



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Rockville Mailing Service, Inc.

File: B-270161.2

Date: April 10, 1996

Jeffrey A. Lovitky, Esq., for the protester.

Louis J. Kozlakowski, Jr., Esq., Blum, Yumkas, Mailman, Gutman & Denick, P.A., for Jet Sort, Inc., an intervenor.

Lyman Goon, Esq., Social Security Administration, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where agency ascertained that it had made award based on misevaluation of awardee's technical proposal which had resulted from an unclear solicitation provision, agency reasonably determined to take corrective action.
 2. Where awardee's price has been disclosed, reopening negotiations after disclosure of all competitor's prices, does not constitute an improper auction where an improper award had been made.
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DECISION

Rockville Mailing Service, Inc. protests the agency's decision to reopen discussions and reevaluate proposals as corrective action after an award had been made to Rockville under request for proposals (RFP) No. SSA-RFP-95-2255, issued by the Social Security Administration (SSA), for mail sorting services. Rockville argues that the corrective action is unwarranted and will result in an improper auction.

We deny the protest.

The RFP sought proposals for all services necessary to prepare first-class metered mail to qualify for rate discounts under the United States Postal Service (USPS) barcoded and presorted first-class discount programs. First-class mail that is presorted may qualify for discount rates when specified minimum volumes are met. In this regard, the RFP contemplates that the contractor will commingle the SSA's mail with its own sorted first-class mail to qualify for better volume rate discounts. Under the contract, the contractor will pick up SSA's first-class mail from its Woodlawn, Maryland facility on a daily basis, sort the SSA's mail, add it to the contractor's other sorted first-class mail, and then deposit it at the Post Office for

delivery. In order to permit SSA to evaluate the estimated volume of first-class mail that each offeror could commingle with SSA's first-class mail during sorting to qualify for rate discounts, the RFP required offerors to include average daily volume of current National Distribution Mail (NDM) as part of the technical proposal.

The RFP provided that award would be made on a best value basis, with technical factors more important than price. The solicitation contained the following technical evaluation factors and points (with a possible total of 100 points): (1) understanding of the requirements of the statement of work (SOW) (10 points); (2) offeror's technical approach (20 points); (3) experience of offeror's proposed technical staff (15 points); (4) experience of offeror's proposed management staff (15 points); (5) offeror's experience in barcoding and presort operations to include volumes of mail handled, amount of experience and qualification rates achieved in the barcoding/presorting of national distribution mail (25 points); and (6) facilities and equipment (15 points).

The agency received five proposals in response to the solicitation, all of which were included in the competitive range. The agency received four best and final offers (BAFO), including those submitted by Rockville and Jet Sort, Inc. Jet Sort's BAFO received a total technical score of 100 points at an evaluated price of \$2,470,195. Rockville's BAFO received a total technical score of 91 points at an evaluated price of \$1,121,088.50. Under the experience criteria, the agency evaluated each offeror's current volume of NDM on the following basis:

First-Class NDM Volumes	Technical points
below 250,000	3.5
250,000-350,000	6.5
over 350,000-450,000	9.5
over 450,000	12.5

In its proposal, Rockville had identified its NDM volume as ranging from 100,000 to 150,000 pieces daily, to as much as 300,000 to 500,000 pieces daily. The technical evaluation panel (TEP) treated Rockville's volume as falling in the 350,000 to 450,000 range, and gave Rockville's proposal 9.5 points, out of a possible 12.5, under the NDM volume evaluation subfactor. The source selection official (SSO)

determined that the technical proposals of Jet Sort, Rockville, and another offeror were technically equivalent and recommended award to Rockville based on its low price. Award was made to Rockville.

During an on-site inspection of Rockville's facilities after award, the TEP noted that Rockville's volume of first-class mail appeared to be below the level which Rockville represented in its proposal. The TEP asked Rockville to clarify the amount of first-class mail that it processes on a daily basis. Rockville responded that it currently processed a daily average of 52,000 pieces of first-class mail, but that at the time that it submitted its proposal, its daily average was 118,508. The TEP ascertained that Rockville had interpreted the term "national distribution mail" to include both first-class and third-class mail. The agency intended the term "national distribution mail" to apply only to first class mail, which is all that is relevant to this procurement. Therefore, the agency determined that Rockville's proposal was incorrectly scored and should have received 3.5 points for its NDM volume, instead of the 9.5 points that it did receive. The TEP also concluded that at least one other competitive range offeror might have a similarly misinterpreted the intended meaning of the term "national distribution mail." The agency determined that reopening discussions and reevaluating was necessary, and this protest followed.

Rockville argues that the agency's determination that the evaluation was flawed, and its resulting decision to reopen negotiations, was based on the incorrect premise that NDM volume was a technical evaluation factor. The protester argues that the volume of NDM handled by each offeror impacts on each offeror's price, and was not properly encompassed by the solicitation's technical evaluation criteria. Rockville contends that the technical evaluation criteria primarily dealt with offerors' technical experience, and that nothing in the criteria reasonably apprised an offeror that the agency would evaluate mail volume. We disagree.

