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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Pitney Bowes, Inc.

File: B-413876.2

Date: February 13, 2017

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

David K. Barnes, Esq., and Holly H. Styles, Esq., Department of the Treasury, Internal Revenue Service, for the agency.

K. Nicole Willems, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging technical specifications as unduly restrictive of competition is sustained where the record fails to show that the specifications are reasonably necessary to meet the agency's needs.

DECISION

Pitney Bowes, Inc., of Washington, DC, protests the terms of request for quotations (RFQ) No. TIRMS-16-R-00016, issued by the Department of the Treasury, Internal Revenue Service (IRS), for the procurement of mail inserter/folder machines. Pitney argues that the technical specifications set out in the solicitation are unduly restrictive of competition.

We sustain the protest.

BACKGROUND

The RFQ was issued via the General Services Administration's (GSA) e-Buy system on November 3, 2016,¹ and contemplated the award of a fixed-price

¹ The RFQ, which was designated GSA e-Buy no. 1153425, was initially issued on August 3, 2016, and closed on August 15. In response to the initial RFQ, the agency received quotations from Pitney and another company, Neopost USA. Contracting Officer (CO) Statement at 1. According to the protester, Pitney was

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contract on a lowest-priced, technically acceptable basis.² The solicitation sought quotations for four PS200 folder/inserters with four 500 sheet capacity sheet feeders, and four PS200 high capacity feeders, or equivalent machines, to replace existing equipment used for document processing and mailing at the IRS's National Distribution Center (NDC) in Bloomington, Illinois. CO Statement at 1. According to the solicitation, the NDC is one of the IRS facilities that processes and mails high volume turnaround letters including Affordable Care Act compliance and earned income tax credit letters. RFQ at 3.

The RFQ includes contract line item numbers (CLIN) that refer to the PS200 folder/ inserter and certain PS200 components. RFQ at B-1. The statement of work (SOW), however, lists a number of specific requirements for the folder/inserters, which is consistent with the agency's assertion that it intended the acquisition to be a procurement for the brand name PS200 equipment or an equivalent product that could meet the specifications in the SOW. SOW at 2; CO Statement at 1. The specifications include, as relevant here: (1) "[a] high capacity sheet feeder with a capacity of up to 1,000 per feeder with the capability of loading on the fly"; (2) "[a] feeder swap capability for up to 10 sheet feeders per machine"; and (3) "[o]ne envelope feeder to handle all types of envelopes from letters to flats."³ RFQ at 4.

This protest was filed with our Office on November 7, prior to the closing of the solicitation. The agency has indicated that the protester was among the vendors who submitted quotations.

DISCUSSION

Pitney challenges specifications in the SOW requiring high capacity sheet feeders that are capable of being loaded on the fly, folders/inserters that have a feeder swap capability for up to 10 sheet feeders per machine, and folders/inserters that

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initially selected for award, but that award was successfully challenged at the agency level by Neopost. Protest at 1. Neopost was subsequently selected for award on September 23. CO Statement at 1. Pitney filed a protest of the award to Neopost with our Office on September 30, but withdrew its protest on October 21, after the agency decided to cancel the RFQ and recompute its requirements. Id. at 2.

² We note that the solicitation provided to our Office did not advise vendors of the basis for award, and did not clearly indicate that the agency was seeking brand name (PS200) equipment or its technical equivalent. Here, we rely on the information provided in the CO Statement, which is not at issue in this protest.

³ Load-on-the-fly capability allows a user to load additional sheets into the feeder while the feeder is in operation. Agency Report (AR) at 7.

have an envelope feeder capable of handling all types of envelopes from letters to flats. According to the protester, the requirements are unduly restrictive of competition and amount to a de facto sole source requirement.⁴ Based on the record, we are unable to conclude that the specifications included in the RFQ are necessary to meet the agency's needs.

The determination of the government's needs and the best method of accommodating them is primarily the responsibility of the procuring agency, since its contracting officials are most familiar with the conditions under which supplies, equipment, and services have been employed in the past and will be utilized in the future. Columbia Imaging, Inc., B-286772.2, B-287363, Apr. 13, 2001, 2001 CPD ¶ 78 at 2. To the extent a protester challenges a specification as unduly restrictive, that is, challenges both the restrictive nature of the requirement as well as the agency's need for the restriction, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. Smith and Nephew, Inc., B-410453, Jan. 2, 2015, 2015 CPD ¶ 90 at 5. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether it can withstand logical scrutiny. Id.

Here, the protester challenges three specifications included in the SOW. First, the protester challenges the requirement for a high capacity sheet feeder with a 1,000 sheet capacity, capable of being loaded on the fly. According to the agency, load-on-the-fly capability, which would allow the insertion of additional sheets while the system is in operation, is necessary to "minimize production time by allowing the equipment to be loaded while in operation." AR at 7. According to the protester, this requirement is overly restrictive because, while the protester's high capacity sheet feeders do not have load-on-the-fly capability, the same continuous operation can be achieved by using two high capacity sheet feeders, each holding 1,000 sheets. Protest at 5. The protester's approach would provide for items to be pulled from one feeder while the other feeder is filled. The machine would alternate

⁴ The protester initially challenged two additional requirements. First, Pitney challenged a requirement that folder/inserters have an envelope feeder capacity of 800 envelopes with load-on-the-fly capability. Pitney also challenged a requirement for a touch screen that controls all functions from start to finish. Protest at 5-6. The protester withdrew its challenge to the first requirement after the agency confirmed that it would not find the protester's equipment, which only has a 500 envelope capacity, to be technically unacceptable, consistent with the agency's response in the questions and answers conducted during competition under the original solicitation. AR at 8; Comments on the AR at 4. The protester also withdrew its challenge to the requirement for the equipment to have a single touch screen that would control all functions after the agency, in its agency report, explained that it would accept a button-based control. AR at 11.

between the feeders to provide continuous operation and avoid system interruption. Protest at 5. While the agency appears to concede that Pitney's solution will provide for continuous operation, it argues that the use of the protester's approach would require additional employee time, possibly resulting in more paper jams, and require additional storage space. AR at 7. The agency's arguments, in this regard, fail to establish that the load-on-the-fly capability is necessary.

