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# Decision

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

**File:** B-416220; B-416220.2

**Date:** July 11, 2018

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## DIGEST

1. Protest that an awardee's technical approach violated regulations is denied where the record does not support the protester's characterization of the awardee's technical approach.
  2. Protest that an agency erred in finding a quotation technically unacceptable is denied where the agency reasonably concluded that the protester's quotation did not meet the requirements of the solicitation.
  3. Protest that agency failed to adequately document its technical evaluation in a lowest-priced, technically-acceptable procurement is denied where the agency reasonably documented the technical faults it identified in each quotation.
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## DECISION

Pitney Bowes, Inc., (PBI) of Stamford, Connecticut, protests the issuance of a delivery order to Stamps.com, of El Segundo, California, by the Department of the Army under request for quotations (RFQ) W15QKN-18-R-1016 for web-based postage. PBI argues that the agency erred in evaluating both its quotation and the awardee's quotation, and alleges that the agency's evaluation is inadequately documented.

We deny the protest.

## BACKGROUND

On February 14, 2018, the agency issued the RFQ, which contemplated the issuance of a fixed-price delivery order under General Services Administration (GSA), Federal

Supply Schedule 36, Special Item Number 50 163 “Mail Processing Machines, Systems, and Related Software.” The anticipated order was for web-based postage support for Army Reserve Centers in 13 states at a total of 157 locations. Agency Report (AR), Tab 1a, Memorandum of Law (MOL) at 2. Award of the order was to be made on a lowest-priced, technically-acceptable basis. MOL at 3-4.

The RFQ’s performance work statement (PWS) required, among other things, that vendors make postage available for purchase and provide postage for each location, and that vendors provide one consolidated master invoice monthly, by site, showing current charges and cumulative charges for postage used during the period of performance. AR, Tab 3, PWS at 1,4. Additionally, the RFQ provided that the agency’s so-called “wide area workflow system” should be used to process payment requests, and provided specific mandatory instructions for offerors to follow when submitting payment requests. AR, Tab 2, RFQ at 16-18.

The agency received two quotations in response to the RFQ, one from PBI, at a total evaluated price of \$1,561,395.73, and one from Stamps.com, at a total evaluated price of \$1,596,061.33. MOL at 7. Following a preliminary technical review, the agency identified areas of concern with both quotations and asked clarification questions of both vendors. MOL at 4-7; AR, Tab 5, PBI Clarification Questions; AR, Tab 16, Stamps.com Clarification Questions. Following receipt of vendor answers, the agency concluded that Stamps.com’s quotation was technically acceptable, and that PBI’s quotation was not technically acceptable for two reasons: (1) PBI proposed that the agency would purchase postage in advance from the United States Postal Service (USPS) directly, rather than purchasing postage from the vendor, and (2) PBI proposed a six-to-eight-week transition period before performance could begin at all locations, which the agency concluded was unacceptably long. MOL at 4-7.

On March 26, the agency issued a delivery order to Stamps.com, as the sole technically acceptable vendor, and on March 28, notified PBI that it had been found unacceptable. MOL at 7-8. This protest followed.

## DISCUSSION

The protester argues that: (1) Stamps.com’s quotation included a technical approach that violated Department of Defense (DOD) regulations and the agency erred in finding it technically acceptable; (2) the agency erred in finding the protester’s proposal unacceptable; and (3) the agency’s technical evaluation was inadequately documented. Protester’s Comments and Supp. Protest at 13-16. We address each argument in turn.<sup>1</sup>

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<sup>1</sup> The protester initially argued that several supplies and services to be procured under this RFQ were not on Stamps.com’s GSA schedule. Protest at 4-5. The protester withdrew this ground of protest following receipt of the agency report. Comments at 1.

## Regulatory Arguments Concerning Stamps.com's Technical Approach

In its initial protest, the protester contended that Stamps.com violated fiscal law and regulation by proposing to purchase postage in advance for the agency, and then later billing the agency for that postage. Protest at 5-6. Specifically, the protester argued that this billing scheme constituted an unlawful augmentation of the agency's appropriation. Id. We dismissed that argument on the basis that our bid protest jurisdiction extends to violations of procurement laws and regulations, and does not generally extend to questions of fiscal law. See Notice of Resolution of Request to Dismiss at 1; 31 U.S.C. § 3552; NTELX, Inc., B-413837, Dec. 28, 2016, 2017 CPD ¶ 13 at 2 n.2 (allegations of violations of purpose statute were dismissed because they presented fiscal law issues not within our bid protest jurisdiction); Alliant Enterprise JV, LLC, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 5 n.8 (dismissing allegation of a violation of the voluntary services prohibition and, in turn, the Antideficiency Act because the Antideficiency Act is not a procurement statute).

