

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

44-1
April 24, 1984

FILE: B-213691

DATE:

MATTER OF: Pitney Bowes

DIGEST:

1. Allegation that agency improperly evaluated price proposals will not be considered where reevaluation indicates that protester's price still exceeds awardee's price by significant margin since protester was not prejudiced by any error.
2. Protest of technical evaluation of proposals is denied where protester has not shown evaluation to be unreasonable.
3. Protest challenging capability of awardee to perform relates to matter of responsibility which will not be reviewed absent a showing that contracting agency acted fraudulently or in bad faith.

Pitney Bowes protests the award of a contract to Rapicom, Inc. (Rapicom), under request for proposals (RFP) No. DCA200-83-R-0037 issued by the Defense Communication Agency (DCA) for medium volume facsimile machines. Pitney Bowes contends that the price and technical evaluations were not done in accordance with the criteria stated in the RFP.

We deny the protest.

The RFP requested proposals on medium (150 pages per month) and high (over 150 pages per month) volume telefax devices. Although the same RFP was utilized, certain features were required for the high volume award, while merely desirable for the medium volume award. Technical evaluations were performed separately and DCA specifically reserved the right to make a split award.

Pitney Bowes' protest concerns only the medium volume award. For medium volume machines, DCA concluded that there were no significant technical differences between the proposals and that award to other than the low offeror was

028645

not justified. Rapicom's lease to ownership price was \$446,714 lower than Pitney Bowes' lowest offered price and its straight lease price of \$2,508,172 was \$308,886 lower. Rapicom, evaluated as low, received award.

The RFP required that the facsimile machines be capable of transmitting at various speeds. CCITT Gp-1, Gp-2 and Gp-3 are the international interface standards that were specified, with Gp-1 being the slowest speed and Gp-3 the fastest. For the high volume award, capability at all three speeds was required. The slow Gp-1 standard was a desired option, but not required for medium volume machines. However, for evaluation purposes, paragraph 4A on page M-4 of the RFP indicated that for both high and medium volume machines, it was assumed that 10 percent of the machines would be ordered with the Gp-1 option.

DCA indicates that in the price evaluation for the medium volume award, it was assumed that none of the machines would be ordered with the Gp-1 option. Although recognizing that this scheme varied slightly from that specified in the RFP, DCA contends that it was consistent with the government's requirements since Gp-1 was merely a desired, rather than a required, option. In any event, DCA indicates that it reevaluated Rapicom's price using the additional monthly charge Rapicom included for the Gp-1 option and determined that the total increase over the life of the contract was insignificant and did not change the outcome.

Pitney Bowes included the Gp-1 option as a standard item and offered the same price for providing Gp-2/Gp-3 capability and Gp-1/Gp-2/Gp-3 capability. However, Pitney Bowes now argues that if it had known that Gp-1 was not going to be considered, it would have offered either a lower priced machine or else lowered the price on 90 percent of the units it offered.

We see no merit in Pitney Bowes' contention that it should now be given an opportunity to substitute lower priced equipment or reduce its price on 90 percent of the units that were offered. Pitney Bowes knew from the outset that the GP-1 option was merely desired and would be ordered on only 10 percent of the machines. However, all Pitney Bowes machines offered the Gp-1 capability as a standard feature and Pitney Bowes' decision to bid in this manner was clearly a matter of business judgment. To

permit Pitney Bowes to modify its proposal at this juncture would provide an unfair and unwarranted advantage to Pitney Bowes. Accordingly, we find that any error in evaluating price was more than offset by the overall difference in price between the two proposals and that Pitney Bowes was not prejudiced by the error. See A.T. Kearney, Inc., B-205527, July 1, 1983, 83-2 CPD 49; Mutual of Omaha Insurance Company, B-201710, January 4, 1982, 82-1 CPD 2.

Pitney Bowes also complains that although DCA's pricing comparisons relate to Rapicom's lease to purchase price, DCA is actually renting the machines from Rapicom at a significantly higher price. DCA allowed offerors to propose three types of prices: straight lease, staggered lease and lease to ownership. Under paragraph M(4)(A) of the RFP, DCA reserved the right to evaluate all pricing arrangements offered and use the discounted life cycle cost which was determined to be most advantageous. Rapicom's offer included a straight lease and a lease to ownership option. The awarded contract included both pricing options and under either option Rapicom's prices are significantly lower than Pitney Bowes'. Since price was the determinative factor and Rapicom is low under either pricing option, this allegation provides no basis to disturb the award to Rapicom.

With respect to the technical evaluation, we point out that it is neither our function nor practice to conduct a de novo review of technical proposals and make an independent determination of their acceptability or relative merit. The evaluation of proposals is the function of the procuring agency, requiring the exercise of informed judgment and discretion. Our review is limited to examining whether the agency's evaluation was fair, reasonable and consistent with the stated evaluation criteria. Crown Point Coachworks and R & D Composite Structures; North American Racing Company, B-208694, September 29, 1983, 83-2 CPD 386.

Pitney Bowes argues that there were several errors in the technical evaluation. Pitney Bowes contends that the RFP required that the facsimile machines be capable of printing and copying all transmissions and receptions and that Rapicom does not meet this "Activity Journal" specification. Pitney Bowes also argues that copy quality was not given sufficient weight and that Pitney Bowes should not have lost a point for not having 50/60-Hz capability. In addition, Pitney Bowes argues that Burroughs should have lost four points for not having Federal Communications Commission numbers.

Pitney Bowes' allegation concerning DCA's evaluation of Burroughs is not relevant to this protest and will not be considered since Burroughs did not receive an award. DCA indicates that the "Activity Journal" specification was merely desired for the medium award and that Rapicom did meet the requirement. Also, DCA indicates that copy quality tests were very important and accounted for approximately one-third of the technical evaluation. With respect to Pitney Bowes' allegation that it lost one point for not having 50/60-Hz capability, DCA indicates that this statement is in error and that Pitney Bowes did not lose any points in this area.

Based upon the record, we find that Pitney Bowes has failed to demonstrate that DCA's evaluation of proposals was unreasonable. The evaluations were conducted in conformance with the stated criteria and Pitney Bowes has not shown that there was no rational basis for DCA's conclusion that the proposals were technically equal. As a result, we will not object to the DCA technical evaluation.

Finally, we note that Pitney Bowes has questioned Rapicom's ability to provide adequate service. In response, DCA indicates that Rapicom's performance has thus far been excellent. In any event, this allegation relates to responsibility which will not be reviewed by our Office absent a showing that the contracting officer acted fraudulently or in bad faith. Educational Technology & Services, Inc., B-211231, April 22, 1983, 83-1 CPD 449. It is not alleged that either exception is present here and, accordingly, we have no basis for reviewing this matter.

The protest is denied.

William J. Fowler
for Comptroller General
of the United States