

Protests of) Date: November 23, 1992
)
STANDARD REGISTER;)
MOORE BUSINESS FORMS, INC.)
) P.S. Protest No. 92-68
Solicitation No. 105603-92-A-0002)

DECISION

Standard Register ("Standard") and Moore Business Forms, Inc. ("Moore") each timely protest the award of contracts for two types of Express Mail labels. Solicitation 105603-92-A-0002 was issued on March 27, 1992, by the Headquarters Printing Office, with a due date, as amended, of May 29. Standard and Moore complain that the evaluations of their respective proposals were flawed and that awards were improperly made to two other offerors.

The solicitation contained specifications for two types of Express Mail labels, Label 11, Unit-Set, (Item 001) and Label 11C, Continuous, (Item 002). Express Mail labels are four-part forms printed in four colors which use a chemical transfer medium to copy material written on the top form to the three forms below. Each label is sequentially numbered both in OCR-A readable numbers and in a Code 39 (3 of 9) bar-code. The back of the label is covered with a pressure-sensitive adhesive protected by peelable liner. The continuous style labels are designed with aligning holes along the right and left edges and connected horizontally with a perforated tear line and edges, so that they may be fed through a pin-feed printer, while the unit-set label comprises a single label.

The Postal Service intended to award two indefinite delivery/indefinite quantity five-year contracts under the solicitation. The solicitation set forth estimated minimum and maximum quantities for each style of label for each year of the contract.^{1/} The solicitation also set forth "option parameters" for each label style, which called for the offeror to submit per thousand prices for labels incorporating additional features, described as die-cut and kiss-cut.^{2/} The option allowed the specification of either additional feature as individual orders were placed.

^{1/} For example, the estimated quantities of unit-set labels for the first year of the contract was a minimum of 150 million, a maximum of 200 million.

^{2/} The options provided for the incorporation of a die-cut cutout in the top sheet of the form revealing a section of the second sheet below, and for a kiss-cut area surrounding the OCR-A number on the bottom sheet of the form such that when the liner is removed from the sheet, the number remains attached to the liner.

Section J.11 a.2. stated generally that:

[o]fferor(s) may, at their discretion, submit 'alternate' proposals concerning construction samples. If a [sic] 'alternate' is submitted [sic], a corresponding [sic] price proposal must be submitted [sic]. Alternate proposals, or deviations from any requirement of this solicitation, must be clearly identified.

The prospective offerors were required to submit construction samples as part of their proposals. Section A.1 B. stated:

[i]f 'alternate' construction samples are submitted the offeror(s) must submit separate price proposals for each 'alternate' sample. If the offeror(s) technical proposal changes for 'alternate' construction samples, a separate technical proposal must also be submitted.

Section B.3, at p. 9, stated that the contractor could alter the construction to meet its individual capabilities as long as the label met all the parameters and specifications set forth in the specifications. It further stated that the "[s]ize of both labels must be at least 8 x 5" and no larger than 9 x 6".

Section M of the solicitation stated that award would be made to the offeror(s) whose proposal offered the best value to the Postal Service, "considering price, price-related factors, and/or other evaluation factors specified elsewhere in [the] solicitation." The solicitation also stated that "[t]echnical proposal superiority is more important than price . . . [h]owever, price will be evaluated and its importance increases as the difference between offeror(s) technical proposal decreases." The solicitation listed five technical evaluation criteria as follows:

Offeror(s) shall submit for technical evaluation the following:

1. 50 completed construction samples of each label. . . . 0 - 50 points
2. A detailed written description of the offeror(s) proposed numbering verification system. . . . 0 - 18 points
3. A detailed listing and description of the printing and numbering equipment being used to produce these labels. . . . 0 - 15 points
4. A detailed description of the Quality Assurance processes used at offeror(s) facility to meet all requirements stated in this solicitation. . . . 0 - 12 points
5. Contractor schedule meeting each task order. A description of the offeror(s) processes involved to produce these labels. . . . -5 to +5 points

NOTE: All offeror's [sic] will be given zero(0) points for meeting and not deviating from the initial delivery order's 30 million copies required in the delivery schedule stated in Section C.2. Offeror(s) meeting or not meeting the required schedule will be either added or deducted points. One point will be added for every 5 working days that the initial 30 million copies can be delivered earlier than the original delivery [schedule]. One point will be deducted for every 5 working days that the initial 30 million can not [sic] meet the original delivery schedule.

