

April 21, 2003

P.S. Protest No. 01-17

AMERICAN BANKNOTE COMPANY

Solicitation No. 102595-02-Q-0497

DIGEST

Protest of decision to award noncompetitively two year "bridge" contract for money order forms is denied. Award is justified by need to acquire interim quantity of money orders while form is redesigned; awarding longer term contract competitively would not be economically advisable.

DECISION

The American Banknote Company (ABN) protests the noncompetitive award of a contract for the production of postal money order forms.

The Postal Service currently uses two forms of postal money orders. The older form, a three-piece form with carbon interleaving sheets used with a Paymaster imprinter is known as a Paymaster money order (PMO); the newer form, the POS money order, is a one-piece document designed to be used with the Postal Service's Point of Service (POS) One retail terminals.

In October, 2001, the Vice President, Finance, provided the Vice President, Purchasing and Materials, with a request to purchase POS and Paymaster money order forms on a noncompetitive basis from Moore North America, Inc., the incumbent supplier. The non-competitive justification included the following recitals:

[T]he Postal Inspection Service is currently investigating the fraudulent reproduction of [POS] money orders and assessing the appropriate security measures that must be designed into the money order. . . . Since there is no standing inventory of POS money orders, it is urgent that Moore continue to supply the US Postal Service until security requirements can be established and conveyed to the commercial marketplace via a future competitive solicitation.

A recommendation for a noncompetitive procurement prepared by Headquarters Purchasing elaborated on the situation:

It may take as long as a year until the results [of the Inspection Service's investigation] are analyzed, security operations researched, and new requirements written. It is estimated that it will take an additional six months to implement any new security measures into the manufacturing process.

. . . [I]t is not a good business decision to offer a solicitation for PMO/POS money orders at this time, as new requirements are anticipated within the next twelve months. . . .

. . . [A] solicitation for a competitive offering could not be issued until the new requirements are established, and the security measures are identified and implemented. This is expected to take a minimum of twelve months. Even if the USPS were to immediately issue a solicitation based on current requirements, it would be three to six months until award and additional six months to help a new supplier ramp up for production. At the end of this one-year period, new requirement would be published and the supplier would require a new learning curve and capital investment to meet the new expectations.

Even though there may be other security printers in the marketplace who would like the opportunity to compete for this, competing now would not be either advantageous or reasonable to any party. It would appear to be unfair to the market to knowingly alter the product shortly after an award and take the chance that an appreciable capital investment may be required to produce a document with new security features.

It is acknowledged that a competitive offering should be a future tac[k], but the timing must wait until the new requirements are established. In the meantime, it is of the utmost importance and urgency that post offices nationwide have access to a continuous supplier of both styles of money orders.

The recommendation concludes by requesting noncompetitive purchase pursuant to Purchasing Manual (PM) 3.5.5.d.2.(a)(6) (TL1, 1997): "When competitive purchasing is not otherwise in the best interests of the Postal Service."

According to ABN's protest, there has never been a competitive solicitation of the POS money orders, which were first added by amendment to Moore's 1996 contract for PMO money orders. ABN asserts that it is "fully qualified" to meet the Postal Service's needs for these forms and has continuously expressed its interest in the work. According to the protest, "there exists no rational basis for a sole source award," and that the requirements for a noncompetitive justification have not been met. The protest cites *Rockwell International Corporation*, P.S. Protest No. 96-16, October 25, 1996, for a discussion of the requirements of a noncompetitive justification.

The contracting officer's statement recites the various circumstances leading to the noncompetitive determination, asserting that it is within the scope of PM 3.5.5.d.2 (a)(3) and (6):

(3) Unusual or compelling urgency, when delay would seriously harm the Postal Service

(6) When competitive purchasing is not otherwise in the best interests of the Postal Service.

He notes that noncompetitive purchases will be upheld if they have a rational basis (citing *OSM Corporation*, P.S. Protest Nos. 91-59; 61; 67, December 27, 1991).

The contracting officer contends that the purchase was rationally based, noting the following:

- Because changes to the money order form are necessary, it would be “wasteful and disruptive to solicit a new contractor and require it to incorporate significant changes early in the five-year production cycle” and it may be costly to the Postal Service if changes must be made then.
- The two-year length of the “bridge” contract with Moore is economically justified because a shorter contract would have been excessive in price, and justified by “the uncertainties surrounding the Inspection Service[']s development of new security requirements.
- The shortage of money order forms created an unusual or compelling urgency for them, since without them money order service could not be provided, leading to loss of business, cash flow, and investment income.
- It was reasonable to select Moore for the contract because the Postal Service knew that it had equipment in place to produce the money orders.

Responding to the contracting officer's statement, the protester makes the following points:

- The Postal Service should have begun the prequalification process prior to the known expiration of the Moore contract, or should not prequalify.
- The uncertainty about the new solicitation requirements should not make resolicitation difficult; any new offeror will be able to adjust in the same manner that Moore would have to adjust should the requirements change in the course of its performance of its noncompetitive award.
- There has been “patent abuse of the non-competitive process”; the contracting actions are not rationally justified and do not support the noncompetitive procurement (citing *Rockwell International Corporation, supra*).

