



December 22, 2015

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801 17th Street, NW
Washington, DC 20006

Re: Supplier Disagreement Resolution Case No. SDR-15-SR-02
Solicitation No. 1C-14-A-0021

Dear Mr. McCullough:

Xerox Corporation ("Xerox") lodged a Disagreement with the Supplier Disagreement Resolution ("SDR") Official on September 19, 2014 (the "Disagreement"), with respect to the United States Postal Service's award pursuant to Solicitation No. 1C-14-A-0021, Managed Print Services. The awardee was Hewlett Packard Company ("HP"). Xerox lodged an initial disagreement regarding this award with the contracting officer ("CO") on August 18, 2014. The CO denied the initial disagreement on September 9, 2014.

I. The Disagreement

Xerox's Disagreement is based on the following assertions:

- In performing its technical evaluation, the Postal Service unreasonably assessed weaknesses regarding Xerox's technical proposal and applied undisclosed requirements;
- The Postal Service unreasonably failed to address HP's recent and relevant negative past performance, which includes allegations that it mischarged the Postal Service;
- In calculating the total evaluated prices for HP and Xerox, the Postal Service relied on a spreadsheet that incorporated mathematical errors; and
- In calculating the total evaluated prices for HP and Xerox, the Postal Service relied on a pricing methodology that weighted OEM products more heavily than non-OEM and re-manufactured products, which was not consistent with the Solicitation's stated evaluation criteria.

II. Materials Reviewed

In my review, I have considered the following relevant material, among other things:

- The statement of work and solicitation;
- Xerox's and HP's proposals;
- The technical evaluation report;
- The technical evaluation spreadsheet;
- The award recommendation;
- The initial disagreement to the CO;
- The CO's response to the initial disagreement; and
- The disagreement lodged with the SDRO.

Pursuant to 39 C.F.R. § 601.108(e), I have had communications with the CO.

III. Discussion

A. Evaluation of Xerox's Technical Proposal

Xerox argues that the Postal Service made three errors in its evaluation of Xerox's technical proposal. Disagreement at 16. The evaluation of technical proposals is generally a matter within the Postal Service's discretion. Xerox's mere disagreement with the Postal Service's judgment does not render an evaluation unreasonable.

The responses to the SOW requirements were evaluated on a ratings scale from 0 to 4. Below is the adjectival value attributed to each score of 0 to 4:

Score	Title	Description
0	Unsatisfactory	The proposal as submitted clearly does not meet the requirements set forth in the subject RFP. Major weaknesses, deficiencies, and or risks are found which indicate a comprehensive effort, comparable in effect to a thorough rewriting of the application, would be necessary before USPS requirements are met.
1	Marginal	Proposal demonstrates shallow understanding of requirements and proposes an approach that marginally meets or in some instances falls below minimum requirements. The weaknesses, though possibly correctable, outweigh the strengths. There is a higher degree of risk associated with the proposal than should be expected.
2	Satisfactory	The proposal as submitted meets the overall requirements of the subject RFP. There are no major indications of exceptional features that could prove to be beneficial, or conversely, major weaknesses, risks, or deficiencies that diminish the general quality. Ratings and scores within the satisfactory range reflect a proposal that no more than adequately meets the Postal Service's requirements.
3	Good	High quality in most respects and meets or exceeds minimum requirements in a way beneficial to the USPS. The proposal meets overall requirements with no major weaknesses, deficiencies or risks noted. Those weaknesses or risks which are found are considered sufficient to preclude evaluating the proposal as excellent; however, they do not collectively suffice to jeopardize the otherwise overall superior performance as proposed. Ratings and scores within the good range should reflect a comparison of the number and extent of such weaknesses or risks against the overall superiority of the application.
4	Excellent	The proposal exceeds all requirements. The proposal is fully and completely responsive. Corporate and or personnel information submitted indicates extensive experience in similar subject matter and scope to the requirements described in the subject RFP. Assigned ratings and scores within the excellent range indicate that in terms of the specific criteria, the proposal contains no major weaknesses, deficiencies, or risks, or that whatever minor faults are found are considered to be of such small consequence that their impact on the overall excellence of the proposals are negligible.

