



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: A-1 Postage Meters and Shipping Systems

File: B-266219

Date: February 7, 1996

J. Hatcher Graham, Esq., for the protester.

Grace Bateman, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Pitney Bowes, Inc., an interested party.

Bryant L. Durham, Esq., Department of the Air Force, for the agency.

John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the terms of a purchase description for a mail processing machine is denied where, contrary to protester's allegations, specifications that protester challenges are not impossible to perform and do not otherwise preclude the protester from competing.

DECISION

A-1 Postage Meters and Shipping Systems protests the terms of request for quotations (RFQ) No. F09650-95-Q-4383, issued by the Air Force for an automated mail processing machine for the Base Information Transfer Center (BITC) at Warner Robins Air Logistics Center.

We deny the protest.

The RFQ, which sought quotations for equipment listed on a General Services Administration federal supply schedule, included a purchase description with detailed specifications and delivery, installation, and quality assurance requirements for the mail processing machine. A-1 alleges that certain provisions of the purchase description are impossible to meet. A-1 further argues that the purchase description includes requirements that are available only in mail processing machines manufactured by Pitney Bowes, Inc. and which exceed the agency's actual minimum needs. Explaining that it is familiar with the operation of the BITC, A-1 maintains that the actual requirements of that facility are limited to the ability to timely meter and account for postage on letters and packages up to 70 pounds. According to A-1, the solicitation requires equipment that exceeds these minimum requirements.

Agencies are responsible for specifying their needs in a manner designed to promote full and open competition. D & R Tank Co., Inc., B-258529, Jan. 26, 1995, 95-1 CPD ¶ 53. Where a protester challenges a solicitation requirement, our Office will not substitute its judgment for the contracting agency's, which is most familiar with the conditions under which the supplies and services are to be used, unless the protester proves that the challenged specification is impossible to meet or otherwise unduly restricts competition. California Inflatables Co., Inc., B-249348, Nov. 9, 1992, 92-2 CPD ¶ 331. Moreover, the fact that specifications are based upon a particular product is not improper in and of itself; nor will an assertion that a specification was "written around" design features of a particular product provide a valid basis for protest if the record establishes that the specification is reasonably related to the agency's minimum needs. Hewlett-Packard Co., 69 Comp. Gen. 750 (1990), 90-2 CPD ¶ 258.

We have considered the specifications that A-1 has challenged and we conclude that none of those requirements are impossible to perform or improperly restrictive of competition.

A-1 first challenges section 3.2.4.1 of the purchase description, which requires that the mail machine include the following features and performance characteristics:

"Modular mailing system which automatically feeds without operator intervention various sizes and weights of mail ranging from post card size to flats measuring at least 11 inches by 13 inches by 1/2 inch thick. The system will also be equipped with a flat feeding kit to ensure efficient automated feeding. The machine shall be capable of determining nonstandard size mail, and if required, automatically add the required surcharge to the appropriate postage."

A-1 argues that the requirement for feeding "without operator intervention" is physically impossible since with any machine an operator will have to insert pieces of mail face up, with addresses parallel to the machine, the top edge against the feeder, and writing on the envelope facing the operator.

In response to this contention, the agency argues that A-1's reading of the purchase description is unreasonable since section 3.2.4.1 simply calls for a machine that "automatically feeds without operator intervention" (emphasis added), but does not call for loading and starting the machine without operator activity. According to the agency, with any machine, an operator will have to turn the machine on, identify the class of mail to be processed, select the appropriate accounting code, and load the mail. The agency explains that section 3.2.4.1 calls for a machine that allows the operator to load mixed sizes and weights of mail, select the appropriate class and account number, and select a process button so that mail is weighed,

postage applied, and the appropriate account charged "without operator intervention."

We agree with the agency that A-1's reading of the challenged specification as establishing an impossible requirement is unreasonable. Section 3.2.4.1 does not call for a machine that arranges and loads the mail and turns itself on. Rather, as the agency notes, any machine will require some operator activity to load and start the machine. Read in context, the activity required to be performed without operator intervention is feeding the mail through the machine.¹

A-1 also challenges as unduly restrictive the requirement of section 3.2.4.1 that the machine be capable of determining nonstandard size mail and automatically adding any required surcharge to the appropriate postage.

