



May 25, 2012

Mr. Steve Bennett
JCN Construction
155 Dow Street, Suite 301
Manchester, NH 03105-1600

RE: Supplier Disagreement Resolution Case No. SDR-12AC-4
Solicitation No. 072382-12-A-0004
J.C.N. Construction Co. Inc.

Dear Mr. Bennett:

This responds to the supplier disagreement of J.C.N. Construction Co. Inc. (hereinafter "JCN") lodged on April 25, 2012 regarding Postal Service solicitation 072382-12-A-0004, HVAC Systems and Controls Replacement for the Main Post Office, in Portland, ME.

Background

Solicitation 072382-12-A-0004 involves the resolicitation of a contract for HVAC Systems and Controls Replacement for the Main Post Office in Portland, ME that was previously terminated for convenience. That contract (awarded from solicitation 082530-11-A-0042) was the subject of a supplier disagreement (Supplier Disagreement Resolution Case SDR-12AC-1) lodged by JCN. On December 13, 2011, I, as the Supplier Disagreement Resolution Official (hereinafter "SDRO"), directed the contracting officer to terminate for convenience the contract with the awardee and issue a new solicitation if a Postal Service requirement still existed.

As a result of that decision, solicitation 072382-12-A-004 was issued on February 2, 2012, and a contract was awarded on March 23, 2012. JCN was debriefed by the contracting officer (hereinafter "CO") on April 9, 2012, and on April 10, 2012, JCN lodged a disagreement with the CO. The CO denied the disagreement on April 18, 2012, and JCN lodged the present disagreement (hereinafter "Disagreement") with the SDRO on April 25, 2012.

The Disagreement

This disagreement is based on three assertions: (1) the awardee received an unfair advantage and preferential treatment over other offerors; (2) the awardee does not possess the prerequisite experience; and (3) the awardee is ineligible for award until the proper adjudication of the allegations in JCN's November 28, 2011 disagreement regarding the awardee's late price revision with respect to the initial solicitation (solicitation 082530-11-A-0042). Later in this decision, I will address these assertions in this order.

Material Reviewed

In my review of the record, I have had conversations with the CO, and have reviewed the following material:

- The purchase plan;
- The solicitation (solicitation 072382-12-A-0004);
- The initial disagreement and CO response;
- The Disagreement lodged with the SDRO;
- JCN's and the awardee's proposals;
- The evaluation team's evaluations; and
- The evaluation team's award recommendation to the CO.

The Solicitation

Paragraph A.300 Evaluation and Award provided (in part) as follows:

"A.301 Contract Award (Provision 4-2) (March 2006) (Modified)

- a. General. The Postal Service will award one (1) or more contract(s) resulting from this request for proposal (RFP) to the offeror(s) whose proposal is deemed to provide the Postal Service best value, cost or price and other factors specified elsewhere in this solicitation considered. See also Section B.1500 – Attachments.

An offeror's proposal may be accepted in whole or in part. The required Financial Statement will be evaluated by the Purchase Financial Team. NOTE TO CONTRACTORS: In the event a determination is made a contractor is financially incapable of performing the requirements, no review of a firm's technical and price proposals will occur.

A.302 Contract Award and Proposal Evaluation (Provision F-301) (March 2006)

- a. Evaluation
 1. If required by the contracting officer (see Section B. 1500 – Attachments, for any requirements), all Technical, Management Plans and/or Qualification Statement Packages (QSP) will be evaluated by the contracting officer or his/her designated representative(s). The Technical, Management Plans and/or QSPs will be evaluated to ensure that the services and personnel to be provided by the offeror are adequate to ensure the proper execution of this contract. In making this evaluation, the various features to be considered, and the maximum possible rating points are assigned in each document attached in Section B.1500 – Attachments.
 2. Proposals will be evaluated using proposal-specific factors – only – including Technical, Management Plan, and/or QSP and Cost Proposal. The prices will be evaluated to determine that they are fair and reasonable. If it is determined that the Technical, Management Plans, QSPs and/or Cost Proposals need clarification, discussions may be held with any offeror to clarify their proposal. If and when discussions are conducted with an offeror(s) they will be given the opportunity to revise their proposal, if applicable. Offerors whose Technical Management, Plans, QSPs and/or Cost Proposals are determined to be

unacceptable (incomplete, unreasonable costs (high or low) and with no opportunity to receive contract award) may be eliminated from further consideration. Oral presentations may be required. If required, those offeror's (sic) will be notified.

b. Award

1. 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 be necessarily be made to the lowest offeror, if their Technical and Management Plan, and/or QSP, if required, are determined to be significantly inferior."

