



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Mailing Systems

File: B-251932.3

Date: August 4, 1993

Cathleen M. DeMarco, Esq., Dillon, Bitar & Luther and Burton J. Tepper for the protester, Grace Bateman, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Pitney Bowes, Inc., an interested party, Linda A. Leonard, Esq., United States Coast Guard, for the agency.

Jacqueline Maeder, Esq., and Robert C. Arsenoff, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly placed rental order with Federal Supply Schedule vendor offering the lowest price for the equipment meeting its minimum needs.

DECISION

National Mailing Systems (NMS) protests the issuance of delivery order No. DTCG23-93-D-TMAB44 by the United States Coast Guard, Department of Transportation, for mailing equipment to Pitney Bowes, Inc. (PBI) under multiple award Federal Supply Schedule (FSS) contract GS-00F-7166A.

We deny the protest in part and dismiss it in part.

The agency issued the delivery order to PBI on December 22, 1992, for a 10-month rental of various pieces of mailing equipment to be used at 13 different Coast Guard locations. The 10-month rental is for a pilot program during which the Coast Guard intends to test the functionality of the equipment to determine which functions are required by its various installations. After the test period and evaluation of equipment functions is complete, the Coast Guard plans to issue a competitive solicitation for the purchase of mailing equipment. The delivery order was for a total rental price of \$74,631.10. The equipment ordered included four machines offered by PBI called Paragon, and accessories, including, for example, postage meters, folder and shipping systems. Additionally, the Coast Guard rented three model 5600 automatic mailing machines, two E-670 semi-automatic mailing machines, and one 6105 automatic mailing machine. Again,

accessories for each mailing machine, including, for example, electronic scales (models B-510, A-530, and B-610) and postage meters were included in the rental. One interface (model B-586), required for the operation of the model B-610 scale, was also rented.

Prior to issuing the delivery order, in September 1992, the agency's technical representative met with representatives of NMS and PBI to discuss the technical capability of their respective mailing equipment. During the 6 to 8 meetings with NMS, the agency's technical representative viewed NMS' "whole line of equipment," including entry level equipment, intermediate and automatic systems, a machine called the Champ, and a mail manifest system. The agency representative similarly viewed PBI equipment and, after analyzing the equipment offered by both firms, the Coast Guard determined that PBI's equipment better met the agency's specifications which centered around the fact that the meter equipment must be easy to operate with efficient and reliable service.

NMS challenges the Coast Guard's decision to place an order with PBI for the 5600, E-670, and 6105 mailing machines and accessories.¹ The protester principally argues that the Coast Guard did not synopsise the procurement, never provided the protester with adequate specifications reflecting the agency's minimum needs, never compared its products to PBI's, and never asked for its schedule prices to perform a proper price comparison. In summary, NMS submits that these failures caused the agency to ignore the fact that its comparable equipment "can meet [the] minimum requirements of the U.S. Coast Guard at a lower price."²

¹While NMS does not challenge the agency's selection of Paragon equipment on the basis that it does not meet the government's minimum needs, the protester contends that the rental of Paragon equipment exceeds the maximum order limitation (MOL) for that item. The MOL is a dollar amount or unit quantity stipulated in most schedules above which agencies shall not submit orders and contractors shall not accept orders. Federal Acquisition Regulation (FAR) § 8.404-1(c). In this case, special item No. [SIN] 50-205 covered equipment rentals in both PBI's and NMS' schedule contracts, and in each contract there was no MOL applicable to rentals under SIN 50-205. Thus, NMS' sole objection to the rental of Paragon equipment is without merit.

²In the protester's July 12, 1993 comments on the agency report, NMS' account manager stated that the "first time I met with" the agency's technical representative (no later
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The FSS program managed by the General Services Administration (GSA) provides federal agencies with a "simplified process for obtaining commonly used supplies and services at prices associated with volume buying." See FAR § 8.401(a); 41 C.F.R. § 101-26.402-1(a) (1992). When placing an order under an FSS, the procuring agency is not required to seek further competition, synopsise the solicitation or award, or to determine fair and reasonable pricing, since the planning, solicitation, and award phases of the FSS comply with FAR requirements. See FAR § 8.404(a); 41 C.F.R. § 101-26.401(a).

