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## Decision

**Matter of:** Pitney Bowes, Inc.

**File:** B-412185.2; B-412185.3; B-412186.2; B-412186.3

**Date:** May 6, 2016

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William A. Shook, Esq., The Law Offices of William A. Shook PLLC, for the protester.

Andrew J. Mohr, Esq., Daniel Strouse, Esq., and Catherine K. Kroll, Esq., Cohen Mohr LLP, for Neopost USA, Inc., the intervenor.

Jerry S. Hiett, Esq., and Robert D. English, Esq., Federal Bureau of Investigation, for the agency.

Peter D. Verchinski, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest contentions that the agency did not reasonably evaluate the awardee's quotations of equal products under brand name or equal solicitations is denied where the solicitations lacked salient characteristics and the products accepted as equal were not shown to be significantly different from the brand name products.

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### DECISION

Pitney Bowes, Inc., of Stamford, Connecticut, protests the Federal Bureau of Investigation's (FBI) award of two contracts to Neopost USA, Inc., of Milford, Connecticut, under solicitation No. DJF-15-2100-PR-0020579 (No. 20579) and solicitation No. DJF-15-2100-PR-0022525 (No. 22525), for mail tracking systems. Pitney Bowes asserts that the agency failed to properly evaluate Neopost's quotations.

We deny the protest.

## BACKGROUND

On September 10, 2015, the FBI posted two similar solicitations as commercial item acquisitions on the FedBid website.<sup>1</sup> The solicitations restricted competition to vendors holding contracts under the General Service Administration's (GSA) Federal Supply Schedule (FSS). The solicitations sought to procure, on a brand name or equal basis, mail tracking systems, including items such as hand-held portable scanners (or "tracking assistants"), computer workstations, software licenses, and servers. The solicitations identified Pitney Bowes' products from its FSS contract as the brand name items to be procured.

More specifically, solicitation No. 20579 sought a mail tracking system for the FBI's Quantico, Virginia, location. The solicitation listed 18 contract line item numbers (CLIN) with Pitney Bowes' model numbers and descriptions. Solicitation No. 20579 at 12. As examples, CLIN 010 specified "MODEL T56C; PORTABLE TRACKING ASSISTANT," CLIN 015 identified "MODEL EMOU; SENDSUITE SERVER HARDWARE," and CLIN 016 specified "ONSITE WARRANTY MAINTENANCE FOR BASE YEAR." Id. The solicitation contained no further description of the items, and indicated that the "Target Price" for all items was \$80,000. Id. at 9.

Solicitation No. 22525 sought mail tracking systems for the FBI's Washington, D.C., headquarters and Cheverly, Maryland, locations. The solicitation consisted of 23 CLINs--the same items as solicitation No. 20579, along with additional items such as CLIN 002 "MODEL T5FF; IMAGING SOFTWARE" and CLIN 018 "ANNUAL MAINTENANCE FOR HEADQUARTERS BASE YEAR." Solicitation No. 22525 at 12. The solicitation also contained no further description of the items, and provided a "Target Price" of \$351,000. Id. at 9.

Of relevance here, the solicitations included the Federal Acquisition Regulation (FAR) brand name or equal clause 52.211-6, which informs offerors that to be considered for award, proposals for equal products have to include sufficient information to show that the offered items meet the salient characteristics listed in the solicitation. See Solicitation No. 20579 at 11; Solicitation No. 22525 at 11. In addition, the solicitations stated:

**Brand Name or Equal:** The Buyer is allowing Sellers to submit bids for alternate items, provided those items meet all of the salient physical, functional, or performance characteristics specified by this solicitation. Sellers MUST enter exactly what they are bidding (including make, model and description) into the blank description field in order for the bid to be considered. The Buyer will evaluate 'equal'

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<sup>1</sup> FedBid, Inc., is a commercial online procurement services provider that runs a website at FedBid.com.

items on the basis of information furnished by the Seller or identified in the bid and reasonably available to the Buyer. The Buyer is not responsible for locating or obtaining any information not identified in the Bid.

