Protest of	)	
	)	Date: March 9, 1990
T & S PRODUCTS	)	
	)	P. S. Protest No. 90-06
Purchase Order No.	)	
416544-90-P-0330	)	

DECISION

T & S Products ("T & S") timely protests the proposed issuance of Purchase Order No. 416544-90-P-0330 by the Philadelphia Support Services Office to Penn Jersey Paper Co. ("Penn Jersey") for audio and video cassette mailers. The mailers were solicited by means of simplified purchasing procedures pursuant to Procurement Manual ("PM") 4.2.2.

On January 12, 1990, the contract specialist requested oral quotations from three suppliers for 50,000 each audio and video cassette mailers. T & S quoted $13.00/100 for the audio cassette mailers and $17.50/100 for the video cassette mailers for a total of $15,250.00. Penn Jersey quoted $98.00/1000 for the audio cassette mailers and $179.00/1000 for the video cassette mailers, for a total price of $13,850.00. Penn Jersey's quotation included the cost of manufacturing the cutting die. The third for supplier did not offer a quotation. On January 23, the contract specialist notified T & S that the purchase order would be issued to Penn Jersey.

In its protest, T & S contends that the procedures used soliciting the purchase order were improper because it was not given the opportunity to quote a price based on bulk packaging. T & S states that before giving its quotation, it asked the contract specialist if its quotation should be based on the same number of cassettes per box (100) that it had supplied in a previous order. T & S claims to have expressed concern to the contract specialist that there could be a substantial difference in quotations if some suppliers based their quotes on bulk packaging (1000/box) and others did not. T & S that it told the contract specialist that it would comply with her wishes with respect to packaging, as long as "everyone was bidding on the same requirement." According to T & S, the contract specialist indicated that 100 cassettes per box would be satisfactory. Consequently, it quoted a 100/box price instead of a 1000/box price, which it alleges would have been $2,400.00 less and would have made it the low bidder.[1/]

[1/]The protester incorrectly refers to itself and the other suppliers as "bidders." The PM states that a quotation is "a response to a request for quotation; it is informational in character, and unlike a proposal, it is not an offer that can be accepted by the Postal Service to form a binding contract." PM 1.6.2 o. "[A] purchase order issued in response to a quotation does not become a binding contract until the contractor

The contracting officer's report to this office included a separate statement by the contract specialist. The contract specialist stated that when she asked for quotations, she asked each supplier to give its best price. She states that she does not recall any discussion about quantity packaging, although she recalls that T & S telephoned her several times to inquire about the status of the solicitation. She states that when she notified T & S that the purchase order would be issued to Penn Jersey, she mentioned that Penn Jersey "was including the cutting die."

The contracting officer states that he reviewed the procedures used by the contract specialist and found nothing improper. He notes that packaging was not specified in the request for quotations because it was of no importance to the Postal Service and that the decision to issue a purchase order to Penn Jersey was based primarily on price.

T & S submitted comments on the contracting officer's report, stating that it should at least have been issued a purchase order for the video cassette mailers, as its price of $17.50/100 computes to $175.00/1000 and thus was less than Penn Jersey's price of $179.00/1000. T & S further states that Penn Jersey's inclusion of the cutting die appears to be a special inducement to receive the award.[1/]

Discussion

The PM states that oral solicitations are acceptable where simplified purchasing procedures are employed. PM 4.2.2 a. The proper procedures for soliciting oral quotations, as outlined in the Procurement Handbook ("PH"), include: (1) proper identification of the contracting officer by name and as a representative of the Postal Service; (2) a complete description of the supplies or services to be purchased and the quantities needed; (3) any other pertinent information; (4) a request for specified information from the vendor, such as its name, address, and type of business; and (5) documentation on a solicitation worksheet. PH 4.2.2 II. Here, the solicitation worksheet reveals that the contract specialist followed these procedures, including giving a complete description of the supplies and quantities needed. The contract specialist maintains that she asked each vendor to provide its best price at that time. Even accepting the protester's contention that the contract specialist stated that 100 mailers per box was a satisfactory method of packaging, there is nothing in the record to indicate that the Postal Service required the mailers to be packaged in any particular manner or that quotations should be based on a particular method of packaging.

either begins performance of the work or accepts the purchase order in writing . . ." PM 4.2.4 b. Thus, the purchase order is an offer by the Postal Service to buy the quoter's goods or services pursuant to the specified terms and conditions. Neese Floor Covering, Inc., P. S. Mistake Claim No. 74-3, November 5, 1974.

[2/]There seems to be some confusion about the cutting die. Contrary to T & S's belief, the record reveals that Penn Jersey's quotation included the cost of manufacturing the cutting die, not the actual delivery of the cutting die to the Postal Service. This raises no question of improprieties with respect to Penn Jersey's quotation.

T & S was given the opportunity to quote its best price on January 12. If its best price was based on 1000 mailers per box, as it now asserts, it had many opportunities to quote that price and cannot now contend otherwise. C.f., Input Output Computer Services, Inc., maintains P. S. Protest No. 86-28, July 2, 1986; ARA Services, Inc., P. S. Protest No. 76-53, October 14, 1976; Emerson Electric Company, P. S. Protest No. 74-47, January 24, 1975.

T & S claims that it discussed the differences between small quantity and bulk packaging with the contract specialist and from her alleged response it appears that T & S assumed it either had to quote at 100 mailers per box, or that all other suppliers would so quote. The contract specialist does not recall any such discussion. To the extent that T & S and the contract specialist disagree as to what was actually discussed, it is a factual dispute.

> In resolving factual conflicts between the protester and the contracting officer, the statements of the contracting officer are given a 'presumption of correctness' which the protester bears the burden of overcoming.

Fairfield Stamping Corporation, P.S. Protest No. 88-04, June 3, 1988; see also Pitney Bowes, Inc., P.S. Protest No. 89-86, December 20, 1989. The protester has not met its burden here. T & S has not shown, nor can it be inferred from the record, that in requesting quotations, the contract specialist gave it instructions that were different from those given to the other suppliers.

With respect to T & S's contention that it should have received a purchase order for the video cassette mailers, all suppliers were asked to quote on the entire quantity for both audio cassette and video cassette mailers. There is no indication in the record that it was the intention of the Postal Service to split the requirement and issue more than one purchase order. Since the contracting officer properly solicited quotations pursuant to the simplified purchasing procedures outlined in the PM and Penn Jersey's total price was less than that quoted by T & S, the contracting officer properly issued the purchase order to Penn Jersey.

This protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 5/26/93]