



December 13, 2011

Robert J. Symon
Aron C. Beezely
Bradley Arant Boult Cummings
1615 L Street, N.W, Suite 1350
Washington, DC 20036

RE: Supplier Disagreement Resolution Case No. SDR-12AC-1
Solicitation No. 082530-11-A-0042

Dear Mr. Symon and Beezely:

This responds to your supplier disagreement (hereinafter, "Disagreement") on behalf of J.C.N. Construction, Inc. ("JCN") regarding US Postal Service solicitation 082530-11-A-0042 C11 HVAC & Control Replacement for the Portland, ME Main Office. This Disagreement follows a reevaluation of proposals as directed by me in my resolution of Supplier Disagreement Case No. SDR-11AC-11 (see Supplier Disagreement Resolution Official (SDRO) decision letter of 10/19/11). This Disagreement is based on the assertion that the "USPS, in conducting its reevaluation of proposals, failed to follow the evaluation scheme set forth in Solicitation No. 082530-11-A-0042."

Background

JCN lodged a disagreement with the SDRO regarding the award of a contract for the above solicitation in October. After a review of the record, the SDRO sustained the disagreement and directed the relevant contracting officer (CO) to reevaluate the proposals in a manner consistent with the solicitations' stated evaluation factors in order to determine which offer presents the best value to the Postal Service; once the reevaluation was performed, the CO was directed to issue a revised Notice of Award to the awardee and unsuccessful offerors and offer debriefings to the latter. On 10/26/11, the CO notified JCN that the reevaluation had taken place and the contract had again been awarded to the initial awardee. JCN requested a debriefing, and this was held by telephone on 11/1/11. On 11/15/11, JCN lodged an initial disagreement with the CO regarding this new award; the CO denied the disagreement on 11/23/11.

The Disagreement

Your disagreement is based on two assertions: (1) that JCN was harmed during the purchasing process by someone within the Postal Service providing the eventual awardee with the pricing contained in JCN's proposal, thereby allowing the eventual awardee to underbid JCN; and (2) that in its evaluation of JCN's proposal, the Postal Service did not follow the scheme set forth in the solicitation. I will address the second of these assertions first.

The Solicitation

Solicitation No. 082530-11-A-0042 was issued on 7/5/11. The solicitation was for "HVAC & Control Replacement for the Portland, ME Main Office." Solicitation Provision 4-2, Evaluation, stated:

Award will be made to the responsible offeror whose proposal contains the combination of Technical, Management Plan, and/or QSP, if required and cost-related factors that offer the best overall value to the Postal Service. Primary consideration will be given to the lowest evaluated prices. However, an award will not necessarily be made to the lowest offeror, if their Technical and Management Plan and/or QSP, if required, are determined to be significantly inferior.

See Solicitation No. 082530-11-A-0042 p.6.

The solicitation required offerors to complete a "Construction Qualification Statement," p.2 of which stated (under the header "Completing the Qualification Statement"): "The information you provide in this Qualification Statement will be the basis for the evaluation of your company." "The Evaluation Process" section of this Statement (Statement p.2) instructed offerors to include with their submission: "Comparable criteria identified in the Statement including type of repair/alteration, cost, etc. Projects listed must meet all portions of the established criteria to be considered comparable (underline in original)."

Sentence 1 of Section B, Project Description, states that the Estimated Cost Range (of the project) "is between \$1,500,000.00 and \$2,300,000.00 (see Construction Qualification p.3)", and Paragraph 1 of Section C, "Minimum Company Performance Requirements (see Statement p. 3)" required the following for a proposal to be considered:

Completion of a minimum of two (2) comparable projects with the past five (5) years. Projects are to be similar size, cost, type and complexity having been performed in an existing building during ongoing operations.

Material Reviewed

In my review of the record, I have had conversations with the CO, both by phone and by email, and have reviewed the following:

- The solicitation;
- The initial disagreements;
- The CO's response to the initial disagreements;
- The disagreements lodged with the SDRO;
- JCN and the eventual awardee's proposals;
- The evaluation team's evaluations of the above proposals; and
- The awardee's response to the notification of JCN's disagreement.

From my review of the materials listed above, it is apparent that neither the awardee nor JCN provided information establishing that they met the Minimum Company Performance Requirements. The contracting officer stated that JCN did not meet the Minimum Company Performance Requirements because none of the jobs referenced in JCN's proposal were within the dollar limits stated in Sentence 1 of Section B, Project Description, of the Construction Qualification Statement. Based on my review of JCN's proposal, this statement is true. Along the same lines, however, one evaluation team member noted that the awardee submitted only one comparable project (in terms of

the required cost range) in its proposal. Based on my review of the awardee's proposal, this observation is also true.

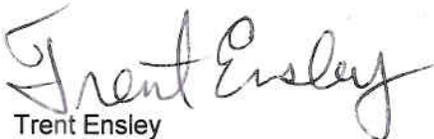
Despite the fact that neither the awardee nor JCN met the stated Minimum Company Performance Standards, both JCN and the awardee were considered for award. This misapplication of the evaluation methodology spelled-out in the solicitation raises serious doubts as to whether the evaluation team conducted an effective evaluation, either in the initial evaluation or the reevaluation. Absent an effective evaluation, the CO did not have the necessary foundation from which to determine the supplier who offered the best value to the Postal Service. Both effective evaluation and determination of best value are fundamental to the success of the purchasing process, and it does not appear that either was achieved in this case.

While JCN's allegation regarding the potential dissemination of its pricing information before the initial award was made is a serious allegation, it need not be reached in light of my findings with respect to the allegation related to the evaluation process. Regarding this allegation, however, the following should be noted: (1) that JCN presented only limited, circumstantial evidence in support of this allegation; (2) that the CO presented evidence, which appeared to refute the allegation; and (3) that the awardee's response to JCN's disagreement specifically denied that the awardee had received any information regarding JCN's pricing during the purchasing process, and adequately explained the facts and circumstances surrounding its price proposal.

Decision

After considering all information provided by the CO, JCN, and the awardee, and after having conducted a thorough review of the material listed above, I have determined that fundamental questions exist as to whether the Postal Service obtained best value in this purchase. JCN's disagreement is therefore sustained as to its assertion that the Postal Service did not follow the evaluation scheme set out in the Solicitation. As a result, I hereby direct the CO to terminate for convenience the contract with the awardee. I also direct the CO to work with the requirements organization to determine if a Postal Service requirement still exists, and if a new solicitation for a supplier to perform this work should be issued. If it should, the CO must ensure that the new solicitation contains a rational and effective evaluation scheme and ensure that it is followed by the evaluation team.

Sincerely,



Trent Ensley
USPS Supplier Disagreement Resolution Official

cc: Domenic Battista

bcc: Susan Brownell
Barbara Cioffi
Jennifer Beiro-Reveille
Paul McGinn