As shown above, the midrange score of 2 meant that the offeror met the requirement. The maximum score of 4 meant that the offeror significantly exceeded the requirement.

1. Narrative Responses to the SOW Requirements

For certain responses to the SOW requirements, Xerox argues that it should have received the maximum score possible in cases where it stated that it was fully compliant but provided no narrative explanation. Xerox argues that since the solicitation did not require a narrative explanation in cases where an offeror states that it is fully compliant, it should have received the maximum number of points possible, instead of half the number of points possible in many of these cases.

However, pages 2 and 3 of the solicitation's Proposal Instructions and Evaluation Criteria stated that the offerors would be evaluated on their explanatory responses to the SOW requirements:

MPS Statement of Work:

The Offeror's response to the Managed Print Services Statement of Work constitutes the core of the technical evaluation of this solicitation. The technical team will directly review and score the response to the SOW. Offerors are, therefore, strongly encouraged to respond to each section of the SOW and to provide ***succinct and thorough responses in the MPS Requirements Matrix FINAL document***. The SOW and the separate responses must be reattached to the solicitation and included in both the binder and the electronic soft copy submission. Offerors must not redline the text of the SOW document.

MPS Requirements Matrix FINAL

Offerors are required to provide written responses to each section of the SOW on the MPS Requirements Matrix FINAL document where compliance box(s) are provided. Several sections have more than one compliance box which requires multiple responses. ***At each section, Offerors must indicate at what level their company will be compliant to the requirement (fully compliant, partially compliant or non-compliant). To the right of the compliance box, Offerors should elaborate to what degree they are capable of meeting the requirement.*** No embedded documents are permitted as a response to the SOW and as per the instruction tab, each response section is limited to 200 words. In general, Offerors should respond as best as possible to each section to satisfy the requirement. ***When reviewing the responses, the Evaluation Team will consider your company's level of compliance, the quality of the response, and any added value that may be presented.***

(emphasis added). There was no ambiguity that the offerors were going to be evaluated on their explanatory responses.

Xerox's argument is based on a flawed reading of the instructions for Column D ("Supplier Response: Fully Comply, Partially Comply, Non-Compliant") contained in the Instructions Tab of the MPS Requirements Matrix (Amendment No. 2). The instructions for Column D and for Column E, which is the actual column for the narrative responses at issue, were as follows:

Column D - Supplier will indicate how their solution will comply with the said requirement: fully compliant, partially compliant or non-compliant. ***If the requirement is only partially met, the supplier response must indicate in the narrative response specifically what aspect of the requirement is not met.*** Additionally, the response must indicate "if and how" the supplier intends to fulfill the full requirement. If the supplier does not intend to meet the full requirement, the response must indicate this.

Column E - ***The Supplier is requested to provide written responses to all requirements.*** Responses, however, must not exceed two-hundred (200) words per

requirement response for the narrative unless otherwise noted. For any requirement that is not met or met in full, the supplier must provide an explanation of any plans to include the full functionality in later releases, again complying with the two-hundred (200) word response restriction.

(emphasis added). Xerox argues that the sentence for Column D stating, "If the requirement is only partially met, the supplier response must indicate in the narrative response specifically what aspect of the requirement is not met," means that if the offeror is fully compliant, then no narrative response is required. Disagreement at 18. However, this flawed logic is contradicted by the first sentence of the instructions for Column E ("Supplier Narrative"): "The Supplier is requested to provide written responses to all requirements."

Even if Xerox's argument was correct (which it is not), at best, the solicitation would be considered ambiguous. In such a case, Xerox should have submitted a question regarding the purported ambiguity when it submitted its other questions during the "Question & Answer" period. In addition, Xerox's argument is untimely because, "[f]or disagreements that concern alleged improprieties in a solicitation, the contracting officer must receive the disagreement before the time set for the receipt of proposals." 39 C.F.R. § 601.107(b).