Following the agency report, the protester shifted its position to argue that the awardee is not, as first alleged, purchasing postage in advance and billing the agency, but rather collecting postage funds from the agency and holding them in trust to facilitate later purchases of postage. Comments at 15. The protester argues that this arrangement violates the DOD Financial Management Regulation (DODFMR), DOD 7000.14-R, June, 2017,<sup>2</sup> which specifically provides that DOD activities may not permit vendors to hold advanced funds for postage in trust. Comments at 12 (citing Exhibit 7, DODFMR Volume 10, Chapter 16, Paragraph 160303). Rather, according to the protester, DOD activities, to the extent they intend to make advance payments for postage, must deposit such advance payments directly in trust funds administered by USPS. Id. The protester alleges that the agency erred in its technical evaluation by not finding the awardee to be technically unacceptable on the basis that its quotation specifically contemplated violating DOD regulation. Comments at 15.

We do not reach the question of whether such an arrangement would violate the identified provisions of the DODFMR<sup>3</sup> because the protester does not accurately describe the awardee's proposed technical approach. Specifically, in the source selection decision document, the agency describes the financial arrangement as follows:

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<sup>2</sup> The protester additionally alleges violations of internal agency guidance documents such as Department of Defense Instruction 4525.08, "DoD Official Mail Management" (Aug. 11, 2006), and Department of Defense Manual 4525.08-M, "Official Mail Procedures Manual" (Dec. 2001). Compliance with internal agency guidance is not a matter subject to our review through the bid protest process. B&B Medical Services, Inc., B-407113.3, B-407113.4, June 24, 2013, 2013 CPD ¶ 162 at 6 n.6. Accordingly, this portion of the protest ground is dismissed.

<sup>3</sup> We, likewise, do not reach the question of whether the DODFMR is a procurement regulation properly within our bid protest jurisdiction.

The Government decides the postage to put on the meters, not exceeding the ceiling, from Stamps.com and then Stamps.com pays USPS. At the end of the month Stamps.com invoices the Government in [the wide area workflow system] for the amount purchased from USPS for each meter. As the postage is used by the Government, the amount is drawn down from the amount that was purchased for each meter at the locations.

AR, Tab 9, Source Selection Decision Document (SSDD) at 2-3.

The agency's description is consistent with the awardee's proposal, and describes a billing workflow in which the agency first determines how much postage it expects to need, and then the awardee: (1) purchases postage; (2) allocates the postage to various locations in accordance with agency instructions; and (3) invoices the government for those purchases. SSDD at 2-3; AR, Tab 14, Stamps.com Quotation at 11. The various locations then use the postage that has been purchased and allocated to them. Id.

Accordingly, the awardee does not appear to be holding postage funds in trust for the government, but rather appears to be purchasing postage for the agency and subsequently invoicing the agency for those purchases. Id. Thus, the awardee's technical approach does not, facially, appear to violate the DODFMR in the manner suggested by the protester. The awardee's technical approach, instead, more closely resembles the technical approach described in the protester's initial protest, and, as discussed above, those allegations were dismissed for failing to allege violations of procurement laws or regulations. Notice of Resolution of Request to Dismiss at 1. Accordingly, this protest ground, and the protester's derivative argument concerning the agency's evaluation of Stamps.com's proposal, are denied.

#### PBI's Technical Evaluation

Additionally, the protester alleges that the agency erred in finding its quotation to be technically unacceptable, because (as described above) the awardee's approach to postage billing allegedly violates DOD regulation, and the protester's billing approach is the only billing approach that is consistent with DOD regulation.<sup>4</sup> Comments at 13-14.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the

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<sup>4</sup> The protester additionally contests the agency's finding that its proposed implementation schedule was unacceptable. Comments at 1-3. We do not reach this question as we conclude that the agency was reasonable in finding that the protester's billing approach was technically unacceptable, which is sufficient to render the quotation technically unacceptable.

agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. Clearly stated solicitation technical requirements are considered material to the needs of the government, and a quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. See, e.g., Stewart Distributors, B-298975, Jan. 17, 2007, 2007 CPD ¶ 27 at 3-4.

As discussed above, the awardee's technical approach does not appear to be inconsistent with DOD regulation in the way described by the protester, and, more significantly, the protester's proposed technical approach does not appear to be consistent with the requirements of the solicitation. Specifically, the PWS requires the successful vendor to make postage available for purchase, provide postage to a number of locations, and provide consolidated invoices of postage charges. PWS at 1, 4. The RFQ also requires that payment requests be made through invoices in the wide area workflow system, and does not provide for an alternate billing or invoicing process for postage. RFQ at 16-18.