When ordering from the FSS, the procuring agency is required to place orders with the schedule contractor offering the lowest delivered price for products meeting the needs of the government. FAR § 8.405-1. The determination of the agency's minimum needs and which product on the FSS meets those needs is properly the agency's responsibility, and thus we will only examine the agency's assessment of technical acceptability to ensure that it has a reasonable basis. See TSI, Inc., B-249815, Dec. 22, 1992, 92-2 CPD ¶ 429; American Body Armor & Equip., Inc., B-238860, July 3, 1990, 90-2 CPD ¶ 4.

Here, the Coast Guard reports that the mailing equipment will be used to meet a U.S. Postal Service mandate that all government entities use metered mail. The Coast Guard explains that it does not have a qualification code designating an employee as a mail clerk; therefore, mail processing duties are assigned to Coast Guard personnel on a part-time basis. According to the Coast Guard, these part-time clerks, who apparently continue to perform their regular duties, are "already over-burdened" and, therefore, the mail equipment, as noted above, must be easy to operate.

²(...continued)

than September 1992), he provided a business card which displayed what the protester identified as a PBI logo next to the Coast Guard insignia "giving the appearance of an endorsement to a specific vendor." In the final July 29, 1993, post-hearing comments, NMS' counsel for the first time argued that an alleged "special relationship" between the agency's evaluator and PBI--as principally evidenced by the business card--constituted a conflict of interest which resulted in a bias against NMS. Since the basis of this ground of protest was known during the last 4 months of 1992 and the issue was not raised until mid-July 1993, the allegation--which otherwise appears speculative at best--is dismissed as untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1993) (protests other than those based on apparent solicitation improprieties shall be filed not later than 10 days after the basis of protest is known).

The Coast Guard explains that PBI's equipment is, in its judgment, easier to use than the NMS equipment. For example, the agency states that NMS' 335AS mailing system, which it believes to be comparable to PBI's 5600 mailing system, cannot process 9-inch by 12-inch envelopes automatically or handle sealed and unsealed envelopes at the same time. If an envelope jams the 335AS, the operator must remove the entire feed deck to clear it; with the 5600, the operator only lifts a lever on the feed deck and removes the envelope. Similarly, the agency points to easier operation of PBI's meter resetting systems. According to the agency's technical representative, the PBI meter resetting system can be reset in less than 90 seconds with a toll free call, while the NMS system requires a separate dedicated analog phone line and, if operator assistance is required, the mail clerk must dial a different 800 phone number. As to service, the agency found that PBI has a nationwide service network of over 2,500 factory-trained service personnel and that NMS does not have such an extensive, factory-trained service force. Additionally, because PBI service personnel use portable computers in the field, replacement parts can be ordered directly from their central supply facilities and shipped overnight for next-day installation. NMS does not have a similar portable computer-based response system. Based on this evaluation, the Coast Guard determined that the PBI equipment better met its needs for easy to operate equipment and quick, efficient service.

The protester does not argue that the Coast Guard does not require these capabilities³ or that PBI's equipment does not possess them. Rather, as outlined above, the protester argues that the agency did not properly compare the features of NMS equipment to the PBI equipment that was ordered. For example, NMS states that its 335AS can process 9-inch by 12-inch envelopes automatically. The protester, however, does not rebut the agency's other findings, for example, the finding that the 335AS mailing machine cannot process sealed and unsealed envelopes at the same time or the process the agency describes as being required to clear the machine of jammed envelopes. Moreover, NMS insists that the agency did not compare the appropriate NMS equipment to the mailing

