

**December 1, 2000**

**P.S. Protest No. 00-16**

**PITNEY BOWES CORPORATION**

**Solicitation No. 102590-00-A-0165**

**DIGEST**

Protest that specification for mail preparation system are restrictive is denied. Protester has not met its burden to establish that use of cycle speed as a proxy for throughput is clearly unreasonable; claim of bias is not established, and its other objections to solicitation provisions are moot.

**DECISION**

Pitney Bowes Corporation protests the terms of solicitation 102590-00-A-0165 for high-speed mail processing and insertion systems.

On July 7, Headquarters Purchasing posted on the CBDNet a market survey seeking possible sources for "two (2) high speed, high volume intelligent mail processing and inserting systems" which would "accept different stock and envelope sizes, accumulate and process multi-page applications using OMR codes; be capable of changing folding requirements; and produce management reports." Six companies, including Pitney Bowes, responded to the survey.

On July 24, the six companies were furnished a copy of solicitation A-0165. The solicitation sought offers for two systems and their maintenance for two years, with options for additional maintenance on those systems and an option for one additional system and its maintenance. Attachment A to the solicitation set out the systems' fourteen "mandatory technical requirements," including the following:

1. Cycle Speed Minimum 18,000 per hour.
2. Net Throughput Minimum 12,000 per hour.

The specification identified six different items (earning statements, U.S. savings bonds, commercial checks, etc.), their stock size and weight, and the envelope size associated with each item. There were four different stock sizes, two different stock weights, and four different envelope sizes.

Systems were to be installed at the Postal Service's Eagan, MN, Information Technology Center. Arrangements were made for individual site visits during the week of July 31. Offers were due August 11; installation by September 5 was contemplated by the solicitation.<sup>1</sup>

Attachment 1 to the solicitation set out the basis on which offers would be evaluated. Offers would first be scored "pass/fail" on the mandatory technical requirements. Offers which met those requirements would then be scored on Technical Capacity (60 points), Past Performance and Supplier Capability (30 points), and Management Plan (10 points). The solicitation was not specific with respect to the relationship of price to the other evaluation factors, but it stated that "[a]ward may not necessarily go to that offeror submitting the lowest price."

Pitney Bowes's protest was received on August 7. The protest contends that Pitney Bowes is one of "only four . . . console inserter vendors," and that while the other vendors' systems have an 18,000 pieces per hour cycle speed, Pitney Bowes's system does not. It asserts, however, that it can meet the 12,000 pieces per hour net throughput requirement and notes its willingness to run "a timed production test" to demonstrate its compliance.<sup>2</sup>

The protest also contends that "the 'so called' technical experts in Eagan are biased to Bell & Howell," and that "judging from . . . conversations with [the purchasing specialist] and the . . . content of the solicitation," Bell & Howell has already been selected.

Further, the protest asserts that "[s]ome of the material specifications are misrepresented in the SOW," so that "[o]nly a vendor who has been allowed into the Eagan facility and made aware of the proposed document changes" could be "comfortable with" the throughput speed required.

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<sup>1</sup> The solicitation did not advise offerors of the date on which it was contemplated that award would occur. We understand Purchasing Manual 2.2.5, Delivery or Performance Schedule, and Provision 2-2, Time of Delivery (January 1997), which it discusses, to contemplate the inclusion of an assumed date of award in all solicitations calling for delivery in terms of a calendar date, and that commercial solicitations are not excepted from that practice.

<sup>2</sup> In an earlier letter to the postal purchasing specialist, a copy of which accompanied its protest, Pitney Bowes asserted that many factors (jams per hour, ease of recovery, job change-over time, etc.) which can affect throughput and that "[t]he most important factor in production is having a system that does not stop." The Postal Service's reply included the following:

While we agree that these factors do affect throughput, it is evident that there is a direct correlation between cycle speed and throughput. . . . Furthermore, our research shows that cycle speed continues to be an accepted performance standard in the industry and that several companies manufacture systems with a cycle speed of 18,000 pph or higher.

Noting that only two or three inserter sources have delivered to the Postal Service, the protest questions the past performance and capability evaluation criteria, which are also criticized as “subjective and not measurable.”

Finally, the protest objects to the short delivery time as “unreasonable” absent “prior knowledge of the procurement and configuration.”