Solicitation, Section M.1.^{1/} The price evaluations were based on the unit prices for estimated minimum quantities, including the costs of the two option parameters, over the five year contract period.

The contracting officer received proposals from five offerors in response to the solicitation. Three offerors, Standard, Moore, and Forms Corporation of America, submitted proposals for both types of labels.^{1/} Webcraft Technologies, Inc., submitted a proposal for Item 001 only and Wallace Computer Services, Inc., submitted a proposal for Item 002 only. All proposals were found to be in the competitive range. After evaluation of the proposals, by letters dated June 23, the contracting officer identified deficiencies in each, and thereafter conducted discussions with all offerors and requested Best and Final Offers ("BAFOs") to be submitted by August 7. After BAFOs, the offerors' technical and price proposals were rated as follows:

UNIT SET: Item 001

<u>Offeror</u>	<u>Points</u>	<u>Price</u>
Standard Register	76.25	\$40,416,300
Webcraft Technologies, Inc.	101.00	27,957,100
Moore Business Forms, Inc.	81.50	33,803,520
Forms Corporation of America	78.50	32,292,620

CONTINUOUS: Item 002

<u>Offeror</u>	<u>Points</u>	<u>Price</u>
Standard Register	78.50	\$23,379,040
Wallace Computer Services, Inc.	96.75	24,024,790
Moore Business Forms, Inc.	84.50	26,599,060
Forms Corporation of America	78.50	20,876,270

On August 26, the contracting officer awarded a contract for the unit-set labels to Webcraft Technologies, Inc. ("Webcraft"), and a contract for the continuous label to

^{3/} Section C.2 stated that "[e]ach delivery order requires the contractor(s) to complete delivery of the first 30 million labels within 75 working days after the delivery order has been issued."

^{4/} Standard Register submitted two proposals for each type of label.

Wallace Computer Services ("Wallace").

Moore's Protest

On September 3, Moore filed an initial protest against the original awards with the contracting officer. The protest contended that its proposals were inadequately evaluated and that the large dollar differential between its proposals and the awardees' were large enough to warrant review. As the result of the protest the contracting officer discovered a mathematical error in the calculation of Moore's prices. As corrected, Moore's price for Item 001 was reduced to \$26,005,480^{5/} and its price for Item 002 to \$15,552,640. With respect to Item 001, the correction did not cause the contracting officer to disturb the award to Webcraft. However, he determined that since Moore's proposal for Item 002 had the second highest technical score and a substantially lower price, its offer presented the best value to the Postal Service. Accordingly, he terminated Wallace's contract for convenience and awarded a contract for the continuous labels to Moore.

After the contracting officer discovered the mathematical error in Moore's price evaluation and awarded Moore a contract for the continuous labels, Moore withdrew its protest against the award for that item. However, it continues its protest against award to Webcraft for Item 001, unit-set labels. Moore disagrees with the deficiencies in its proposal identified by the contracting officer,^{6/} contending that the evaluation committee failed to consider adequately its numbering and verification system and that the other deficiencies identified were minor. It contends that the award to Webcraft on the basis of technical superiority was not justified.

In his report, the contracting officer states that after the mathematical error was discovered in Moore's prices, he carefully reviewed the evaluations. He determined that, even though Moore's price for the Item 001 was lower than Webcraft's, considering the technical superiority of Webcraft's proposal and relative risks of the two proposals and the experience and past performance of the offerors, Webcraft presented the better value to the Postal Service. He concludes that since award was not based on price alone and the evaluations were conducted properly, the award should be upheld.

In comments responding to the contracting officer's statement, Moore states that its proposal was clearly adequate to meet the Postal Service's needs. In fact, it does not understand why its technical evaluation scores were different for the two types of labels, as its technical proposals were the same. It acknowledges that Webcraft's technical score was significantly higher than Moore's, but views Webcraft's price as also significantly higher.

^{5/} The contracting officer initially reported the corrected price as \$26,845,480 but subsequently adjusted it after Moore complained that a one-time \$840,000.00 equipment cost was already contained in its price for Item 002. As discussed further below, Moore contends that the correct price should be \$26,740,240.

^{6/} The contracting officer noted several deficiencies in Moore's construction samples and indicated that the information provided about its numbering verification system, printing and numbering equipment, and quality assurance program was incomplete.

