



January 30, 2012

Mr. David P. Hendel
Law Office of Husch Blackwell LLP
750 17th Street, NW
Suite 1000
Washington, DC 20006-4656

Re: Supplier Disagreement Resolution Case No. SDR11SR-09
Solicitation No. 2A-10-A-0007

Dear Mr. Hendel:

This responds to your supplier disagreement on behalf of Harte-Hanks Direct, Inc. ("Harte-Hanks") regarding U.S. Postal Service solicitation 2A-10-A-0007 for advertising and media planning, campaign support and logistics. You lodged an initial disagreement with the contracting officer (CO) on August 5, 2011, followed by a supplemental disagreement ("Supplemental Disagreement") on August 12, 2011. The CO responded to the initial disagreement on August 15, 2011 and, on that same date (via email) declined to consider the Supplemental Disagreement. You then lodged this disagreement (hereinafter the "Disagreement") with the Supplier Disagreement Resolution Official (SDRO) on August 25, 2011. In your Disagreement, you ask that the SDRO also consider the Supplemental Disagreement, and I will do so in the following.

The Disagreement

The Disagreement is based on the following assertions:

1. That a key member of the evaluation committee had documented animus towards Harte-Hanks, which resulted in a biased and tainted evaluation of its proposal;
2. That the Postal Service failed to obtain a best value decision because it did not engage in discussions with Harte-Hanks;
3. That the Postal Service conducted an errant evaluation of Harte-Hanks' proposal;
4. That the Postal Service failed to follow the solicitation's stated evaluation criteria; and
5. That the Postal Service failed to properly evaluate price proposals.

The Supplemental Disagreement

The Supplemental Disagreement is based on the following assertions:

1. That the Postal Service misevaluated technical proposals;
2. That the Postal Service did not evaluate proposals on an equal basis;

3. That the awardee's proposal failed to meet a minimum mandatory requirement; and
4. That, alternatively, the Postal Service failed to clarify an ambiguous solicitation requirement.

As is evident from a review of the above lists, these assertions overlap in some respects. Therefore, in the interest of brevity, the following discussion may address and resolve more than one assertion at a time, although it should be clear that all assertions were given full consideration.

Material Reviewed

In deciding this disagreement I have reviewed the following:

- The purchase plan;
- The statement of work, solicitation, and amendments;
- The awardee and Harte-Hanks' proposals;
- The evaluation team's individual and consensus evaluations and scores of all of the proposals;
- The award recommendation;
- Harte-Hanks' initial and SDRO Disagreements (including the Supplemental Disagreement);
- Correspondence from the awardee concerning the Disagreement.

Fact finding conferences were also held with the following: the prior CO for the contract with Harte-Hanks, the initial CO, the successor CO (this CO awarded the contract), the relevant purchasing & supply management specialist, the co-chairs of the evaluation team, and Harte-Hanks' representatives and counsel.

The Solicitation

Solicitation No. 2A-10-A-0007 was issued on June 15, 2010. It called for advertising and media planning, campaign support and logistics software services. Paragraph a. of Provision 4-2, Evaluation, which was amended on August 30, 2011, stated:

"General: The Postal Service reserves the right to award a contract for three (3) years for the base contract and 2 options for two (2) years for each option resulting from this solicitation to the offeror whose offer conforms to the solicitation and is deemed to offer the Postal Service the best solution, value, price and other factors as specified considered. The Postal Service is looking for one offeror to perform all services, USPS reserves the right to make multiple awards base (sic) on bundling sections of the SOW. The below evaluation factors will be considered in evaluating proposals. The Postal Service is more concerned with obtaining superior services than with making an award based on the lowest overall cost or price to the Postal Service. However, the Postal Service will not make an award at a significantly higher cost to the Postal Service to achieve slightly superior service features. The following factors will be used to evaluate offers, and are listed in descending order of importance. Responses to the performance factors should be included in the Technical Proposal:"

"Factor 1 – Technical Approach – 30%

The USPS will evaluate the supplier's demonstrated understanding of and ability to meet the various functional and technical requirements of the SOW, and the degree to which the functional and technical requirements will be supported. The USPS will not only evaluate the degree to which supplier's approach will meet the requirements of the SOW, but also their flexibility and responsiveness to meet future strategic and tactical changes. The supplier will provide a completed SOW compliance matrix. The matrix should list each section of the SOW and list if the supplier can meet the requirements of the specific SOW. Please list the following options next to each section of SOW; can comply, cannot comply, can or cannot comply with comment. Provide a detailed comment description of compliance as an attachment in responding."