However, the solicitation was not ambiguous. Nearly all of Xerox's responses to the SOW requirements said "Fully Comply" in Column D and contained a narrative explanation in Column E. Clearly, Xerox understood that it would be evaluated on its explanatory responses to the SOW requirements. For any given requirement, it was up to the offeror to provide the evaluators with the grounds to judge how advantageous the proposal would be to the Postal Service. Xerox was scored appropriately in the cases where a narrative response was provided and in cases that it did not provide a narrative response.

2. Requirement to Ship All Supplies Using the Postal Service

Xerox argues that the Postal Service erred in assessing it a weakness for not making clear that Xerox would ship all supplies using the Postal Service. Disagreement at 21. The two Xerox responses at issue were for SOW Requirements 3.2.1.c. and 5.c. *Id.* at 21-22. Xerox's approach to this argument is that the Postal Service erroneously determined that Xerox was not going to ship all of the required items using the Postal Service. However, that was not the case.

SOW Requirement 3.2.1.c. from the Solution Logistics factor required that, "Supplier must ship all items via USPS, unless prohibited by USPS regulations." In Column D of the Requirements Matrix, Xerox indicated "Fully Comply," and in Column E, Xerox responded, "Xerox has analyzed the requirements to allow compliance and will implement this as part of this program." Disagreement at 22. The technical evaluation team assessed Xerox a 2.5 out of 4 for this requirement.¹ Xerox's score of 2.5 is between Satisfactory and Good.

The reason why Xerox did not receive a higher score for SOW Requirement 3.2.1.c. was because of the weaknesses in its response. Xerox's short narrative response only states that it "will implement" the requirement, but it does not explain how it will meet the requirement. Xerox could have explained what changes it was going to make to its own fulfillment/shipping process in order to be able to ship the large amount of required items using only the Postal Service.

SOW Requirement 5.c. from the Unmanaged Print Services factor required that, "Supplier shall deliver replacement consumables for unmanaged printers purchased by USPS not later than five (5) business days after order submission by USPS." In Column D of the Requirements Matrix, Xerox indicated "Fully Comply," and in Column E, Xerox responded, "Xerox standard shipping process will accommodate this timing." Disagreement at 21. The technical evaluation team assessed Xerox a 2 out of 4 for this requirement, which is a mid-range score meaning that Xerox met the requirement.

¹ Xerox's score for SOW Requirement 3.2.1.c. was slightly higher than HP's respective score.

The reason why Xerox did not receive a higher score for SOW Requirement 5.c. was because of the weaknesses in its response. Xerox's short narrative response only states that its "standard shipping process" will accommodate the five-business-day requirement. However, Xerox does not explain whether its "standard shipping process" involves using the Postal Service to ship the large amount of required items. While SOW Requirement 5.c. is concerned about meeting a five-business-day requirement, any kind of fulfillment/shipping has to be done in compliance with the contract. As discussed above, one of the requirements of the MPS contract is that all items have to be shipped using the Postal Service. It was reasonable for the technical evaluation team to have concerns that "standard shipping process" was a kind of caveat that made the response unclear.

3. Managing Third Party Equipment

Xerox argues that the Postal Service erred in assessing it a weakness for not clearly describing its capacity to manage third-party equipment. Disagreement at 24. At issue is SOW Requirement 4.1.a. from the Managed Print Services factor, which required that, "Solution shall be capable of supporting deployment of, configuring and updating Managed Printers remotely, from a central location in real time." *Id.* In Column D of the Requirements Matrix, Xerox indicated "Fully Comply," and in Column E, Xerox responded, "The Xerox Tool Suite allows Xerox to inspect, configure and schedule tasks for compliant print devices. For non-compliant devices Xerox will work with the USPS to determine the best remote strategy." *Id.*

For SOW Requirement 4.1.a., the technical evaluation team assessed Xerox a 2 out of 4, which is mid-range score meaning that Xerox met the requirement. Xerox argues that it should not have been assessed a weakness. However, Xerox's narrative response states that its "Xerox Tool Suite" will meet the requirement for "compliant print devices." Xerox's narrative response does not explain which printers are "compliant" and which are "non-compliant" with the "Xerox Tool Suite." It was reasonable for the technical evaluation team to have concerns that "non-compliant" may have meant non-Xerox as it relates to the "Xerox Tool Suite." In addition, regardless of which devices fall under the category of "non-compliant," Xerox does not propose a strategy for meeting the requirement for said devices. For "non-compliant" devices, Xerox expected the evaluators to take it at its word that it would be able to meet the requirement.