Solicitation No. 20579 at 10; Solicitation No. 22525 at 10. Neither solicitation, however, contained or made reference to any salient characteristics of the identified Pitney Bowes brand name products.

On September 14, 2015, both Pitney Bowes and Neopost submitted quotations for the solicitations, with Pitney Bowes offering the brand name products and Neopost offering equal products.<sup>2</sup> After evaluating the quotations, the FBI awarded both contracts to Neopost.<sup>3</sup> Pitney Bowes timely protested the awards, asserting that the awards were improper because Neopost did not have certain requirements relating to maintenance on its FSS contract, and because Neopost's FSS contract did not include items that matched salient characteristics of several of Pitney Bowes' products. For example, Pitney Bowes alleged that its T56C portable tracking assistant had features that were not found on Neopost's portable tracking assistant. In response, the FBI stated that it would take corrective action by re-evaluating the quotations and making a new award decision. Thereafter, our Office dismissed Pitney Bowes' protests. Pitney Bowes, Inc., B-412185, B-412186, Oct. 26, 2015 (unpublished decision).

In the course of implementing its corrective action, the agency conducted discussions with the two vendors. Legal Memorandum at 2. During discussions, Pitney Bowes was informed that its quotation contained no significant weaknesses or deficiencies, while Neopost was informed that its quotation contained one deficiency. Specifically, Neopost was informed that the item it had proposed for a server lacked the capacity to store several years of package tracking data, and that "to be considered 'equal' to the Government's requirement, proposed servers had to be capable of storing a minimum of two years' worth of data." Contracting Officer's (CO) Statement at 1; Agency Report (AR), Tab 8, Discussions Letter, at 1. In response, Neopost revised its quotation to include (at no additional cost to the FBI)

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<sup>2</sup> The solicitations refer to both bids and offers being requested, and the agency report refers to quotations. For purposes of this decision, we adopt the agency's use of the term quotations.

<sup>3</sup> With regard to the evaluation criteria for award, the solicitations stated, among other things, that "[s]ellers understand that FedBid ranks all Bids by price," and that "award will be made to the responsible Seller whose offer conforming to the solicitation will be most advantageous to the Buyer on the basis of price, technical capability, delivery, and past performance." Solicitation No. 20579 at 10; Solicitation No. 22525 at 10.

an additional hard drive capable of retaining the data. CO Statement at 1-2. The FBI gave both vendors a new deadline of December 2 to submit final quotation revisions.

After receiving final quotations, the agency sought clarifications from Neopost regarding whether all items it had quoted were included on its GSA FSS contract. CO Statement at 2. Neopost responded by submitting pages from its FSS contract that identified Neopost's proposed products' model numbers and included product descriptions. AR, Tab 11, Neopost Dec. 22, 2015 Reply, at 2-10. On these excerpts from its FSS contract, Neopost included hand-written notes identifying the solicitations' CLINs that corresponded to the items being offered in its quotation. For example, with regard to solicitation No. 20579, Neopost wrote "010" next to the entry in its FSS contract for Model No. IDS55NCK-N, description "WTS-P MC55 Delivery Scanner: Includes scanner requires IDSMBSLIC – Mobile Software License." Id. at 4. Neopost also wrote "010" next to Model No. IDSMBSLIC-N, description "WTS-P Mobile Software License." Id. at 2.

The agency concluded that both vendors had the required items on their GSA schedules, both vendors could meet the delivery requirements, and that Neopost's quoted prices (\$47,496 and \$223,230) were less than Pitney Bowes' quoted prices (\$72,673 and \$355,686). AR, Tab 12, Quotation Evaluation Board Report, at 7. On January 27, 2016, the agency awarded the contracts to Neopost. These protests followed.