Regarding the use of employee time, the parties disagree as to whether it would be more efficient for employees to monitor and refill one tray on a machine with load-on-the-fly capability or to monitor two trays on a machine like the protester's, that alternates between trays to achieve continuous use. While there are likely pros and cons to both continuous operation solutions, we fail to see, and the agency has not adequately shown, why the protester's solution would be more time consuming for employees. IRS Information Technology Specialist's Declaration, January 18, 2017, at 2. With either approach, employees would be monitoring a tray and inserting more sheets into a feeder as needed.

With regard to the agency's bare assertion that the use of two feeders increases the possibility of paper jams, the agency has not provided anything to substantiate its claim. CO Statement at 3. Casting some doubt on the agency's assertion, the protester argues that there is actually a benefit to the two feeder system in that, unlike a system that relies on a single feeder with load-on-the-fly capability, the use of two feeders would allow an operator to turn off the jammed feeder for repair, while allowing the other feeder to continue operating. Comments at 3. Given the agency's goal of maintaining continuous operation, the protester's argument is compelling. Id.

Additionally, the agency argues that the use of two sheet feeders to achieve continuous operation would result in the need for additional storage space. AR at 7. In response, Pitney argues--without rebuttal from the agency--that its equipment is designed to store the feeders, such that no additional space would be required. Comments at 4.

In sum, the agency has failed to provide a reasonable justification as to why a requirement for load-on-the-fly capability is necessary, when a different approach may be able to achieve the same results.

In its November 7 protest, Pitney also challenges the requirement for the equipment to have a feeder swap capability for up to ten sheet feeders per machine. Protest at 6. According to the protester, this requirement, which differed from the requirement in the original RFQ for machines capable of accommodating up to ten additional module feeders each, could only be met by one source. Protest at 6. In its report, the agency clarified that "module feeder" was synonymous with "sheet

feeder.” CO Statement at 5. The protester responded that, based on that clarification, its equipment will be able to meet the requirement.⁵ Comments at 5. Accordingly, because the protester has conceded that its equipment could satisfy the requirement for feeder swap capability for up to ten sheet feeders per machine, we do not address further the argument that the requirement is restrictive of competition.

Finally, the protester challenges the requirement that the folder/inserter have one envelope feeder to handle all types of envelopes from letters to flats. Protest at 5. According to the protester, the standard envelope feeder for its proposed solution feeds a wide range of the most common types of envelope sizes and flats. Federal Government Strategic Manager for Pitney Affidavit, December 19, 2016, at 2. For more unusual sizes, the protester asserts that the process of removing a feed and inserting a new one would take less than 30 seconds. Id. While the agency simply maintains that it needs a feeder that will handle all types of envelopes, it provides no explanation as to why it needs a feeder that would handle envelope sizes and types that deviate from standard sized envelopes.

Additionally, while the agency complains about the time and effort that would be required to insert a new feeder, it has provided no information regarding whether and how often the insertion of a different feeder might actually be necessary. IRS Information Technology Specialist’s Statement at 3. Absent further support from the agency, it is not clear why the agency would need an envelope feeder that could handle all types of envelopes, given that there is no discussion of a need for types

⁵ In arguments attempting to justify this requirement, the agency indicated that this requirement relates to an anticipated future need in which NDC will be required to insert ten documents per envelope. CO Statement at 5. In this regard, the agency has argued that the protester’s machine will not be able to meet the requirement even though it has a feeder swap capability for up to ten sheet feeders. The agency argues that, without load-on-the-fly capability, the protester’s machine would need to assign two feeders to each document, swapping between feeders as described above, in order to achieve continuous operation. AR at 9-10. In other words, according to the agency, to meet its future need for the capability to insert ten documents per envelope while maintaining continuous operation, the protester’s machine would need to have twenty sheet feeders, which would exceed its capacity. To the extent the agency’s requirement is for a machine with the capability to insert ten documents per envelope while maintaining continuous operation, this was not clearly communicated in the RFQ. Given our recommendation that the agency revisit its requirements and revise its RFQ accordingly, the agency may want to consider whether a requirement stating the need to process jobs that include ten documents per envelope should be included in its solicitation.

of envelopes that would fall outside of the range of standard types.⁶ Here, the agency has not provided a reasonable justification for its requirement that the folder/inserters come equipped with one envelope feeder that can handle all types of envelopes from letters to flats.

CONCLUSION AND RECOMMENDATION

In sum, we recognize that the IRS is entitled to great discretion in establishing its needs. Here, however, we find that the agency has failed to provide reasonable justifications for the challenged specifications, such that we are unable to conclude that the challenged specifications are reasonably necessary for the agency to meet its needs.

We recommend that the agency make a documented determination of its needs. Once the agency identifies its needs, the agency should revise its RFQ to include specifications that are reasonably necessary to meet those needs. We also recommend that Pitney be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Pitney should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. Id. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel

⁶ We note that in a supplemental filing, the protester argued that while the RFQ required that the new machines not exceed the footprint of the existing machines, Neopost's machines, when configured to meet the agency's anticipated future need for the capability to insert ten documents per envelope discussed in footnote 5, exceed the size limitation. Whether the size limitation in the current solicitation reasonably reflects the agency's needs is another matter that the IRS may wish to consider as it reassesses its requirements and revises the RFQ.