B. Technical Evaluation of HP's Past Performance

Xerox argues that the solicitation required the Postal Service to take into account HP's July 31, 2014 settlement agreement relating to a U.S. Department of Justice investigation under the False Claims Act. However, the Disagreement does not cite anything in the solicitation that would have required the technical evaluation team to do so. With regard to Past Performance, the solicitation explained what the Postal Service would review, and the evaluation team evaluated this part of the proposal in accordance with the solicitation.

In addition, the CO completed his Award Recommendation on June 16, 2014, which was well before HP's July 31, 2014 Settlement Agreement. The technical evaluation team could not have known about the settlement prior to the evaluation of proposals. In addition, the allegations that were settled involved a contract that had expired in 2010, which was more than three years before this solicitation was issued. Furthermore, during the evaluation process, senior Postal Service Supply Management officials did not share information regarding the allegations against HP with the applicable Supply Management Purchase Team because of the ongoing investigation.

I find no error in the technical evaluation of HP's past performance.²

² The Disagreement cites internal guidelines from § 2-26.4 of the Postal Service's Supplying Principles and Practices ("SPs&Ps") in support of its arguments. Disagreement at 29. Since they are internal guidelines, the SPs&Ps are not binding on the Postal Service. Xerox cites § 2-26.4.1(c)(3), which states, "All past performance evaluations should consider the following factors ... (3) Business

Furthermore, the Past Performance evaluation factor was only 5 percent of the technical evaluation and both Xerox and HP received the same score for Past Performance.

C. Evaluation of Offerors' Price Proposals

At the outset, it should be noted that the solicitation at issue is for an IDIQ contract. Clauses & Provision at 13. For evaluation purposes only, the solicitation's pricing spreadsheet used estimated unit amounts for the proposed unit prices in order to calculate a comprehensive evaluated price.

The price evaluation consisted of the following six components: (1) Existing Managed Fleet, (2) Cartridge Pricing – Existing, (3) New Hardware Pricing – Managed – Purchase, (4) New Hardware Pricing – Managed – Monthly Lease, (5) New Hardware Pricing – Unmanaged – Purchase, and (6) New Hardware Pricing – Unmanaged – Monthly Lease. All six components were taken directly from the Pricing Rollup from the pricing spreadsheet. For each of the six components, HP was the lowest evaluated price. The sum of the six components was \$208,869,993 for Xerox and was \$151,879,775 for HP. In the Award Recommendation, the CO multiplied the Cartridge Price – Existing component by six and added that to the other five components for each offeror. This additional comparison was done as part of the evaluation process and it provided the CO with a view of pricing that the Postal Service could evaluate over the 6 year period. The total for Xerox was \$327,998,947, and the total for HP was \$219,847,575.

Xerox argues that the pricing calculations for all of the offerors were based on flawed mathematical formulas, including ones with an alleged preference for OEM cartridges. All of the formulas and weighting were viewable in the pricing spreadsheet. Xerox should have submitted questions regarding the alleged errors when it submitted its other questions during the "Question & Answer" period. Furthermore, I find that Xerox's arguments regarding the formulas and weighting are untimely because, "[f]or disagreements that concern alleged improprieties in a solicitation, the contracting officer must receive the disagreement before the time set for the receipt of proposals." 39 C.F.R. § 601.107(b). All of Xerox's issues with the formulas and weighting were required to be raised in a disagreement before the due date for proposals.

In addition, the Disagreement does not identify any errors in the actual price evaluation. The solicitation's pricing spreadsheet showed exactly how the offerors' prices would be evaluated, and the prices were evaluated in accordance with the solicitation. Xerox cannot say it was treated unfairly because all of the offerors were evaluated using the same pricing spreadsheet.

Furthermore, as explained below, I find that the alleged errors were either not errors or not consequential.

