of the copiers and the purchase order complained of to Xerox for the other two copiers. The Xerox copiers were installed on March 15, 1990.

The protester objects to the award to Xerox, stating that the Ricoh model it would have supplied, when compared to the Xerox model purchased, would represent a life-cycle savings of \$6,416.40 to the Postal Service and that it would have been in the best interests of the Postal Service to purchase its copiers.

In his report, the contracting officer states that because this was a simplified purchase, no evaluation criteria were developed or disseminated to the vendors. The contracting officer concedes that the Ricoh models would have been cheaper than the Xerox models, but states that the decision to purchase the Xerox models was based on factors other than price, such as: 1) past performance, including experience with both vendors and copier models; 2) features of the equipment, including copy speed, duplex capability, sorting and finishing capabilities, and book copying capabilities; 3) cost of maintenance; 4) warranties; and 5) the trade-in value of a surplus Xerox machine. On these bases, the contracting officer determined that Xerox offered the best value to the Postal Service.

The Office Place submitted comments to the contracting officer's report suggesting that an older model copier had generated the Postal Service's unfavorable experience with its product in the past, but that the copiers it now proposes resemble the older model

only in appearance, not in performance. It contends that the features of its proposed copier compare favorably to those of the Xerox model, and that one feature it was asked to quote was not provided by Xerox. It describes its maintenance program and warranty plan and alleges that it was unaware that the Postal Service had a Xerox machine available as a trade-in.

### Discussion

When a protester claims that improper evaluation procedures were used, this office will not disturb the evaluation of a proposal unless it is shown to be "arbitrary or in violation of procurement regulations." Computer Systems & Resources, Inc, P.S. Protest No. 86-4, March 27, 1986; Amdahl Corporation, P.S. Protest No. 81-34, September 29, 1981. The Procurement Manual states that:

The simplified purchasing procedures established in this section are for use in making fixed-price purchases up to the ceiling amount [\$50,000.00] . . .

PM 4.2.1 a. Additionally, the PM states that proposals and quotations must be evaluated "on the basis of best value to the Postal Service, taking into account price and price-related factors (such as transportation charges and administrative costs to the Postal Service)." PM 4.2.3 b.

The contracting officer erred by evaluating technical factors other than price in this situation because it resulted in an award based on criteria other than price or price-related factors.<sup>1/</sup> Where factors other than price will be considered, the contracting officer must advise the prospective offerors of the basis on which their offers will be evaluated for award. PM 2.1.6 c.5.; International Technology Corporation, P.S. Protest No. 89-21, May 8, 1989; Rohr-Plessey Corporation, P.S. Protest No. 74-19, September 23, 1974. The protester has met its burden of showing that the evaluation was both arbitrary and in violation of procurement regulations. Computer Systems supra., and its protest is sustained.

Although the procurement was flawed, we are unable to offer the protester any relief.

Whether to require termination action in a given case depends on consideration of such factors as the seriousness of the procurement deficiency, the degree of prejudice to unsuccessful offerors or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the Government, the urgency of the requirement, and the impact of termination on the accomplishment of the agency's mission.

<sup>1/</sup>PM 2.1.6 a. states that "[t]he contracting officer must develop a source selection plan for each procurement subject to competitive procedures (see 4.1) whenever price and price-related factors will not be the sole basis for proposal evaluation and contractor selection." PM 4.1.4 a. states that ". . . [p]roposals must be evaluated in accordance with procedures established in the source selection plan (see 2.1.6) and the evaluation criteria specified in the solicitation."

Inforex Corporation, et al., P.S. Protest No. 78-12, June 26, 1978, quoting Honeywell Information Systems, Inc., Comp. Gen. Dec. B-186313, April 13, 1977, 77-1 CPD & 256. The procurement deficiencies identified above may have prejudiced The Office Place, however, as the same deficiencies were present in the purchase order it received, termination of both awards might also adversely affect it. The procurement was an outright purchase and aside from possible warranty work or maintenance agreements, substantial performance was complete upon delivery of the copiers. There is no evidence that the contracting officer acted in bad faith. These factors indicate that the Xerox awards should not be terminated.<sup>1/</sup> CFI, P.S. Protest No. 88-82, February 17, 1989; Memorex Corporation, P.S. Protest No. 83-78, January 16, 1984.

The protest is sustained.

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**[checked against original JLS 6/2/93]**

<sup>2/</sup>We note that "the degree of prejudice to the integrity of the competitive procurement system will prove not to have been great provided that the lessons of this procurement are observed in future procurements." Dwight Foote, Inc., P.S. Protest No. 87-90, September 28, 1987.