## DISCUSSION

Pitney Bowes raises several challenges to the agency's evaluation and award decision. The protester primarily argues, in essence, that award was improper because Neopost's proposed products differ significantly from Pitney Bowes' brand name items, and that, in Pitney Bowes' view, some of the products lack the salient characteristics of Pitney Bowes' items. The protester raises various examples of how the awardee's items allegedly differ from its own items. As one example, the protester complains that Neopost's handheld tracking device does not have "all the features" of Pitney Bowes' tracking device, including the ability to take pictures.<sup>4</sup> Protest at 5.

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<sup>4</sup> The protester essentially asserts that Neopost quoted an older model of the scanner listed in the solicitations. Comments/Supp. Protest, attach. 4, Declaration of Pitney Bowes' Federal Systems Engineer, Mar. 21, 2016, at 2. In this regard, Pitney Bowes asserts that Neopost's scanner lacks "GPS and cellular capability," and has a "completely different operating system" that is slower, less secure, and at the end of its operational life. Comments/Supp. Protest at 15; attach. 4, Declaration of Pitney Bowes' Federal Systems Engineer, Mar. 21, 2016, at 2.

The agency responds that its evaluation and award were reasonable because the awardee proposed items that met “the functional requirements of the RFQs, and were therefore ‘equal’ to those offered by Pitney Bowes.” Legal Memorandum at 1. In this regard, the agency explains that it was seeking to procure a mail tracking system with the ability to capture a signature (showing proof of delivery) and to retain a record of that signature in a database. AR, Tab 3, Declaration of Technical Evaluation Chair, Mar. 14, 2016, at 1. The agency assessed whether the items quoted in Neopost’s proposed system were able to meet these requirements, and found the items to be acceptable. After considering all of Pitney Bowes’ arguments, we find no basis to sustain the protest.<sup>5</sup>

In reviewing a protest challenging an agency’s evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Superior Cleaning Equipment, Inc., B-411847, Oct. 29, 2015, 2015 CPD ¶ 328 at 2. Rather, we will review the record only to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. at 2-3. Moreover, in a brand name or equal procurement such as here, a product offered as an equal need not meet unstated features of the brand name product, and where an agency does not include a list of salient characteristics in the solicitation, it may not reject an “equal” quotation for noncompliance with a specific performance or design feature unless the offered item is significantly different from the brand name product. See J. E. Pope Co., Inc., B-238560, May 16, 1990, 90-1 CPD ¶ 478 at 4.

Here, we find unobjectionable the agency’s determination that Neopost offered products from its FSS contract that were essentially equal to the Pitney Bowes’ products listed in the solicitations, thus satisfying the solicitation requirement that the items be brand name or equal. In this regard, the record shows that Neopost’s quotations provided items that were part of a “functionally equivalent” mail tracking system. See AR, Tab 4, Declaration of FBI Point of Contact for Shipping and Receiving, at 1. As explained above, the FBI’s requirements were for mail tracking systems that had the capability to capture a signature--thus showing proof of delivery--and retain a record of that signature. The record reflects that the agency

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<sup>5</sup> As an initial matter, we disagree with the protester’s contention that certain features of its products were salient characteristics that were also required of Neopost’s products. In this regard, the solicitations permitted the submission of quotations offering equal products, but contained no listing of the salient characteristics those products must meet. Accordingly, to the extent that Pitney Bowes now asserts that certain features of its products should have been viewed as salient characteristics, and required, this protest ground is untimely. In this respect, the protester was required to raise the solicitations’ lack of salient characteristics prior to the closing time for receipt of quotations. 4 C.F.R. § 21.2(a)(1).

evaluated the functionalities of the items each vendor quoted, and reasonably found that both vendors had quoted items that met the agency's requirements.