"Factor 2 – Agency Organization/Staffing – 25%

The USPS will evaluate supplier's ability to plan and manage work activities, coordinate work with internal staff, subcontractors and USPS staff. The USPS will evaluate the supplier's proposed personnel qualifications, relevant experience, and the degree to which such qualifications and experience are considered suitable to meet the SOW requirements. Provide staffing plan with Key Personnel indicated."

"Factor 3 – Fiscal Year 2011 Advertising and Promotion Plans – 25%

The USPS will evaluate supplier's Proposed Plan (various objectives and work elements) based on the SOW requirements and knowledge of USPS advertising and marketing strategies and objectives."

"Factor 4 – Past Performance – 20%

The past performance will be evaluated considering supplier and key personnel experience and the supplier's overall performance on similar accounts and projects of similar size and complexity."

"Factor 5– The supplier's ability to perform upon award of a contract. Including whether the supplier has the ability to obtain, (sic) adequate technical and financial resources to perform the work. The capability to provide cost-effective solution that meets the program requirements. Provide detail on how it will be accomplished. This will be weighted as Pass/Fail."

Paragraph b of Provision 4-2 stated, in part: "The Postal Service *will not* (emphasis added) evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement."

Discussion of Individual Assertions in the Disagreement

1. A key member of evaluation committee had documented animus toward Harte-Hanks, which resulted in a biased and tainted evaluation of its proposal.

This assertion maintains that a member of the evaluation team negatively influenced the evaluation of Harte-Hanks' proposal. After having reviewed the record (including individual scoring of proposals) and conducting interviews with various members of the evaluation team, I find no evidence that this individual negatively influenced the evaluation of Harte-Hanks' proposal. To the contrary, my review of the record shows that the individual's scoring of Harte-Hanks' proposal was higher than the consensus score reached by the evaluation team. In addition, interviews with the evaluation team's co-chairs reveal that the individual was not in a position of authority over any of the other

eight evaluation team members and did not use the influence of her position as an evaluator to pressure other evaluation team members to negatively evaluate Harte-Hanks' proposal. These conversations also revealed that the individual made no negative statements about Harte-Hanks either in the consensus discussions or during Harte-Hanks' oral presentation. Based upon my review of the record, I conclude that this assertion is groundless. The individual fairly evaluated Harte-Hanks' proposal and this individual's involvement did not taint the evaluation of Harte-Hanks' proposal by other team members.

In addition to the above, I find that the individual was properly included as a member of the evaluation team. The evaluation team consisted of nine Postal Service professionals from various functional groups that would be working with the eventual awardee. The individual in question had previously worked with the incumbent supplier (which was Harte-Hanks) and had valuable insight with respect to portions of the contract work and performance. As such, it was in the interest of the Postal Service to include this individual as one of the members of the evaluation team.

2. The Postal Service failed to obtain a best value decision because it did not engage in discussions with Harte-Hanks.

This assertion maintains that a lack of discussion with Harte-Hanks resulted in a faulty evaluation of Harte-Hanks' proposal. As general information, a best value determination does not require conducting discussions with each offeror. Offerors are provided the opportunity to make their best argument for award of a contract in their proposals, and conducting discussions with each offeror is neither mandatory nor efficient in all solicitations. Rather, discussions may be held with some or all offerors when doing so will generate further information or clarify matters. In this instance, the CO determined that it was important to establish a deadline by which each offeror could make its best proposal, and that to allow later supplementations – which could arise from discussions - would not be efficient or practical. The terms of the solicitation informed Harte-Hanks and all offerors just what service and capabilities the Postal Service was seeking, and Harte-Hanks and all other offerors had the opportunity to explain what they had to offer in these regards in their proposals. Harte-Hanks' proposal did not rank as high as others due to a lack of detail in comparison to other proposals. The Postal Service was not obligated to seek out additional details from Harte-Hanks in conducting its evaluation.