1. Formulas for Hardware Lease Pricing

With regard to the hardware lease pricing, Xerox is correct that the formulas in the four columns/tabs cited in the Disagreement probably should not have added the purchase price to the total lease

relations (a history of being reasonable and cooperative with customers; commitment to customer satisfaction; integrity and ethics)," and § 2-26.4.1(e), which states, "The review of past performance should generally be limited to contracts completed within the last three years. However, longer periods may be reviewed when the purchase/SCM team deems them appropriate." Putting aside the fact that the SPs&Ps are not binding on the Postal Service, I find that nothing in the internal guidelines from § 2-26.4 of the SPs&Ps required the technical evaluation team to take into account the July 31, 2014 Settlement Agreement.

pricing.³ Disagreement at 34-35. However, the formulas were the same for all offerors, so Xerox was not disadvantaged relative to any other offeror. HP's price advantage would have remained the same.

2. Formula for Managed Hardware Configuration Using Alternative Print Cartridges

In his resolution of the initial disagreement, the CO acknowledged that the formula used to calculate the managed hardware configuration using alternative printer cartridges should have multiplied, instead of added, the expected quantity of devices. CO's Letter at 8. The tab at issue is the "Hardware Pricing-Managed-ALT" tab. However, since Xerox's alternate pricing was significantly more than HP's non-alternate pricing, the formula was not consequential.

3. Annual Pricing from the "Cartridge Pricing – Existing" Tab

There really is no disagreement between Xerox and the CO regarding the annual pricing from the "Cartridge Pricing – Existing" tab. One of the ways that the CO looked at the six components of the pricing spreadsheet in the Award Recommendation was using the view being presently advocated by Xerox. There are multiple ways to look at the six components from the pricing spreadsheet. One can look at each component individually, one can add the six components together, and one can multiply the cartridge pricing component by six and add the subtotal to the other five components, which is what Xerox is presently advocating for. The CO compared the pricing of the components on an individual basis and did a comparison on a rollup basis. HP was the lowest priced offer on all the individual components and the rollup basis.

4. Formula for Cartridge Pricing for Managed Devices (Weighting)

With regard to the cartridge pricing for managed devices, Xerox objects to 90 percent of the annual cartridge price being based on OEM cartridges and 10 percent being based non-OEM and re-manufactured cartridges. Xerox repeatedly claims that this was an unstated preference for an OEM cartridge solution. As a threshold matter, the weighting was viewable in the pricing spreadsheet, so there was nothing unstated. In addition, there was no preference. The weighting was based on historical purchasing patterns. Furthermore, all of the offerors had the opportunity to propose a different mix of OEM, non-OEM, and re-manufactured cartridges under the "Hardware Pricing-Managed-ALT" tab, and none of the offerors did so.

D. Best Value Decision

With regard to the best value decision, technical and price were of equal importance. Instructions at 7. Xerox correctly acknowledges that HP was rated slightly higher technically than Xerox and had a significantly lower price than HP. Disagreement at 4, 41. Even if Xerox's technical score was increased and HP's price advantage was reduced as proposed by Xerox, HP would still have a significant price advantage that would make it best value.⁴

IV. Decision

³ The four affected formulas are in Column BF of the "Hardware Pricing-Managed-OEM" tab, Column BG of the "Hardware Pricing-Managed-ALT" tab, Column AY of the "Hardware Pricing-Unmanaged-OEM" tab, and Column AZ of the "Hardware Pricing-Unmanaged-ALT" tab.

⁴ Contrary to the Disagreement, none of the formula or weighting issues raised by Xerox made the pricing part of the best value analysis "illusory." (Disagreement at 40.) There were many valid ways to calculate the six components of the pricing spreadsheet. The important part was that the offerors' proposed pricing was evaluated the same way, such that they could be compared to each other uniformly and comprehensively.

After reviewing the procurement record, I find that the CO's award represents best value for the Postal Service. Therefore, this Disagreement is denied. In accordance with 39 C.F.R. § 601.108(g), this is my final decision.

A handwritten signature in cursive script that reads "Trent Ensley".

Trent Ensley
USPS Supplier Disagreement Resolution Official