Moore also disagrees with the contracting officer's calculation of its price. It claims that its corrected price for Item 001, not including the equipment charge, should be \$26,740,240 so that the difference between its price and Webcraft's is \$1,216,860. Noting that the solicitation stated that price would become more important as the differences between technical scores decreased, Moore concludes that the difference in technical scores did not warrant award to the higher priced offeror. Moore requests that the award to Webcraft be terminated and award made to it for Item 001.

Standard's Protest

Standard filed an initial protest with this office challenging the award for Item 002 on August 28, alleging that it could meet or exceed the specifications and that the alleged defects that were identified in its technical proposal "are normal items that need to be addressed during preproduction operations and first article." After being informed of the correction in the award for Item 002, Standard advised this office that it wished to continue its protest.¹⁷ It questions the validity of the procurement process due to the "many mistakes" made by the evaluation committee. Standard also contends that the award to Moore for the continuous label poses a risk to the Postal Service, as Moore's price is below factory cost.

In his report, the contracting officer first states that the Postal Service determined after evaluations, given the pricing and technical scores, that awarding two contracts would be in the Postal Service's best interest. He agrees that Standard is qualified to provide the continuous labels. He states that he is not sure what mistakes Standard is referring to in its protest, other than the pricing mistake concerning Moore's proposals. He recalls telling Standard at its September 3 debriefing that he had not been satisfied with the evaluation committee's first report, as it did not adequately explain some of the scoring. He states that, as a result, he reconvened the committee, gave them more detailed instructions, and requested a new report. The second report provided the requested additional scoring information but did not change the rankings of the offerors. He contends that the evaluations were conducted properly and the scoring accurately reflected the relative strengths and weaknesses of each offeror. He denies that there is any foundation for a finding of impropriety.

With respect to Moore's low price, the contracting officer states that he asked Moore to verify its prices in writing, which it did. He also states that there is no prohibition against award to an offeror proposing a below-cost price, as long as the offeror can demonstrate its ability to perform at that price.

The contracting officer does not agree that the solicitation should be canceled, since all of the offerors' prices have been exposed and there were no errors in the evaluations.

Moore, the current awardee for the continuous labels, submitted comments as an interested party, contending that its corrected price for this item was \$7,826,400 lower than Standard's. In addition, it points out that its technical score was six points higher than Standard's. Moore agrees with the contracting officer that any mistakes made by the evaluation committee were corrected and that the scoring results were explained

¹⁷ At its protest conference on October 8, Standard clarified that its protest is against the award to Moore for Item 002, continuous labels, only.

adequately. Moore categorically denies that its offer is priced below cost and contends that, even if it is, it would present no basis for overturning the award. Moore concludes that none of Standard's allegations present a basis for overturning award to it.

At its protest conference on October 7, and in written comments submitted on October 8, Standard reiterated its concerns. It emphasizes that it is not making any allegations of bad faith or fraud, but notes several discrepancies in the procurement process.^{1/} It questions how any offeror could receive 101 points, when only 100 points were available. In addition, it cannot comprehend how anyone could achieve a perfect score in an evaluation by a committee consisting of several members. Next, it complains that three of the five deficiencies in its proposal identified by the contracting officer concerned matters that were, in fact, adequately covered by its initial proposal.^{1/} It contends that the contracting officer acknowledged this on June 23, during discussions. It also contends that its BAFO corrected many of the other inadequacies and asserts that its technical score after BAFOs was not upgraded accordingly.^{1/}

Standard alleges that it submitted two separate proposals, one for a 5 1/2" tall label and one for a 6" tall label, but claims that the contracting officer was unaware of the second proposal and it believes that the committee evaluated only one. It contends that someone other than the contracting officer decided that the second proposal was unacceptable and that only the contracting officer had the discretion to make that decision.

With respect to price, Standard contends that several of the pricing calculations given to it at its debriefing differ from those reported in the contracting officer's statement.^{1/} It maintains that both the evaluation committee and the pricing committee made mistakes and exhibited a lack of communication, causing Standard to lose confidence in the process. Finally, Standard reiterates its concerns about the performance ramifications of Moore's unreasonably low price.

Although the contracting officer was furnished Standard's further comments, he has not responded to them.