The mere fact that the Postal Service did not conduct discussions with Harte-Hanks does not support a conclusion that the Postal Service did not obtain best value. Negotiations were held with the eventual awardee after it had been determined that the awardee had the highest ranked technical proposal. There is no inherent unfairness in this decision and it does not in and of itself mean that the Postal Service was not able to determine which proposal offered the best value. I therefore find that this assertion lacks sufficient merit to overturn the award.

3. The Postal Service conducted an errant evaluation of Harte-Hanks' proposal.

This assertion contains a number of bullet points created by the CO in his response to Harte-Hanks' initial disagreement, followed by Harte-Hanks' responses. The bullet points and responses discuss aspects of Harte-Hanks' proposal, and many are either repetitions or variations of the same point. Rather than repeat this exercise, the following addresses this assertion's main point regarding an errant evaluation.

In my review of the record, I have found no evidence that the Postal Service conducted an errant evaluation of Harte-Hanks' proposal. I have reviewed the awardee's proposal and find that Harte-Hanks did not provide as much detail in its proposal as the higher ranked awardee. How Harte-Hanks responded to the solicitation is its own business decision, as is the extent of detail it decided to provide. It is the responsibility of the evaluation team to evaluate the proposals in accordance with the terms and conditions of the solicitation. In this case, it appears that Harte-Hanks relied on its status as the incumbent supplier in how it prepared its proposal. When proposals were compared, the evaluation team gave higher scores to the offerors that provided more detailed responses. While Harte-Hanks characterizes these conclusions as a "down-grading" of its proposal, the fact is that Harte-Hanks did not lose points so much as it did not earn points due to its lack of detail and thoroughness, while by comparison, the eventual awardee did.

This conclusion holds for all of the aspects of the bullet points and the responses. The record shows no evidence that the evaluation team misapplied the evaluation factors or failed to follow the evaluation strategy outlined in Provision 4-2 of the solicitation, and as clarified by amendment and offerors' questions and answers responses. What the record does show is that the evaluation team applied the evaluation factors, followed the evaluation strategy, and scored and ranked the offerors – including Harte-Hanks - accordingly. On this basis, I find the assertion that the Postal Service conducted an errant evaluation of Harte Hanks' proposal to be without merit.

4. The Postal Service failed to follow the Solicitation's stated evaluation criteria.

Similar to Assertion 3 above, this assertion maintains that the Postal Service failed to follow the solicitation's stated evaluation criteria because it considered factors not mentioned in the solicitation. Harte-Hanks does not back this assertion up with facts, but rather states that Harte- Hank's proposal was ranked unfairly because it was not "innovative" and "did not bring anything new to the table" (see Disagreement p. 19). However, as stated above, a review of the record shows that the ranking did not come from the application of new or different evaluation factors, but rather from a comparison of Harte-Hanks' proposal to those of the other offerors, and a conclusion that Harte-Hanks' proposal suffered in comparison due to a lack of detail and thoroughness. Individual evaluations of proposals and their comparison to each other is a best practice that allows the CO to make a more effective determination as to which offeror offers the best value to the Postal Service. The record shows that this is what was done in this instance, and, therefore I find this assertion to be without merit.

5. The Postal Service failed to properly evaluate price proposals.

This assertion maintains that the Postal Service did not employ an objective or systemic method for evaluating the ". . . prices submitted by each offeror and thus did not properly evaluate price proposals." The solicitation explained that pricing for each of the six statement of work sections for each contract year was needed for evaluation, and offerors could use their discretion to tailor their price proposals in light of this. The CO decided to provide all offerors with this pricing flexibility rather than hold them to a rigid price structure. The solicitation provided the offerors with the most current volume estimates from the historic data of the program to provide a basis for their estimated pricing and to facilitate comparative price analysis.