Replying to the protest, the contracting officer’s statement makes the following contentions:

- When a solicitation is challenged as unduly restrictive, the Postal Service must establish *prima facie* support for the allegedly restrictive requirements; once it does, the protester must show by “an extremely high level of proof” that the restrictions are “clearly unreasonable” (citing *Modigraphics*, P.S. Protest No. 95-07, March 21, 1995).
- The Postal Service’s need for high speed inserters arises from a new plan to send some 550,000 employee earning statements to employee homes each pay period. A single inserter with the required cycle speed and net throughput can accomplish that task.
- “Net throughput is directly correlated to cycle speed — the higher the cycle speed, the higher the net throughput will be.” A machine’s net throughput equals “approximately 70 to 80 percent of its cycle time” but net throughput figures are more speculative than cycle speed figures because throughput “is affected by many factors.”<sup>3</sup> By specifying a net throughput figure slightly less than 70 percent of the specified cycle time, “an objective industry standard,” “the Postal Service is reasonably confident” that its throughput needs can be met.
- With respect to the claim of favoritism, prejudice must be shown by “well-nigh irrefragable proof,” not “inferences or speculation,” citing *Mid-Pacific Air Corporation*, P.S. Protest No. 92-62, November 23, 1992. The contentions the protester raises concerning favoritism make no sense. The required cycle speed has been justified; vendors (including Pitney Bowes) have had the opportunity to inspect the Eagan facility; past performance and capability are required as evaluation factors by Purchasing Manual (PM) 2.1.7.c. 1.; non-postal past performance will be considered; and the delivery schedule is required so that a September 20 deadline for the implementation of the earning statement mailing program.

The contracting officer’s report also discloses that subsequent to the receipt of the protest, the purchasing process continued, two timely offers and one late offer were received and considered, and that on September 7, while the protest was pending, award was made to Kern International after the Vice President, Purchasing and Materials, determined, as PM

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<sup>3</sup> The contracting officer offers various pieces of descriptive literature said “consistently [to] list cycle speed as a standard performance measurement.” The literature supplied includes that of Pitney Bowes, some of which refers to speeds (e.g., “14 Series -- 14,000 per hour” and “[the 14 series] will process documents at a rate of 14,000 per hour.”) not further described. In response to our inquiry, the contracting officer indicated his understanding, based on discussions with the protester’s representative, that these figures represented cycle speeds.

3.6.5.a. allows, that “urgent and compelling circumstances” required the award. In response to this office’s inquiry, the contracting officer supplemented his report explaining that Kern’s proposal was both the lowest priced and highest technically rated. We are advised that delivery occurred on September 29.

Responding to the contracting officer’s statement, Pitney Bowes makes the following points:

- Cycle speed is an effective indicator of throughput only if there is no input device which presents the input material to the inserter chassis. Pitney Bowes’s inserter has a lower cycle speed, but achieves a high throughput by using a high speed input device. Pitney Bowes has successfully demonstrated the ability of its equipment at the Postal Service’s San Mateo facility, the backup site for the mailing of employee earnings statements, with slower-speed inserters than it would have proposed for Eagan.<sup>4</sup>
- The solicitation misdescribes the orientation of the earnings statement as “east/west,” instead of “north/south.” An east/west document is more difficult to transport and feed on the inserter than a north/south document. Since the earnings statement occasions the need for the new inserting systems, “it would seem reasonable that the specification would have been scrutinized for accuracy.”
- The evaluation factors are arbitrary and unmeasurable. Use of cycle speed as a criterion is unjust; the specifications for document control (OMR-CS) are nonexistent; there are no codes specified for the preponderance of multi-page forms indicated as comprising 70 - 80 percent of the mailings to be inserted.
- Similarly, the past performance and capability criteria include unmeasurable factors; “[t]his requirement provides . . . 30 points that . . . can arbitrarily [be] award[ed] without obligation.”
- The delivery time is unreasonable. If the Postal Service does not ship test material to the manufacturer, “there is no possibility of the machines operating properly on delivery.”

The contracting officer responded to the protester’s comments, making the following points:

- The San Mateo tests involved “only a small number of documents” and machines with cycle speeds which could not “possibly produce mail at 12,000 IPH per hour.”
- The error in the description of the orientation of the earning statement was corrected in a July 27 e-mail, and Pitney Bowes had its site inspection at Eagan on August 2.

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<sup>4</sup>In its comment, Pitney Bowes refers to its inserter as having a cycle speed of 12,000 but of being capable of meeting the 12,000 per hour net throughput speed. It is apparent both from the record (see footnote 2, *supra*) and Pitney Bowes’s final comments that it intended to quote a 14,000 insertions per hour cycle speed.