The pertinent section of the evaluation criterion states as follows:

"Offeror's experience in barcoding and mail presort operations to include volumes of mail handled, amount of experience and qualification rates achieved in the bar-coding/presorting of national distribution mail."

The agency explains that NDM volume was considered only in the technical evaluation, in order "to avoid the possibility of an overly optimistic offeror overstating projected discount qualifying rates in order to gain an apparent price advantage over offerors with perhaps more realistic projections of discount qualification rates." The fact that NDM volume impacts price does not prohibit the agency from considering this matter under the technical evaluation, as long as the

evaluation criteria provide for such evaluation. Contrary to the protester's contention, this technical criterion reasonably indicates that in evaluating each offeror's experience, the agency would consider each offeror's "volumes of mail handled." Accordingly, the agency reasonably assessed each offeror's NDM volume, as part of its evaluation of the offeror's experience. Rockville's argument simply misconstrues the plain language of the quoted section.

Next, Rockville argues that the SSA's action in reopening negotiations was unreasonable because the agency's evaluation error had no impact on the award decision. Rockville argues that the distribution of a particular offeror's mail to various zip codes is far more important than its total volume in assessing the likelihood of obtaining mailing discounts. In this regard, Rockville argues that the critical factor is each offeror's qualification rates, which is the percentage of a particular offeror's mail that qualifies for a USPS discount. The protester argues that the TEP assigned it a qualification rate of 89 percent that has never been challenged.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Oshkosh Truck Corp.; Idaho Norland Corp., B-237058.2; B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ 274. An agency may conduct a new evaluation where the record shows that the agency made the decision in good faith, without the specific intent of changing a particular offeror's technical ranking or avoiding an award to a particular offeror. PRC, Inc., 72 Comp. Gen. 530 (1992), 92-2 CPD ¶ 215; Burns & Roe Servs. Corp., B-248394, Aug. 25, 1992, 92-2 CPD ¶ 124. We will not object to proposed corrective action where the agency concludes that award was not necessarily made on a basis most advantageous to the government, so long as the corrective action taken is appropriate to remedy the impropriety. See Oshkosh Truck Corp.; Idaho Norland Corp., *supra*.

Here, we find nothing objectionable in the agency's decision to take corrective action. Notwithstanding Rockville's view as to the greater relative importance of the qualification rate subfactor, the record makes clear that the incorrect evaluation of Rockville's NDM had a significant impact on the award decision.¹ Because

¹Regarding Rockville's contention that its qualification rate is unchallenged, while the agency did not recalculate Rockville's qualification rate based on its actual (reduced) volume of first-class mail, the contracting officer did note that since Rockville actually had less than the indicated volume of its own first-class mail to commingle with SSA's mail, it would therefore probably qualify less first-class mail for discounts than the other higher-ranking offerors. The contracting officer's conclusion that Rockville's qualification rate would decrease because of a lower

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Rockville interpreted NDM to include first- and third-class mail, Rockville's proposal received 9.5 points for its NDM volume, when in fact Rockville's proposal should have received 3.5 points for its first-class mail volume. This adjustment would result in a reduction of Rockville's overall technical score from the 91 points, on the basis of which it was considered technically equal to two other slightly higher-scored proposals, to 85 points. The contracting officer states that she would not consider Rockville's proposal, with this lower score, to be technically equivalent to the two higher-scored proposals. Under these circumstances, the agency reasonably questioned whether the original award determination resulted in the best value to the government. In view of the fact that the awardee and another offeror misconstrued a material solicitation clause in a manner which significantly affected the evaluation of their proposals and the award determination, the agency properly determined that reopening discussions and reevaluating was necessary to ensure a fair and impartial competition. See Oshkosh Truck Corp., Idaho Norland Corp., supra.

Rockville also challenges SSA's proposed action on the ground that, since prices have been disclosed, reopening discussions will result in a prohibited auction. While Federal Acquisition Regulation § 15.610(e)(2) proscribes the use of auction techniques, this applies to the negotiation tactic of indicating one offeror's price to another offeror during negotiations; where reopening of negotiations is properly required notwithstanding the disclosure of an offeror's proposal, this does not constitute an improper action. Sperry Corp., 65 Comp. Gen. 715 (1986), 86-2 CPD ¶ 48.

In addition, there is nothing inherently illegal in the conduct of an auction in a negotiated procurement. Rather, the possibility that a contract may not be awarded based on true competition on an equal basis has a more harmful effect on the integrity of the competitive procurement system than the fear of an auction. Honeywell Information Sys., Inc., 56 Comp. Gen. 505 (1977), 77-1 CPD ¶ 256. The

¹(...continued)

volume of first-class mail is consistent with the RFP provision that the qualification rate is based on an offeror's technical capabilities and the volume of its first-class mail from other customers that would be mixed with the agency's mail.

statutory requirements for competition take primacy over the regulatory prohibitions of auction techniques. See The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425.

The protest is denied.

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