Section B. 1500 – Attachments, included a "Contractor Qualification Statement" stating that "the information you provide in the Qualification Statement will be the basis for the evaluation of your company." A paragraph of the Qualification Statement titled "The Evaluation Process" stated:

"The Postal Service is interested in awarding this contract to the firm providing the best value based on the combination of qualifications provided in the Qualification Statement and the contractor's cost proposal. Only those companies that provide superior Experience/Performance and Capabilities can achieve the maximum number of points. Your Qualification Statement will be evaluated by a committee appointed by the Contracting Officer " (pp. 1 and 2 of the Contractor Qualification Statement)."

Part A of the "General Information" section of the Qualification Statement (p. 3) required offerors to submit: "One (1) original and two (2) copies of the Qualification Statement. The Qualification Statement should be indexed into sections and tabbed as indicated for each requirement of this package as follows:

- Tab One: Comparable Experience/Performance
- Tab Two: Safety/Experience Modification Ratio
- Tab Three: Bonding Information"

Part C of the General Information section (p.3) identified the following as the "Minimum Company Performance Requirements"

1. Completion of a minimum of two (2) comparable projects within 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.
2. Projects constructed for the direct use or occupancy of the company(s) submitting the Qualification Statement will not be considered as a comparable project.
3. Proposed HVAC contractor shall be certified by the HVAC manufacturer for the specified system

Part D of the General Information section (p.4) stated the following under "Evaluation Procedures:"

1. A completed Qualification Statement package, Parts I, II, and III, will be used to evaluate the company's experience, performance, and capabilities.

2. The Evaluation Team will evaluate companies submitting Qualification Statements to ensure that the company's experience and resources are adequate to provide a high level of excellence in the execution of the project. Each team member will individually evaluate each Qualification Statement. The results will be recorded on a matrix using the points earned for each area. These points will determine the final overall ranking of the submissions.

Discussion of JCN's Assertions

I will address each of JCN's assertions in turn.

Assertion 1. The awardee has received an unfair advantage and preferential treatment over other offerors.

JCN argues that it has been put at a competitive disadvantage because it and other offerors were not told what amount of work had been "descoped" from the original solicitation (solicitation 082530-11-A-0042) for this requirement and the subsequent performance under the original contract. JCN argues that, with this knowledge, the awardee which had performed the work under the earlier, terminated contract, was able to price its offer lower than its competitors, thus giving rise to the alleged "competitive disadvantage."

It is true that the awardee had a familiarity with the work called for under the present solicitation (solicitation 072382-12-A-0004), since it had been awarded the earlier contract from the earlier solicitation and had performed for some time before the SDRO directed the previous CO to terminate the contract for convenience and issue a new solicitation for a supplier to perform the work if the requirement still existed. However, with the exception discussed below, the record shows that the new solicitation provided all prospective offerors the same information upon which they could prepare their proposals - including prices - and the evaluation team evaluated the offers based on the methodology contained in the new solicitation. Simply put, the fact that a supplier has performed a previous requirement, or part of a previous requirement, does not constitute an unfair competitive advantage. That supplier will still have to provide a proposal that addresses the new solicitation and that proposal will be evaluated on the basis of the new solicitation's evaluation factors. There is no indication in this case that the awardee's previous performance unfairly skewed the evaluation of the awardee's proposal or the other offerors' proposals.

Also germane to this assertion of unfair advantage is the occurrence of a preproposal conference/site walkthrough on February 21, 2012, which both JCN and the awardee attended. During the walkthrough, JCN asked no questions of the CO concerning the scope of the work or the extent of work performed under the previous contract (of which JCN was fully aware, having lodged the SDRO disagreement that led to the earlier termination for convenience). Further, during the proposal preparation period, JCN asked no questions and sought no clarification regarding the scope of work or, for that matter, any previously performed work. During this period, JCN could have sought relevant information in order to refine its proposal, but declined to do so. The fact that the awardee submitted a lower price, in light of the above facts, does not lead to a conclusion that the awardee had or was given an unfair advantage.