After the original pricing proposals were received and reviewed, there were concerns that offerors may not have correctly understood the requirements of the program and that this may have affected the original price proposals. The solicitation was amended to provide clearer price proposal preparation instructions, and offerors were given time to provide revised price proposals.

Oral presentations were then held to allow the offerors to provide an opportunity to explain their respective price proposals. Technical proposals were not discussed during these presentations; as they had already been scored. In addition, no pricing negotiations took place at the presentations nor were any alternate pricing proposals accepted or discussed.

The record shows that the CO conducted a proper price analysis and evaluated price proposals properly. In this analysis, the record shows that the CO did employ an objective method of analysis and applied it to all price proposals. I therefore find that this assertion is without merit.

On a related note concerning the price evaluation: as noted above, Provision 4-2, *Evaluation (March 2006)*, paragraph b. Options, stated that:

“The Postal Service *will not* (emphasis added) evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement.”

Upon review of the CO's award recommendation, I confirmed that the CO evaluated and performed a price analysis of all offerors' annual prices including a subtotal of the base contract pricing, in addition to base plus option pricing. In the narrative provided by the CO, the CO discussed total pricing for all seven years (base plus option periods). As part of my review of this contract award, I compared the ranking of price proposals of the base period to the ranking of the base plus options periods. The ranking of the offerors remained the same, and therefore would not have affected the eventual award decision.

Lastly in this area, during my review of the pricing proposals, I noticed that the CO had not factored into his price evaluation the awardee's potential leasing costs for a facility during the option years. I discussed the matter with the CO, who stated that he did consider the additional costs, but decided not to address them in his award recommendation. I therefore factored these costs – which were derived from the awardee's proposal – into the base-plus-options total, and compared this total with those in the other offerors' price proposals. Again, the ranking remained the same.

For the above reasons, I find this assertion regarding the evaluation of price proposals without merit.

The Supplemental Disagreement

As noted above, I have decided to consider the supplemental disagreement which the CO declined to consider. My conclusions follow.

1. The Postal Service misevaluated technical proposals.

This assertion states that the Postal Service misevaluated Harte-Hanks' proposal due to the evaluation committee's misunderstanding of the technical services and capabilities Harte-Hanks provided as the incumbent supplier. Essentially, it is a repeat of earlier assertions concerning the evaluation of Harte-Hanks' proposal - in this case asserting a basic requirements misunderstanding regarding data hosting on the part of both the Postal Service and the awardee. Again, the record shows that the evaluation team understood the technical requirements and reviewed the proposals properly, and the CO and the awardee have confirmed that there was no misunderstanding as to specific technical requirements related to the data hosting requirement on their part. In addition, a review of the awardee's technical proposal shows that the awardee's proposal addressed the data hosting requirement in detail. For these reasons, I find this assertion without merit.

2. The Postal Service did not evaluate proposals on an equal basis.

This assertion argues again that the awardee did not understand the requirement. For the reasons stated above, I find this assertion without merit.

3. The awardee's proposal failed to meet a minimum mandatory requirement.

In a variation of the above, this assertion again argues that the awardee did not understand the requirement. For the reasons stated above, I find this assertion without merit.

4. Alternatively, the Postal Service failed to clarify an ambiguous Solicitation requirement.

This assertion is an attempt to build upon Harte-Hanks' earlier assertion that the awardee or the Postal Service or both did not understand the terms of the solicitation. As the record demonstrates the opposite, I find this assertion without merit.

Decision

After a thorough review of the record and fact-finding with the relevant parties, and for the reasons discussed above, I have determined that the CO awarded the contract to the offeror who offered the best value to the Postal Service. This disagreement is therefore denied.

Sincerely,



Robert D. D'Orso, CPSM
USPS Supplier Disagreement Resolution Official