By contrast, the protester's proposed approach would require the agency to purchase its own postage directly from USPS, and the protester made clear that it would not invoice postage charges in the wide area workflow system, and, indeed, would not have a role in the invoicing of purchases of postage.<sup>5</sup> AR, Tab 7, PBI Clarification Responses, Part 2 at 1; AR, Tab 7a, PBI Clarification Responses, Part 3 at 3-4; SSDD at 2. For example, in its clarification responses, the protester indicated that "[a]ny services performed by Pitney Bowes are billed in arrears," but that "[p]ostage does not fall in this category," and because "postage is the property of the United States Postal Service, Pitney Bowes cannot invoice against funds not owed to Pitney Bowes." Id. The agency's conclusion that this approach did not meet the solicitation's requirements to invoice postage charges using the wide area workflow system appears reasonable. SSDD at 2-3. Accordingly, this protest ground is denied.<sup>6</sup>

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<sup>5</sup> As an aside, the protester's argument that it is legally impermissible for the awardee to purchase postage on behalf of the agency is undercut by the protester's written offer to purchase postage for the agency on a temporary basis. See PBI Clarification Responses, Part 3 at 3. If such an arrangement is, as protester contends, entirely impermissible, it is unclear how it could appropriately be conducted on even a temporary basis.

<sup>6</sup> To the extent the protester contends that these solicitation terms are in violation of relevant laws or regulations, that is a solicitation defect which should have been protested prior to the time for receipt of quotations. 4 C.F.R. 21.2(a)(1).

## Lack of Adequate Technical Evaluation

Finally, the protester contends that the agency's technical evaluation is inadequately documented, because the supporting documents provided by the agency appear to only address issues raised in the agency's clarification questions. Comments at 15-16. The protester contends that nowhere in the record does the agency document a comprehensive assessment of the technical acceptability of the awardee's quotation with all terms of the PWS, and accordingly that the agency's evaluation is inadequately documented.<sup>7</sup> Id.

As discussed above, in reviewing technical evaluations, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., supra. While source selection decisions must be documented and have a reasonable basis, an agency is not necessarily required to document all "determinations of adequacy." Wyle Laboratories, Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 11; Development Alternatives, Inc., B-279920, Aug. 6, 1998, 98-2 CPD ¶ 54 at 9; Allied Tech. Group, Inc., B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13.

Here, the record reflects that the agency identified areas of technical concern in both quotations, which led the agency to send clarification questions to both vendors. See MOL at 4-7; PBI Clarification Questions; Stamps.com Clarification Questions. The vendors responded to the clarification questions, and the agency assessed those answers and documented their conclusions as to whether the answers addressed the

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<sup>7</sup> The protester additionally argues that the agency's evaluation of Stamps.com's quotation reflected the application of an unstated evaluation criterion. Protester's Comments on Supp. Agency Report at 5-6. Specifically, the protester claims that the agency made an assessment of the awardee's past performance even though past performance was not an evaluation factor in this procurement. Id. This argument is predicated on a conclusory comment in the SSDD that "[t]he prior two contracts have been awarded to Stamps.com and there has been successful managing of the postage management and postage requirements. Therefore, the award should be made to Stamps.com." SSDD at 3. This comment immediately follows several sentences explaining why the protester's technical approach, which would involve the agency purchasing its own postage, is technically unacceptable. Id. This paragraph was also part of a longer discussion contrasting the protester's technical approach with Stamps.com's technical approach, which involves purchasing postage on behalf of the agency, but which the protester contends is legally impermissible. Id. at 2-3. In context, this comment can reasonably be read as a reference to the immediately preceding discussion of technical approaches--that is to say, as an acknowledgement that, historically, the contractor has purchased postage on behalf of the agency--rather than as an assessment of Stamps.com's past performance. Accordingly, we find this allegation to be without merit.

agency's concerns. AR, Tab 8, PBI Technical Evaluation; AR, Tab 15, Stamps.com Technical Evaluation. Specifically, the evaluators concluded that Stamps.com's answers addressed their concerns, while PBI's answers did not address their concerns in the two areas discussed above. Id. On the basis of those evaluations, the contracting officer concluded that Stamps.com's quotation was technically acceptable in all areas. SSDD at 1. Where the agency clearly documented features of the two quotations that it viewed as potentially technically unacceptable, as well as its attempts at resolving those issues through clarifications, the fact that the agency did not additionally document all determinations of adequacy does not render the technical evaluation unreasonable or inadequately documented. See Allied Tech. Group, Inc., supra.

The protest is denied.

Thomas H. Armstrong  
General Counsel