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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pitney Bowes, Inc.--Request for Reconsideration
File: B-233100.2
Date: June 22, 1989

DIGEST

Request for reconsideration of prior decision denying protest of evaluation of proposals is denied where protester does not establish any factual or legal errors in the prior decision.

DECISION

Pitney Bowes, Inc., requests reconsideration of our decision in Pitney Bowes, Inc., B-233100, Feb. 15, 1989, 68 Comp. Gen. ___, 89-1 CPD ¶ 157, wherein we denied its protest of the Internal Revenue Services' (IRS) award of contract to Bell and Howell Company, under request for proposals (RFP) No. IRS-88-021, for multifunctional document handling systems.

We deny the request for reconsideration.

In our prior decision, we concluded that the IRS reasonably determined that the proposed Bell and Howell document handling system offered superior performance and ease of use and that, notwithstanding Pitney Bowes' lower price, the agency therefore had a reasonable basis for making award to Bell and Howell.

In reaching our conclusion, we rejected Pitney Bowes' allegation that the agency improperly conducted the evaluation pursuant to unstated guideline preferences in the source selection plan that were inconsistent with the stated criteria, because the agency rated Bell and Howell superior in some areas based on proposed system features that were specified as preferable in the guidelines. For example, the solicitation imposed stringent performance and reliability requirements while the guidelines indicated that evaluators should consider whether proposed systems offered a "rugged design;" the IRS found the system proposed by Pitney Bowes to be less desirable because of its less rugged design and the likely need for more maintenance.

We found that the guidelines were consistent with the specifications, which were primarily stated in terms of performance requirements, and merely reflected what the agency, based on prior experience, reasonably viewed as superior technical approaches to satisfying certain performance requirements. With respect to disclosure of the guidelines we concluded that:

> "We see no reason why the IRS should have been required to disclose the evaluation guidelines instead of requiring offerors to use their own inventiveness and ingenuity in devising approaches that will meet the government's requirements. See generally Mark Dunning Industries, Inc., B-230058, Apr. 13, 1988, 88-1 CPD ¶ 364. Again, where a solicitation allows for alternative approaches to meeting a performance requirement, the manner in which offerors are to fulfill the requirement need not be specified in the solicitation, see Personnel Decision Research Institute, B-225357.2, Mar. 10, 1987, 87-1 CPD ¶ 270, nor must the agency advise a technically acceptable offeror during discussions that another approach is considered superior. See generally Loral Terracom, et al., 66 Comp. Gen. 272 (1987), 87-1 CPD ¶ 182."

In its request for reconsideration, Pitney Bowes does not question our conclusion that the IRS reasonably determined that Bell and Howell proposed a superior system; rather, Pitney Bowes challenges our holding that the unstated guidelines were not requirements or evaluation factors that had to be disclosed in the RFP. Specifically, Pitney Bowes argues that the decisions we cited in support of our conclusion in fact do not support our position. Pitney Bowes maintains that Mark Dunning Industries, Inc., B-230058, supra, and Personnel Decision Research Inst., B-225357.2, supra, were not controlling because the basis for evaluation in those cases, unlike here, was implicit in the solicitation, and that Loral Terracom, et al., 66 Comp. Gen. 272, supra, actually supports its argument that an agency has an obligation to advise offerors if it becomes aware of a superior approach to meeting its requirements.

We find Pitney Bowes' argument to be without merit. The cases in question indeed did not involve facts identical to those under consideration, and were not presented as such. Rather, the cases involved some similar relevant facts and were cited for the purpose of identifying the general legal principles on which our reasoning was based. In Mark Dunning, for example, the protester argued that the

agency should have disclosed a manning level developed in-house as a guide in evaluating proposed manning; we held that such internal judgments as to what is necessary to perform the work need not be disclosed to offerors, and that the agency need only put offerors on notice that the area will be evaluated. We cited this holding, not as controlling precedent, but to convey our general view that an agency need not disclose what it considers to be the optimal approach to performing the work; rather, offerors properly may be left to use their own ingenuity to develop the best means of performing the work. Consistent with this principle, we concluded that the IRS was not required to disclose its guidelines to Pitney Bowes and other offerors.

We also do not agree that our Loral Terracom decision supports the protester's position. That case involved not undisclosed internal preferences for a certain approach, but a solicitation requirement that one approach be used and the acceptance of a proposal offering a different approach the agency determined was superior. We sustained the protest on the basis that the agency should have advised all offerors of its relaxation of the requirement that a single approach be used and given them an opportunity to revise their proposals. We cited Loral Terracom in our prior decision for the ancillary proposition that the agency there, and the IRS in the case at hand, was not permitted to advise one offeror of another offeror's acceptable approach once it was determined to be superior.

Pitney Bowes suggests that the cited cases are also distinguishable from the facts in its protest on the basis that they concerned procurements for services rather than, as here, supplies. This distinction is irrelevant; whether a procurement covers supplies or services, we see no reason why an agency should not be permitted to require offerors to use their own inventiveness and ingenuity in devising approaches that will best meet the government's performance requirements, even where the agency may already have developed what it considers to be a preferred approach.

Pitney Bowes argues that our decision was inconsistent with several recent decisions of the General Services Administration Board of Contract Appeals (GSBCA). However, while GSBCA decisions may be instructive, they are not binding with regard to unrelated matters before our Office. In any event, we have examined the cited cases and find them inapposite here; in Contel Federal Systems, Inc., Dec. 14, 1988, GSBCA No. 9743-P, 1988 BPD ¶ 311, for example, the GSBCA found, not that the agency had failed to disclose internal guideline preferences, but that the evaluation improperly had been based on a different

weighting of evaluation factors than had been specified in the solicitation. Again, this holding is not inconsistent with our prior decision.

As Pitney Bowes has not presented evidence of factual or legal errors in our prior decision, the request for reconsideration is denied. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1988).

James F. Hinchman
General Counsel