



Comptroller General  
of the United States

10171810

Washington, D.C. 20548

REDACTED VERSION

## Decision

**Matter of:** Ascom Hasler Mailing Systems, Inc.

**File:** B-257327

**Date:** September 22, 1994

Cathleen M. DeMarco, Esq., Dillon, Bitar & Luther, for the protester.

Grace Bateman, Esq., and Trisa J. Thompson, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Pitney Bowes, an interested party.

Barbara E. Harrison, Esq., Department of Justice, for the agency.

Adam Vodraska, Esq., and Guy Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. In a negotiated procurement for the award of a fixed-price, indefinite quantity contract for assorted mailing machines and equipment, the awardee's deviation from the solicitation's instructions for the preparation of price proposals did not require the rejection of the awardee's proposal, where sufficient information was provided to allow the agency to determine exactly what had been offered and at what fixed price.

2. Protest that awardee's descriptive literature did not show that awardee's proposed weighing scale could provide rate information for special delivery mail, as required by the solicitation, is denied where the awardee's scale incorporated replaceable "programmable read only memory" microchips, which allow for the programming of any postal rates including special delivery, and the awardee unequivocally promised to provide scales that satisfied all the postal rate requirements.

The decision dated September 22, 1994, contained confidential source selection sensitive information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

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**DECISION**

Ascom Hasler Mailing Systems, Inc. protests the award of a contract to Pitney Bowes, Inc. under request for proposals (RFP) No. JOJMD-94-R-0011, issued by the Department of Justice, for postage meters, mailing machines, weighing scales, shipping systems, and related servicing and training at various locations throughout the country. The protester contends that Pitney's proposal is technically unacceptable.

We deny the protest.

The RFP contemplated award of a fixed-price, indefinite quantity contract for the rental and/or acquisition; and installation; and maintenance of mailing machines, shipping systems, weighing scales, and postage meters for a base period and 4 option years.<sup>1</sup> Minimum and maximum quantities of equipment and services that could be ordered under the contract were set forth. Section B of the RFP, the Schedule of Supplies or Services, also stated the estimated quantities of equipment and services against which offerors' fixed unit prices would be applied in preparing price proposals.

Detailed specifications were provided for each of the types of mailing system equipment to be provided. For example, offerors were informed that "0-30 pound capacity" weighing scales must have--among other things--replaceable rate programmable read only memory (PROM) microchips and be capable of displaying rates for United States Postal Service first class, priority, third class, fourth class, special fourth class (book), registered, certified-return receipt, special delivery; international air and surface, and express mail delivery and for United Parcel Service ground, next day, and second-day delivery. Also, offerors were informed that proposed postage meters for district offices, headquarters, mailrooms, and distribution center locations must be capable of storing specified information for at least 10 separate accounts; this multiple account requirement did not apply to postage meters for small office locations. Technical proposals and descriptive literature were requested to demonstrate that offered products satisfied the RFP's requirements.

Technical evaluation factors and their weights were stated for a comparative ranking of proposals, and a best value basis for award identified. Offerors were informed that

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<sup>1</sup>The use of postage meters is licensed by the United States Postal Service and can only be provided by authorized vendors, such as Pitney and Ascom, under rental agreements.

price and the technical evaluation factors were equally important in determining which offer was most advantageous to the government, but that between substantially equal technical proposals, price would be the determining factor.

Justice received proposals from Pitney and Ascom in response to the RFP. Discussions were conducted, and best and final offers (BAFO) received. Pitney's proposed BAFO price was evaluated to be [DELETED] while Ascom's price was evaluated to be [DELETED]. Justice determined that Ascom's and Pitney's BAFOs were substantially technically equal and made award to Pitney on the basis of its lower proposed price. This protest followed. Subsequently, the agency concluded that it erred in its price evaluation of Pitney's and Ascom's BAFOs.<sup>2</sup> As a result of Justice's revised price evaluation, Pitney's evaluated price was increased [DELETED], while Ascom's evaluated price was decreased [DELETED]; Pitney's BAFO remained the lowest priced.

Ascom first protests that Pitney has not promised to provide the quantities of small office mailing machines required by the RFP. Specifically, Ascom argues that Pitney proposed to provide [DELETED]. Because the RFP, for the base year, stated estimated quantities of 800 units for mailing machines and 600 units for postage meters, Ascom contends that by this error Pitney did not offer to provide all the required mailing machines and was therefore "nonresponsive."<sup>3</sup>

The RFP allowed offerors to propose either a rental or purchase mailing machine unit for small offices. If the offer was for a "stand-alone" unit (i.e., the postage meter is not removable), the entire price was to be entered in the CLINs for the rental of mailing machines. If the postage meter was separable, a price was to be entered in the small

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<sup>2</sup>Pitney and Ascom offered different configurations of equipment, which resulted in the offerors' pricing of different contract line item numbers (CLINs). Justice's initial price evaluation did not account for the different configurations with regard to the required quantities of equipment and systems. Justice, however, performed a revised price evaluation to account for the different configurations and to correct the estimated quantities against which the offerors' prices were applied. Ascom does not protest the reasonableness of the revised price evaluation.

