

December 22, 2005

Mr. Dennis Bertucci
Post Office Box 1520
Boulder, UT 84716-1520

RE: Supplier Disagreement Resolution Case No. OM06SR-04
Disagreement Regarding Solicitation No. 2BCPAC-06-A-0005

Dear Mr. Bertucci:

Your letter of November 17 presented a disagreement as defined in 39 CFR Part 601 with respect to the award of solicitation no. 2BCPAC-06-A-0005 for a Contract Postal Unit (CPU) in Boulder, Utah. Specifically, you are requesting that I overturn the contracting officer's contract award decision because the evaluation process lacked competition and integrity.

I have examined the disagreement lodged with me as well as the information you provided. I have also examined the contracting officer's administrative file. While there were some irregularities in the purchasing process, they were addressed, and business decisions made resulted in the Postal Service receiving the best value in its award to Mr. Dick.

You asserted the following chain of events in your disagreement lodged with me on November 17:

1. You completed the application, interview and bid process for the above-referenced solicitation. It was your understanding that there were two suppliers bidding on the contract, yourself and Mr. Brian Dick;
2. You received an e-mail from Ms. Melissa Walker, administrative assistant for the Postal Service Retail Products & Services Category Team in Aurora, Colorado, stating that your original bid of \$19,720 was greater than the Salt Lake City District would allow and you were asked to submit another bid. Subsequently on November 4, you left a voice mail and e-mail with Ms. Walker with a second bid of \$18,720;
3. On Friday, November 4, you learned from Ms. Linda Pickett, the District Retail Specialist for the Salt Lake City District Office, that Mr. Dick was awarded the contract. Later that day, you had a conversation with Mr. Dick in which you learned from Mr. Dick that when he was asked to submit a second bid by Ms. Walker, he called the Postal office in Colorado for guidance. During the course of Mr. Dick's conversation with Ms. Walker, Mr. Dick asserted to you that Ms. Walker stated that the pricing range for an acceptable bid was between \$18,000 and \$19,000. Mr. Dick told you that based on the information he received from Ms. Walker, he lowered his bid approximately \$7,000. Mr. Dick also conveyed to you that his original bid was around \$25,000;

On November 4, you contend that both you and Mr. Dick knew each other's low and high bids and what was acceptable to USPS. At that point, you lodged a disagreement with the Contracting Officer based on the discussion between Ms. Walker and Mr. Dick citing that the pricing evaluation was anticompetitive and you requested that the original bids be recognized by Ms. Walker as the only bids that were offered. Your disagreement further explained that in response to the disagreement you lodged with the Contracting Officer, Ms. Walker requested a third bid on November 7 and informed you at that point that the bids had to be under \$19,000. You stated the following in your disagreement:

"having read the application carefully I felt bound by my second bid of \$18,720 as this was the last bid that I offered which was independent of my conversation with Mr. Dick (Part 2.3 Provision 4-3: Representations and Certifications, Section C.3 of the solicitation package). I was unable to alter that bid and still claim independence. In response to the request for a third bid I submitted a statement asserting independence, detailing the pricing conversation with another offeror and the same (second) bid of \$18,720. At this point, a third bid was pointless as a pricing conversation between offerors had occurred and both Mr. Dick and myself were bound to disclose this conversation."

You contend that the rationale for your disagreement is that when Ms. Walker entered into a discussion with one of two suppliers regarding acceptable bid amounts she deprived the agency of a competitive bid environment. Mr. Dick had a target amount and lowered his bid substantially. By doing so, this prevented USPS from achieving the best value for this contract and corrupted the integrity of the process.

According to the response submitted by the Contracting Officer, the solicitation was sent to six suppliers on October 12, but only two initial offers were received; however, the two offers exceeded the approved funded amount provided by the client of \$12,000. Mr. Brian Dick submitted a bid for \$25,145 and Mr. Dennis Bertucci submitted a bid of \$19,720. The response further stated that on November 2, Ms. Walker requested that both suppliers reevaluate their offers and submit their new offer by November 3. Ms. Walker told both suppliers that "your offer is greater than the Salt Lake City District will allow." The Contracting Officer further confirms that afterwards, Mr. Dick contacted Ms. Walker on November 2 for additional information and during the conversation, Ms. Walker mentioned to Mr. Dick that she did not think the District office would go above \$19,000. The Contracting Officer stated that by disclosing this pricing information to Mr. Dick, he was afforded an advantage over Mr. Bertucci. Afterwards, on November 2, Mr. Dick submitted his new offer of \$17,750 and Mr. Bertucci submitted his new offer of \$18,720. Ms. Walker provided an email and attempted to phone each supplier to request their final offer on November 7, and the statement "please submit an offer below \$19,000." Both suppliers responded to this request and provided the same offer as the initial request on November 2. The administrative file affirms that with other evaluation factors being equal, pricing became the determining factor.

In this instance, a determination of best value to the Postal Service is based upon whether we received the best price reasonably available for a CPU in Boulder, Utah. It is my conclusion that the Postal Service did receive best value in this matter. Granted, Ms. Walker compromised the integrity of the purchasing process by giving Mr. Dick an advantage during the second bid submission; however, she corrected the matter and leveled the playing field by allowing both parties a third opportunity to submit offers. You are correct in that Provision 4-3 Representations and Certifications, of the solicitation requires that you do not communicate or consult with other offerors regarding proposed bid prices. However, on November 7 when Ms. Walker allowed both parties a third opportunity to submit offers, pricing knowledge was known by both parties and you were given an opportunity to provide a revised bid. You stated that having read the application carefully you felt

bound by your second bid of \$18,720. When Ms. Walker requested that both parties submit their final offers on November 7, she absolved you from being bound by the Certificate of Independent Price Determination under Provision 4-3. Ms. Walker gave you an opportunity to resubmit another bid price. If you did not understand the provisions within the solicitation or if you had doubts about whether you could revise your \$18,720 bid price, it was incumbent upon you to contact Ms. Walker and ask for clarification prior to submitting the same initial bid.

Accordingly, I conclude that the award of solicitation no. 2BCPAC-06-A-0005 was properly made by the contracting officer and it represented the best value to the Postal Service. Therefore your disagreement is denied and the award of solicitation no. 2BCPAC-06-A-0005 stands.

This is the Postal Service's final decision on this disagreement regarding solicitation no. 2BCPAC-06-A-0005 under 39 CFR 601.108(h).

Sincerely,

A handwritten signature in black ink that reads "Juanda J. Barclay". The signature is written in a cursive, flowing style.

Juanda J. Barclay, C.P.M., A.P.P.
USPS Supplier Ombudsman

cc: Melissa L. Walker
Ronald E. Burke
Michele P. Scheumann