For example, Neopost's quotations included a handheld portable scanner, which could read barcodes, handle multiple packages delivered to multiple locations by a single courier, capture the receiver's signature upon delivery, and retain the signature for download later to a database. See AR, Tab 3, Declaration of Technical Evaluation Chair, Mar. 14, 2016, at 1. While Pitney Bowes points out that Neopost's portable scanner lacks certain other features (such as the ability to take pictures), the failure to have these additional features does not demonstrate a flawed evaluation. In this respect, the agency maintains that a camera and other features cited by Pitney Bowes were not necessary or required characteristics of the scanner, as these features (such as GPS and cellular capability) would not be utilized by the agency. Declaration of Technical Evaluation Chair, Mar. 28, 2016, at 1. Indeed, the agency reports that the use of some features, such as GPS and cellular systems, would violate agency security requirements. Id. Given this, we see nothing unreasonable with the agency's determination that Neopost's scanner was equivalent to the one listed in the solicitations.

As another example, Pitney Bowes also challenges the agency's determination that Neopost submitted equivalent items for CLIN 014, configuration project management, found under solicitation No. 22525. Pitney Bowes interpreted the agency's requirement here as the conversion of the existing database of tracking information to the new system. Comments/Supp. Protest at 16. The agency responds, however, that CLIN 014 was not for database conversion, but was instead for "installing, setting up, and maintaining of whatever software system the vendor proposed" to meet the mail system's tracking requirements. Declaration of Technical Evaluation Chair, Mar. 28, 2016, at 2. While Pitney Bowes asserts that it submitted its quotation based on its understanding of CLIN 014 (such that the agency's different understanding of CLIN 014 constitutes a "latent" defect), the protester's interpretation of what the FBI required is not supported by the language of the solicitation, such that there is no ambiguity or defect. Thus, we find nothing unreasonable about the agency's determination that Neopost met the CLIN 014 requirement for configuration project management even though Neopost did not propose to convert the existing database, as Pitney Bowes did.<sup>6</sup>

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<sup>6</sup> The protester and agency also disagree over whether the item Neopost proposed for server hardware met the solicitations' requirements. In this regard, the agency concedes that Neopost quoted hard drives for these requirements, whereas Pitney Bowes offered a server. However, the agency argues that a hard drive was sufficient to meet the agency's needs, which consisted of retaining large amounts of data for at least two years. Legal Memorandum at 3-4. We need not determine whether the agency's acceptance of this was proper, because even if we were to find that the agency improperly waived the solicitation requirement for the awardee, (continued...)

Given the agency's broad discretion in evaluating quotations, and the lack of any defined salient characteristics for each item being procured, we have no basis to object to the agency's determination that the awardee's items met the requirements set forth in the solicitations. See Superior Cleaning Equip., Inc., supra, at 3; see also Fortune Chem. Co., Inc., B-247000, Apr. 2, 1992, 92-1 CPD ¶ 344 at 1 (protest that agency improperly made award to firm whose product was not "equal" is denied where agency reasonably found that awardee's product was functionally equivalent for the intended application, despite the lack of salient characteristics). Based on the record before us, we find that the agency reasonably determined that Neopost quoted items that were equivalent to the brand name items identified in the solicitations.<sup>7</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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(...continued)

the record does not establish that Pitney Bowes was prejudiced by the agency's acceptance of the hard drives. Specifically, the record shows that Pitney Bowes quoted \$4,000 for the servers under solicitation No. 20579 and approximately \$21,000 under solicitation No. 22525. Even if Pitney Bowes instead were to have offered hard drives at no additional cost to the FBI (as Neopost did), Neopost would still have submitted the lower-priced quotation. See LexisNexis Risk Solutions FL Inc., B-410595, B-410595.2, Jan. 7, 2015, 2015 CPD ¶ 30 at 4-5 (where protester suffers no prejudice as a result of an alleged evaluation flaw, our Office will not sustain a protest).

<sup>7</sup> The protester also argues that the awards were improper because Neopost failed to provide make, model, and descriptive literature of the items in its quotations, as required by FAR clause 52.211-6(b), Brand Name or Equal. We disagree. The record shows that, for each CLIN in Neopost's quotations, the vendor listed the CLIN number next to the make, model number, and description of the item in its FSS contract. AR, Tab 11, Neopost Dec. 22, 2015 Reply, at 1-10. Consequently, this argument fails to provide a basis to sustain the protest.