<sup>3</sup>Since this is a negotiated procurement, the concept of responsiveness is not strictly applicable. See Hust Bros., Inc., B-255363.2, Mar. 14, 1994, 94-1 CPD ¶ 192.

office mailing machine CLINs and the rental price for the meter was to be entered in the postage meter rental section.

Pitney offered its model [DELETED] for its small office mailing machines; this machine is a [DELETED]. Because the model [DELETED]. Contrary to the RFP's pricing instructions, Pitney included its [DELETED]. Ascom, on the other hand, offered a mailing machine base and a separate, removable postage meter; accordingly, Ascom priced both the mailing machine and postage meter CLINs, as instructed by the RFP.

In performing its price evaluation, Justice failed to recognize that the pricing of Pitney's mailing machine/postage meter configuration in the postage meter CLINs resulted in Pitney's fixed prices being applied against lower quantities than those against which Ascom's fixed prices for mailing machines and postage meters were applied. After Ascom's protest to this Office, Justice realized its price evaluation error, and the agency ? recalculated Pitney's prices so that both offerors would be evaluated on the basis of the same number of complete functioning mailing machine and postage meter units for the base year and the option years. As noted above, Justice found that Pitney's BAFO price continued to be low.

Ascom does not challenge Justice's revised price evaluation but asserts that Pitney's pricing proposal demonstrates that Pitney had not promised to provide all the quantities required under the contract. We disagree. A contractor is obligated under an indefinite quantity contract to furnish all the supplies and services ordered by the government, up to the stated maximum quantity. See Federal Acquisition Regulation § 16.504 (FAC 90-4). Here, Pitney promised to perform the contract in accordance with the stated ordering and delivery requirements and is thus obligated to provide all the quantities of weighing scales ultimately ordered by Justice, up to the contract's stated maximum quantity.

While Pitney failed to prepare its price proposal as instructed by the RFP, sufficient information was provided to allow the agency to determine that Pitney had offered a [DELETED] and that Pitney's fixed price for this configuration was contained in its [DELETED] CLINs. Rather than raising a problem with the technical acceptability of Pitney's proposal, Pitney's pricing irregularity required the agency to ensure that the same quantities of mailing machine/postage meter systems were used for each offeror in the agency's price evaluation. As noted above, the agency reevaluated the offerors' BAFO price proposals to provide for this, and Ascom does not challenge the agency's revised price evaluation.

Ascom also protests that Pitney failed to demonstrate that its proposed equipment satisfied all the RFP's specifications. Specifically, Ascom asserts that Pitney's descriptive literature for its offered "0-30 pound capacity" weighing scale does not state that the scale provides mailing rates for special delivery and that Pitney's proposed postage meter cannot store information for up to 10 accounts, as required.<sup>4</sup>

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since it is responsible for defining its needs and the best method of accommodating them. Thus, our Office will not make an independent determination of the merits of a technical proposal; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Here, we find that the agency reasonably determined that Pitney's proposed weighing scale and postage meters satisfied the RFP's requirements.

Pitney addressed the RFP's weighing scales requirement in its technical proposal and descriptive literature. While Pitney's descriptive literature did not specifically state that its proposed scales provided rates for special delivery, sufficient information was provided to allow the agency to reasonably determine that Pitney's scales would provide these rates. Specifically, Pitney's weighing scales use replaceable PROMs, as required by the RFP, to provide all the required rate information. These microchips are capable of being programmed for any rate information, including that for special delivery. Given the technology proposed to provide the required rate information--programmable microchips--and that Pitney had unequivocally promised to provide all the required rates, we think that Justice could reasonably conclude that Pitney had offered to provide scales that were programmed for all the required rates, including special delivery.

Regarding the required postage meters, Pitney proposed to provide its model [DELETED] for small office locations and its model [DELETED] for all other required locations. Model [DELETED] is capable of storing information for only 1 account, while model [DELETED] can store information for 10 accounts, as required by the RFP. Ascom does not assert

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<sup>4</sup>Ascom argues that the failure of Pitney's descriptive literature to show that its weighing scales is programmed for special delivery rates renders Pitney's proposal "nonresponsive." As noted above, the concept of responsiveness is not generally applicable in a negotiated procurement. See West Bros., Inc., SURDA.

that Pitney's model [DELETED] does not satisfy the solicitation's account requirements but argues that the contract awarded to Pitney only requires the awardee to provide its single account postage meter, model [DELETED]. Specifically, Ascom refers to the special note placed on the cover of the contract by Justice, which states as follows:

"The prices for the Small Office Machines (CLINs 0001, 1001, 2001, 3001, 4001), and Maintenance (CLINs 1025, 2025, 3025 and 4025) are included in CLINs 0038, 1038 through 1041, 2038 through 2041, 3038 through 3041, and 4038 through 4041. The Pitney Bowes [DELETED] which meets the small office mailing machine needs, is a [DELETED] and, therefore, separate prices are not applicable to the above contract line item numbers."

Justice states that this note was included in the contract to clarify Pitney's rental pricing for model [DELETED] and does not limit Pitney's contractual obligation to provide both models [DELETED] as proposed. We agree. Pitney unequivocally promised to provide both models to satisfy the solicitation's appropriate office location requirements. This note does not limit or reduce that promise but merely identifies in which CLINs the model [DELETED] pricing can be found.

The protest is denied.

Robert P. Murphy  
Acting General Counsel