- While the Postal Service “recognizes the importance of net throughput,” “practical considerations led [it] to conclude that the most appropriate manner of evaluation was to consider both cycle speed and net throughput.” Because of the many variables affecting throughput, “manufacturers’ assertions of . . . net throughput are highly speculative.” In order to validate those assertions, the Postal Service would have to conduct side-by-side tests, an action which it did not wish to do for this purchase.<sup>5</sup> Because it could not conduct those tests, it was reasonable for it to consider both net throughput and cycle speed in its comparisons of its offers.

Pitney Bowes submitted final comments including the following:

- The San Mateo tests were stopped by the Postal Service “because the machines were exceeding the required throughputs.” They demonstrated Pitney Bowes’s familiarity with the Postal Service’s needs.
- The clarification of the earning statement’s orientation was not a part of the solicitation, and their configuration was not discussed in the Eagan site visit.
- The contracting officer’s acknowledgement that various factors affect net throughput supports the protester’s position. Its throughput is a greater percentage of its cycle speed because of its increased input speed. Inclusion of the cycle speed was either a way to eliminate Pitney Bowes as an offeror or “an easy way . . . to award points.”

Böwe Systec, an interested party, submitted comments contending that it is not unreasonable to impose a cycle speed requirement, and that “a higher cycle speed will always give you a higher net throughput.” It expresses some concern about the delivery timeframe, but “find[s] hard to believe” the suggestion that “Eagan has intentionally influenced the bidding process.”

## DISCUSSION

The contracting officer has correctly stated the standard applicable to our review of a contention that a specification is unduly restrictive.

Where a protester alleges that a solicitation is unduly restrictive, it is incumbent upon the procuring agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. But once the agency establishes this support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable.

Once the Postal Service establishes prima facie support for the allegedly restrictive requirements, the protester must present an extremely high level of proof to show that those restrictions are clearly unreasonable.

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<sup>5</sup> The factors weighing against such tests in this case included the size of the contract; the lack of space at Eagan for side-by-side tests; and the time and expense the tests would consume.

The determination of what constitutes the Postal Service's minimum needs is properly to be made by the requiring activity, and is not subject to being overturned in the absence of a clear showing that the determination lacks a reasonable basis. If a specification is otherwise reasonable, the fact that one or more potential offerors may be precluded from participating in the solicitation does not render its terms restrictive if they reflect the legitimate needs of the procuring activity.

This office will not substitute its judgment for that of the technical personnel absent fraud, prejudice, or arbitrary and capricious action.

*Flamingo Industries (USA) Ltd., et al.*, P.S. Protest Nos. 99-01— 05, May 6, 1999, quoting *Memorex Telex Corporation*, P.S. Protest No. 92-73, January 8, 1993 (citations and internal quotations omitted).

Pitney Bowes's principal objection here is to the use of cycle speed as a proxy for throughput. The contracting officer has established an adequate *prima facie* case that cycle speed is a commonly promoted in the industry as a feature of inserting machines, and has explained why the Postal Service has chosen cycle speed, in addition to net throughput, as measures for the systems it wished to buy. The protester's rebuttal has not risen to the high level of proof necessary to overturn those conclusions. While it is undoubtedly the case that throughput can vary from machine to machine, the protester has not persuasively demonstrated that its machine could process the required items at a throughput rate which was 85 percent of its inserter's cycle speed.

The contention that the source selection was the result of favoritism also cannot prevail. As the contracting officer notes, contentions of bias must be supported by more than surmise. See, e.g., *Pitney Bowes Inc.*, P.S. Protest No. 89-22, July 7, 1989. Not only was Pitney Bowes's concern unsupported, it was overtaken by subsequent events.

Pitney Bowes's remaining concerns are moot. Since Pitney Bowes could not offer an inserter which met the mandatory cycle speed requirements, its objections to the solicitation's misdescription of the earning statement's orientation, the evaluation criteria, and the delivery schedule lack standing. "Since a protester may protest only on its own behalf and lacks standing as an interested party to protest generally for [or] on behalf of another any issue raised by these protesters concerning [a matter which has not affected them] is moot." *Atlanta Regional Distribution Center, et al.; River City Distribution Center*, P.S. Protests No. 97-26; 29, April 17, 1998.<sup>6</sup>

The protest is denied.

William J. Jones

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<sup>6</sup> Pitney Bowes's objections to the use of past performance and capability as evaluation factors are without merit. While it would have been preferable for the for the misdescription to have been corrected by solicitation amendment,

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