Discussion

^{8/} Even though Standard is not protesting the award of Item 001, it uses examples of discrepancies in that award to illustrate what it believes to be a generally faulty procurement.

^{9/} The deficiency letter had noted, inter alia, that Standard's proposal was not complete with respect to the numbering verification system, printing and numbering equipment, and quality assurance program. The contracting officer's later marginal notes on the initial deficient letter indicated, with respect to the numbering verification system and the printing and numbering equipment, "OK'd 7/27 in proposal original," and regarding the quality assurance program, "included throughout orig. proposal."

^{10/} Standard's technical score after BAFOs was increased by 12 points.

^{11/} Standard noted the \$840,000 discrepancy in Moore's price for Item 001, which has been corrected by the contracting officer. It also contends that it was told that Wallace's price for Item 002 was \$24,261,830, while now it is stated as \$24,024,790.

Both protesters allege flaws in the evaluation process. Our standard of review of the contracting officer's technical evaluations is a narrow one. 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." Lazerdata Corporation, P.S. Protest No. 89-60, September 29, 1989, quoting, Computer Systems & Resources, Inc, P.S. Protest No. 86-4, March 27, 1986.

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.

Computer Systems & Resources, Inc, *supra* (citations omitted).

With respect to Moore's protest against award for the unit-set labels, our *in camera* review of the technical and price evaluations did disclose some anomalies. First, Webcraft received 101 technical points in an evaluation scheme that appears to have contemplated a maximum possible of 100 points.^{12/} The record reveals that, although several offerors received the maximum points for evaluation factors 2-5, Webcraft was the only offeror whose BAFO was seen to meet all of the requirements for the first evaluation factor. It is clear from the record that the evaluators intended to give Webcraft full credit for its technical proposal, a determination which we cannot conclude was unreasonable. Removing the extra point from Webcraft's score would not change the results of the evaluation and is, therefore, irrelevant. See TRW Financial Systems, Inc., P.S. Protest No. 91-19, May 29, 1991. Similarly, it is clear from the record that the evaluators found some differences in the samples submitted by Moore for the two types of labels, and reflected those differences in the respective technical scores. There is no evidence that Moore's numbering and verification system was not properly evaluated and, in any event, given that it was noted as a deficiency, Moore was given the opportunity to improve or clarify that aspect of its proposal in its BAFO. Although Moore may disagree with the results of its evaluation, we find no basis for overturning it. See Monarch Marking Systems, P.S. Protest No. 91-49, January 14, 1992.

Moore complains that the contracting officer's technical/cost trade-off was not justified, contending that the 18.5 point difference in technical scores did not justify the stated increased cost of \$1,951,620. The Procurement Manual ("PM") provides that the contracting officer must make the contractor selection decision based on the proposal offering the best value to the Postal Service and is responsible for trade-off judgments between cost and other evaluation factors. PM 4.1.5 b.

^{12/} While it is not clear whether evaluation factor 5 would have allowed more than five additional points for delivery earlier than that required, Webcraft received only five points for that factor.

[P]rocurement officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. A procurement activity may make cost versus technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. The determining element is the considered judgment of the procurement officials concerning the significance of the difference in technical merit among the proposals.

Novadyne Computer Systems, Inc, P.S. Protest No. 90-49, November 9, 1990, quoting Chamberlain Manufacturing Corporation, P.S. Protest No. 85-83, February 14, 1986. Here, the solicitation clearly stated that "[t]echnical proposal superiority is more important than price . . . [h]owever, price will be evaluated and its importance increases as the difference between offeror(s) technical proposal decreases."^{13/}

Webcraft's technical score was significantly higher (23%) than Moore's, yet its price was only slightly higher (4.5%). The decision to award the contract to the higher priced offeror was consistent with the evaluation criteria and was not irrational. See Novadyne Computer Systems, Inc, supra.

Moore's protest against the award to Webcraft for Item 001, unit-set labels is denied.

We turn to Standard's protest against award to Moore for Item 002, continuous style labels. Standard alleges that there were many mistakes in the evaluations, specifically with regard to matters noted in the initial deficiency letter which the contracting officer later acknowledged were adequately dealt with in Standard's initial proposal, but for which Standard contends that it was not given an adequate score in its final technical ranking. It also claims that its alternate proposal was not evaluated. Finally, it alleges that some of the pricing calculations were incorrect and that Moore's price is unreasonably low.