- In analogous situations, the General Accounting Office has held that an agency’s failure to engage in reasonable advance planning as required by the Competition in Contracting Act warranted sustaining a protest against the noncompetitive extension of an existing contract (*New Breed Leasing Corporation*, Comp. Gen. Decs. B-274201; B-274202; November 26, 1996, 96-2 CPD ¶ 202); an “urgency determination cannot support the procurement of more than a minimum quantity needed to satisfy the immediate urgent requirement,” (*Signals & Systems, Inc.*, Comp. Gen. Dec. B-288107, September 21, 2001, 2001 CPD ¶ 168); and contracting officers “cannot take a docile approach and remain in a sole-source situation when they could reasonably take steps to enhance competition” (*National Aerospace Group, Inc.*, Comp. Gen. Dec. B-282843, August 30, 1999, 99-2 CPD ¶ 43).

The contracting officer submitted comments responding to the protester as follows:

- It was not poor procurement planning, but the unexpected increase in presentations of fraudulent money orders that upset the purchasing process. As previously explained, it is not in the Postal Service’s interest to change its requirements early in the five-year contract cycle.
- Moore’s contention that any competitor could adjust to such changes “ignores the fact that Moore has already made the investments, etc., associated with the current requirements,” unlike a new contractor, who would have to make those investments and then promptly have to begin to produce a new product.
- A two year “bridge” contract is necessary. The new Inspection Service requirements will not be forthcoming before a year, and the second year allows the Postal Service sufficient time to compete the new requirement. Prequalification cannot precede the establishment of the new requirement, since “equipment and abilities to be tested” in prequalification have not yet been determined.

Moore submitted comments which distinguish the facts of the GAO cases cited in the protester’s comments, concluding that the contracting officer’s actions in this case do not suffer from the errors cited in those decisions.

The protester submitted brief further comments which contend that the contracting officer “takes an unusual paternalistic approach” by asserting that potential competitors could not adapt to future changes in contract requirements, urging that the Postal Service allow the marketplace to function, demonstrating the qualifications of ABN and others.

DISCUSSION

The protester cites *Rockwell International* as establishing the standard for the review of a noncompetitive purchase justification. That decision summarizes earlier decisions as follows:

“[W]hether a noncompetitive purchase is justifiable depends on the circumstances and basis for its use. While subject to close scrutiny, noncompetitive purchases will be upheld if there is a rational basis for them.” *OSM Corporation*, P.S. Protest Nos. 91-59, -61, -67, December 27, 1991.

“We begin with the proposition that [noncompetitive] awards are not favored. They will be scrutinized closely and upheld only if they have a reasonable basis.

* * *

“The contracting officer's determination that the Postal Service's minimum actual needs will only be met by a [noncompetitive] procurement will be given substantial weight, but it must be based on a factual predicate supporting the reasonableness of the decision. Once the contracting officer has enunciated a factual predicate for his determination, the burden shifts to the protester to prove that the determination is unreasonable; it must produce probative evidence or data to substantiate its assertions. Mere disagreement with the agency's grounds for the sole-source procurement is not a sufficient showing for this Office to find the agency's conclusions unreasonable.” *Wetler Corporation*, P.S. Protest No. 86-80, December 17, 1986 (applying standards of previous regulation, the Postal Contracting Manual; citations and internal quotation marks omitted).^[1]

The protester contends that this purchase can be accomplished noncompetitively because it and other offerors can supply the needed forms. That analysis, however, overlooks the principal thrust of the contracting officer's determination, which is not that those offerors cannot perform, but that it will be economically inefficient to solicit them to do so because the Postal Service's requirements are likely to change early in the course of contract performance. It is reasonable for the contracting officer to conclude that Moore, the incumbent, can provide the current forms more efficiently than a new supplier in the interim period while the Postal Service's new requirements are being developed.

The analogies provided in the Comptroller General decisions cited by the protester are not directly apposite, for the reasons cited by Moore, the incumbent. The Postal Ser-

¹ *Rockwell International* involved a purchase under the Procurement Manual, Pub. 41, the predecessor of the Purchasing Manual which governs this purchase. Both directives, however, offer the same guidance concerning the use of noncompetitive purchases:

4.4.1.b Limitations on Use. Noncompetitive purchasing methods may be used only when competitive purchasing is not feasible or appropriate. [Pub. 41]

3.5.5.b Use. Noncompetitive purchases may be made only when obtaining adequate competition for the purchase is not feasible or appropriate [PM TL-1]

vice's interim need for POS forms is not the result of inadequate advance planning, but rather the newly discovered need for a revised money order form; the two-year contract term is reasonable in the circumstances, and the contracting officer is not, in this instance, improperly failing to take steps to encourage future competition.

The protest is denied.

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