The agency explains that the Domestic Mail Manual (DMM) requires that a surcharge be added to "nonstandard mail," that is, any mail piece weighing less than one ounce and exceeding size limits established by the DMM. According to the agency, if the surcharge is not included in the postage, the mail will be returned by the Postal Service due to insufficient postage.

A-1 argues that no one would send a piece of mail weighing less than an ounce and exceeding the size limits in the DMM. As a result, according to A-1, the circumstances requiring a surcharge would not occur so the requirement for a machine that can apply a surcharge to mail that requires it exceeds the agency's minimum needs. However, A-1 also states that "[i]t should be noted that the Protestant's machine can identify and affix postage to nonstandard pieces, as necessary." A-1 thus concedes that, as required by section 3.2.4.1, A-1's machine is "capable of determining nonstandard size mail, and if required, automatically add[ing] the required surcharge to the appropriate postage."

¹In its comments on the agency report, A-1 for the first time challenges the requirement of section 3.2.4.1 for a "flat feeding kit." This allegation is untimely. Under our Bid Protest Regulations, a protest based upon alleged improprieties in a solicitation that are apparent prior to the time set for receipt of quotations must be filed before that time. 4 C.F.R. § 21.2(a)(1) (1995). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later raised allegations must independently satisfy our timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. See Remtech, Inc., 70 Comp. Gen. 165 (1991), 91-1 CPD ¶ 35. Here, quotations were due on September 22, 1995. Since A-1 first challenged the flat feeding kit requirement in its comments submitted on November 24, after the closing date, the allegation will not be considered.

Prejudice is an essential element of every viable protest. See Hines/Mortenson, B-256543.4, Aug. 10, 1994, 94-2 CPD ¶ 67. Since A-1's machine can perform the function in issue, and since the firm admits that it can meet the RFQ requirement, section 3.2.4.1 does not affect A-1's ability to compete. We therefore will not consider the issue further.

A-1 similarly challenges a number of other provision of the purchase description but concedes that its machine can meet those requirements—demonstrating that it is not prejudiced by the challenged requirements. For example, A-1 challenges section 3.2.4.2 of the purchase description, which states,

"The system shall be equipped with an 11 ounce capacity scale which will allow the system to apply, without operator intervention, appropriate postage and calculate discounts for zip+4, presort, or bar coded mixed weight mail pieces, and automatically reject mail exceeding the US Postal Service 11 ounce limit for first class letters/flats while processing at a rate of at least 200 pieces per minute when processing uniform mail."

A-1 again questions the term "without operator intervention," arguing that an operator would have to select an appropriate mail class and discounts and would have to load the mail on the machine. In response, the agency again maintains that the protester's reading of the specifications is unreasonable. According to the agency, although it is true that the operator would have to select the appropriate mail class and discounts and load the mail, the mail would then be weighed, postage applied, and the cost charged to the appropriate account without operator intervention. The agency states that, contrary to A-1's contentions, section 3.2.4.2 does not call for a machine that would allow the operator to walk away from the machine while it is operating.

In its comments on the agency report, the protester states that its machine "would perform the required service as well as [a Pitney Bowes machine]. However, it would be performed in the Differential Weigh Mode and would not have to be presorted as would the Pitney Bowes machine." Since A-1's machine would, according to A-1, perform the required service as well as the Pitney Bowes machine, it is unclear to us how section 3.2.4.2 would prevent A-1 from offering its machine. Again A-1 is not prejudiced by the requirement.

A-1 also challenges the requirements of section 3.2.4.8 that the machine be equipped with user identification codes for up to 12 operators and section 3.2.4.9 which

requires "supplier provided bar codes." Here again, since A-1 concedes that it can meet these requirements, it is not prejudiced by these provisions.²

The protest is denied.

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²Although A-1's protest also challenged sections 3.2.4.3, 3.2.4.4, 3.2.4.7, and 5.1, the protesters' comments on the agency report did not address the agency's response. Where a protester comments on the agency report and fails to address issues to which the agency report responded, we consider such issues abandoned. Datum Timing, Div. of Datum Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328.