Nevertheless, the CO does acknowledge that the new solicitation erroneously stated the extent of asbestos abatement required. The scope of work under solicitation 072382-12-A-0004 did not recognize that some of the required asbestos abatement had already been performed under the earlier contract. Because this earlier work had been performed by the new awardee, JCN argues that the new awardee was able to adjust its price based on information it had and other offerors did not.

However, in his response to JCN's initial disagreement (see CO response dated April 18, 2012), the CO stated that he told all attendees at the preproposal conference/site walkthrough that some of the asbestos abatement called for in the current solicitation had been performed. As noted above, JCN attended the conference/walkthrough, but raised no questions concerning the amount of abatement already performed or left to be performed. Moreover, the CO in his response stated that the overall value of the asbestos abatement was \$30,000, and approximately \$24,000 of the work had been performed under the earlier contract. I have reviewed the cost proposals of both JCN and the awardee with respect to the new solicitation, and find that JCN's overall proposed price would still be significantly higher than that of the awardee even if the value of the performed work is added to the awardee's overall proposed price and subtracted from JCN's overall proposed price.

From my review of the record, and despite the error concerning the asbestos abatement scope of work, I conclude that offerors were fully informed of the requirements so that they could prepare effective proposals and pricing in response to the solicitation. I also find that the awardee was not given an unfair competitive advantage. I therefore find this assertion to be without merit.

Assertion 2 The awardee does not possess the prerequisite experience.

In this assertion, JCN argues that the awardee's proposal did not provide the information required by the solicitation because it failed to list two "comparable" projects completed or in progress during the past five years. JCN further argues that the Postal Service "tailored" the performance requirements of the new solicitation to permit a successful technical evaluation of the awardee, and that there is a "disconnect" in the evaluation results. I find both allegations without merit.

As detailed above, Section C of the "General Information" section of the Qualifications Package (p.3) states that the "Minimum Company Performance Requirements" include: "Completion of a minimum of two (2) comparable projects within the past five (5) years. Projects are to be similar size, type and complexity having been performed in an existing building during ongoing operations." Part 1 of the Qualifications Package (p. 5) then calls for offerors to "(l)ist a minimum of two (2) comparable projects (as defined in Part 1 General Information, Section C) completed or in progress during the past five (5) years."

I have reviewed both JCN's and the awardee's proposals, and have found that both responded to the Qualifications Package requirements. I have also reviewed the overall evaluation of all of the offerors' proposals. Two of the proposals were not considered for award, but the evaluation team determined that both JCN's and the awardee's proposals met the "comparable projects" requirement. I agree with the team's conclusion in this regard.

The record indicates that JCN's and the awardee's qualification statements were ranked equally and that all offerors' qualification statements were evaluated in accordance with the evaluation methodology contained in the solicitation. Further, my discussions with the CO confirmed that the evaluation of the qualification statements was conducted independently of the price evaluations. There is no indication of favoritism or faulty evaluation. I therefore find this assertion to be without merit.

Assertion 3. The awardee is ineligible for award until the allegations of JCN's November 28, 2011 protests regarding the awardee's late price revision have been properly adjudicated.

This allegation is a reassertion of an argument JCN made in its earlier disagreement concerning the award arising from solicitation 082530-11-A-0042. In that disagreement, JCN suggested that its initial price information was somehow disseminated to the awardee prior to the awardee's revised price proposal. In my decision regarding JCN's earlier disagreement, I directed the CO to terminate the

awardee's contract for convenience, and regarding JCN's allegation concerning price information stated the following:

"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."

JCN has presented no new evidence in support of this allegation since my December 13, 2011 decision. Accordingly, I see no basis to disturb my conclusions with respect to this allegation and find it to be without merit.

Decision

After considering all of the information provided by the CO and JCN, and after having conducted a thorough review of the record, I find the CO's award decision represents the best value to the Postal Service. Therefore, this Disagreement is hereby denied.



Trent Ensley
Supplier Disagreement Resolution Official