³NMS does argue that the agency never adequately specified its needs. At the hearing on the protest held at our request on July 27, 1993, the agency's technical representative listed 8 minimum needs that he stated he had provided to all FSS contractors. Although the protester contends that it was never apprised of these needs, there is no requirement under the regulations governing the use of the FSS that contractors be given agency needs. See FAR § 8.401 et seq.

machines or scales which were rented. For example, while the agency compared NMS' mailing machine model 335AS to the PBI 5600, the protester alleges that its model 320IAS is "more comparable" to the 5600.⁴ Similarly, while the agency compared NMS scale model 1010 to PBI's scale model B-510, the protester states that its model 1010L is more comparable to the B-510.

Because the record developed by both parties prior to the hearing reflected considerable confusion as to whether the agency had properly advised the protester of its needs and had properly compared appropriate NMS models to those actually ordered from PBI, the protester was given an opportunity to supply such a comparison. In each case, the NMS model deemed comparable to the PBI model ordered has a higher overall rental price.⁵ For example, NMS compares its model 1010L scale to PBI's B-510 scale. The 1010L rental price for 10 months is \$892.50; the rental price for the B-510 is \$530.80. NMS compares its model 320IAS mailing machine to PBI's 5600 model. The rental prices are \$3,421.30 and \$1,065.20, respectively. Similarly, NMS compares its model 335HASNHSO mailing machine to PBI's 6105 mailing machine. Again, NMS' rental price is higher at \$5,533.30 for 10 months compared to PBI's 10-month rental price of \$1,993.60.

In light of the fact that the protester's own analysis of the comparability of its models to those ordered from PBI's schedule reveals that the awardee's equipment is less expensive in every case,⁶ we find that even if the agency

⁴At the hearing, the protester compared the PBI 5600 mailing machine to its model 335AS4.

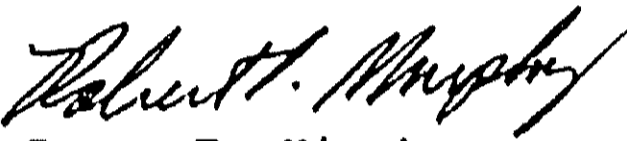
⁵Rental prices under the schedule are expressed in terms of a negotiated percentage of the schedule purchase price resulting in a monthly rental figure. PBI's equipment rents for 4 percent of the purchase price per month; NMS' equipment rents for 10 percent of the purchase price per month. Given the vast difference in rental terms offered, PBI equipment which is more expensive to purchase than NMS equipment can rent for less than NMS equipment. Until the hearing on the protest, both parties erroneously made various arguments based on purchase prices.

⁶Only one PBI postage meter model rented under the delivery order has a higher rental price than the comparable NMS model and, in the quantities ordered, will cost the Coast Guard a total of \$120 more than the rental of a comparable NMS meter for the 10-month pilot program. Postage meters, however, are not covered under FSS contracts and thus are

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had somehow failed to provide the protester with detailed specifications and otherwise failed to properly evaluate NMS' equipment--as the protester alleges--NMS was not, in fact, prejudiced by the alleged failure since it did not have equipment at a price lower than PBI's. Likewise, the protester was not prejudiced by any alleged failure by the agency to examine NMS' price list before it placed the order with PBI since such an examination could not have led to a conclusion that NMS had lower-priced equipment. Accordingly, and notwithstanding the alleged deficiencies, we have no basis to object to placement of the order in this case since it did, in fact, comply with FAR § 8.405-1(a), requiring that orders be placed with the schedule contractor offering the lowest delivered price.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel

⁶(...continued)

rented on an "off schedule" basis. In spite of the higher rental price for this model, we agree with the agency's position that ordering a non-PBI meter to be linked to a system comprised solely of other PBI equipment in order to achieve a possible savings of \$120 on a \$71,000 order is not justified in terms of, among other things, serviceability during the pilot program period because of the administrative burden of possibly having to contact more than one service representative in the event of a system malfunction.