We agree that there appear to be some discrepancies in the technical and price evaluations. The contracting officer's marginal notes on Standard's deficiency letter indicate that he agreed that three deficient items had been covered by Standard's initial offer. Our review of Standard's technical scores reveals that, with respect to the numbering verification system and the printing and numbering equipment, any errors in the initial evaluation were apparently corrected in the evaluation of the BAFO, as Standard received significant credit for those items. However, there was an inconsistency in the initial evaluation with respect to the quality assurance program. One evaluator gave Standard the full 12 points for that factor and one gave it zero points, resulting in an average score of six points. Even without considering the contracting officer's marginal notes on Standard's deficiency letter, the record does not provide a rational explanation for this result. Furthermore, there is no evidence that the

^{13/} We note that the contracting officer's calculation of Moore's price as \$26,005,480 is incorrect. This calculation correctly reflects Moore's price for Item 001, minus the \$840,000 equipment cost. However, it does not reflect Moore's prices for the option parameters, which were to be included in the price evaluation. We agree with Moore that the correct evaluated price for Item 001 is \$26,740,240, \$1,216,860 less than Webcraft's.

discrepancy regarding the quality assurance program was corrected in the evaluation of Standard's BAFO.

Next, Standard complains that its alternate proposal was not evaluated. The record does not indicate that either of Standard's proposals was determined to be technically unacceptable. One evaluator evaluated both the 5 1/2" label and the 6" label, scoring each, but averaging the scores and recording a single technical score. The other evaluator recorded only one technical score, but it is unclear from the record whether he evaluated both proposals, averaging their score, or whether he ignored one of the proposals altogether.

The solicitation clearly allowed for alternate proposals. Accordingly, the evaluators were required to evaluate each proposal separately. PM 4.1.4 c. ("Each proposal must be examined to determine whether it meets the requirements of the solicitation.") By ignoring one of the proposals or by averaging them, the evaluators failed to give Standard credit for each, as the solicitation allowed. See Peirce-Phelps, Inc., Comp. Gen. Dec. B-238520, B-238520.2, 91-1 CPD & 385, April 19, 1991; see e.g., Eastman Kodak Company, P.S. Protest No. 84-77, February 22, 1985 (Even where the solicitation does not request alternate proposals, the contracting officer may consider an alternate proposal and should accept it if it is in the best interests of the Postal Service.)

In addition, Standard proposed different prices for the different label sizes, and the contracting officer recorded only the higher price. Standard's alternate technical and price proposals should have been evaluated and recorded separately.

We further reviewed the evaluations and determined that despite the errors in Standard's evaluation we cannot conclude that the award to Moore should be overturned. If we recalculate the scores, giving Standard full credit for the quality assurance criterion, and using the highest scores given for each label, the result is an overall technical score slightly higher (less than one point) than Moore's. Standard's technical proposal would be slightly more than one percent higher ranked than Moore's, but its price would be about 38% greater than Moore's. Given the evaluation criteria's notice that the importance of price would increase as the difference between technical proposals decreases, it would not be inconsistent with the evaluation scheme to award to Moore over Standard on the basis of price. Where errors in the evaluations, when corrected, would not change the award decision, there is no prejudice to the protester. TRW Financial Systems, Inc., *supra*.

With respect to Standard's final allegation that Moore's price is unreasonably low:

Our standard for review of determinations of price reasonableness is similar to that of responsibility determinations. They will not be overturned unless clearly unreasonable or there is a showing of bad faith or fraud.

Monarch Marking Systems, *supra*. In addition, "award of a contract to an otherwise responsible offeror is not precluded on the basis that the awardee's price is below cost." *Id.*; Lightron of Cornwall, Inc., P.S. Protest No. 84-6, February 27, 1984.

Standard does not challenge Moore's responsibility and states that it is not alleging bad faith or fraud. We note that, in any event, the record does not support a finding of bad faith or fraud. The contracting officer states that he asked Moore to verify its price, which Moore did, and Moore vigorously defends its price here. We conclude that the contracting officer adequately considered Moore's price and his determination that it was fair and reasonable was not clearly unreasonable.^{14/}

Moore and Standard's protests are denied.

For the General Counsel:

William J. Jones

^{14/} In any event, determinations that prices are not fair and reasonable normally apply to situations where the price is too high. Monarch Marking Systems supra.