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**DECISION**



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

*J Notes under  
Proc II*

**FILE: B-186523**

**DATE: January 31, 1977**

**MATTER OF: Postal Data Corporation**

**DIGEST:**

1. Although agency overlooked pertinent material in protester's technical proposal in evaluation process, award will not be disturbed where record indicates that award would have been made to successful offeror on the basis of its substantially lower price even if the protester's material had been considered in the evaluation of its proposal.
2. Where record is not conclusive as to existence of specification ambiguity but shows that protester submitted price proposals on bases of both possible interpretations and would not have been selected for award under either, there was no prejudice to protester's competitive position.

Postal Data Corporation protests the award by the Environmental Protection Agency (EPA) of a contract to Data-Mail, Incorporated under request for proposals (RFP) No. CI 76-0058 for mailing services for technology transfer material, requiring the contractor to maintain a computerized mailing list and fulfill requests for various technology transfer publications.

Postal Data alleges that EPA not only erred in the evaluation of its own proposal but, more significantly, that the award to Data-Mail was improper and illegal because that firm's proposal failed to conform to essential specification provisions requiring the rejection of duplicate orders. Postal Data charges EPA with bad faith by effectively waiving this requirement for Data-Mail without so notifying other offerors, with the consequence that a proper price comparison could not be made among the various offers.

The subject RFP set forth seven technical evaluation criteria, with an indication of their relative weights. The RFP further stated that while technical rating would be the prime factor in the selection process, price may be considered in making the award.

Offers were received from five firms and, after technical evaluation, it was determined that three, including Data-Mail and Postal Data, were capable of performing the work and therefore were within the competitive range. Of these, Data-Mail received

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the highest technical rating (96 points) while Postal Data received the third highest rating (77 points). After final proposals were received and evaluated (the technical ranking remained unchanged), Data-Mail's evaluated price was lowest at \$66,550 while the protester's price of \$120,197 was the highest of the three, resulting in the award to Data-Mail.

Concerning the alleged error committed by EPA in the evaluation of the protester's proposal, the protester takes exception to the fact that it received only 20 of a possible 30 points for each of the first two evaluation criteria entitled "past experience with computerized mailing lists" and "past experience with mass mailings of similar type publications." Specifically, the evaluation summary stated that apparently this would be the first computerized mailing contract for the protester and that no indication was provided in the protester's proposal as to current or past contracts for this type of work.

The protester notes that EPA failed to consider the cover letter to its proposal advising that the protester is presently performing similar work for the National Flood Insurer's Association, and "If the project officer only bothered to contact" that association, the experience could have readily been verified. Moreover, Postal Data claims there are other statements in its proposal indicating prior experience.

EPA admits that through unintentional error the protester's cover letter was not included with the technical proposal when it was transmitted for evaluation. However, EPA points out that the references to past experience in the protester's proposal provided no information indicating the size of the mailings involved nor the number and extent of contracts making use of computerized mass mailing service so that it is unlikely that the evaluators would have given the protester a more favorable rating in these areas. Moreover, EPA states that even if the protester's cover letter had been included in the evaluation and even if inclusion of this information would have improved the protester's technical rating, Data-Mail would nonetheless have received the award on the basis of its substantially lower price.

We are not in a position to judge how many of the 20 points deducted from the protester's score for past experience would not have been deducted if the protester's cover letter had been considered by the evaluators, as it should have been. We note,

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however, that even had the protester received a perfect rating of 30 points under each of the two areas in controversy (which is not certain), its technical rating would be 97 points compared to Data-Mail's 96. In view of such a virtual technical parity, we do not disagree with EPA that the award to Data-Mail at its substantially lower price would be justified. Therefore, we cannot say that EPA's failure to consider the cover letter affected the outcome of the contractor selection process so as to prejudice the protester.

We reach a similar conclusion with respect to Postal Data's allegation that Data-Mail failed to comply with the specification requirements. That allegation is predicated on Postal Data's position that there is a difference between "rejection" of duplicates and duplicate "elimination". According to the protester, the specifications required "rejection", allegedly a more complicated and expensive process than "elimination", while Data-Mail's system merely eliminates duplicates but does not reject duplicate orders.

EPA denies that there is any material difference between "elimination" and "rejection" of duplicates and denies that it waived any of the requirements set out in the RFP's statement of work. It contends that the contract awarded to Data-Mail contains a statement of work identical to that specified in the RFP and that Data-Mail provided sufficient information in its proposal to enable EPA to determine that it was technically qualified to perform the work required.

It is not clear from this record whether there is a meaningful difference between duplicate rejection and elimination of duplicates and whether the specifications required one or the other. If there is such a distinction, and if the specifications did not unambiguously indicate what was required, with the result that offerors did not compete on an equal basis, the award of the contract would be subject to objection. However, it is clear from the record that offerors did compete on an equal basis and that the protester was not prejudiced by its understanding of the specification requirements.

In this regard, the record shows that when Postal Data learned that the requirements might not be as stringent as it had thought originally, it informed EPA by letter of April 12, 1976 that its price for adding or changing a name and address could be reduced substantially. EPA reports that Postal Data's reduced price would have reduced its total price by some \$16,000, but that Postal Data's total price was still substantially higher than that submitted by either the low or second low offeror, and therefore

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would not have been selected for award. Under these circumstances, it appears that the protester in effect submitted an offer on the same basis as the other offerors and that its competitive position was not affected by any possible ambiguity in the specifications.

We note Postal Data's contention that if only duplicate elimination was required, there was no basis for a negotiated procurement because all other aspects of the required work are "standard deliverables" which could be procured by formal advertising and that, in this connection, the resulting contract does not incorporate the winning offeror's technical proposal but only the Government's specifications, which is what happens under formal advertising. We point out, however, that contrary to the protester's apparent perception, technical proposals need not always provide contractor "specifications" for inclusion in a contract, but in appropriate circumstances may provide what is essentially information bearing on the technical capability of the offeror to perform. See, e.g., Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325; 52 Comp. Gen. 865 (1975); SBD Computer Services Corporation, B-186950, December 21, 1976, 76-2 CPD 511. We further point out that the decision to negotiate in this case is supported by a determination and findings (D&F) pursuant to Federal Procurement Regulations § 1.3-210(b). We do not believe the record establishes that "the determination to negotiate \* \* \* is not rationally founded within the limits of existing law." Nationwide Building Maintenance, Inc., 55 Comp. Gen. 693, 699 (1976), 76-1 CPD 71.

In view of the above, the protest is denied.

  
Deputy Comptroller General  
of the United States