



February 6, 2008

Mr. Fred Gowen  
President  
Gowen Motor Services, Inc.  
1185 Mount Aetna Road  
Hagerstown, MD 21740-6832

RE: Supplier Disagreement Resolution Case No. SDR08MT-02  
Emergency Highway Contract Route (HCR) No. 217BU

Dear Mr. Gowen:

Your letter of November 21, 2007 presented a disagreement as defined in 39 CFR Part 601 with respect to the above referenced emergency HCR contract. You requested that this emergency contract awarded to Marcus Express, Inc. be terminated and that Gowen Motor Services, Inc. (Gowen) be permitted to continue this service under contract HCR No. 21734 until that contract can be modified to include this new route.

According to your disagreement, Gowen delivered mail from Frederick to downtown Hagerstown, MD under HCR 21734. When a new post office, the Northern Station, was opened in October 2005, you allege that Gowen was instructed to deliver mail from Frederick to the Northern Station. Subsequently, you were told that HCR 21734 would be modified to reflect this change. You further state that as early as March 2007, you asked the Contracting Officer (CO) to include this route under HCR 21734 so that you could purchase a permanent vehicle for the route. You offered to the CO that by modifying the contract, the CO could convert the work from an indefinite period to a fixed period and this would allow you to make more permanent arrangements for a vehicle to service the new route, reduce costs, and allow for a more competitive price. For two years, Gowen continued to deliver mail from Frederick to the Northern Station without a modification to HCR 21734. Since you received nothing in writing during this two-year period, on October 26, 2007, you faxed a letter to the CO stating that you were going to have to suspend service from Frederick to the Northern Station until you were provided with written direction to perform this changed service. As a result of your inquiry, the CO asked if you were refusing to pick up or deliver the mail. You responded by reiterating that you could not continue to perform this changed work without a written modification to do so. The CO then informed you that the Postmaster of the Frederick, MD Post Office (Frederick Postmaster) is responsible for approving modifications to contracts and that she had still not received that approval. You contend that later that same day you learned that this route, which you had been performing for the past two-years on an indefinite basis, and without the benefit of written instruction, had been awarded to Marcus Express, Inc. for a six month emergency basis. You were informed that the CO solicited and obtained offers on the emergency contract from four other suppliers, excluding you. You contend that since Gowen was the incumbent contractor providing the same service for two years without a modification to the contract, you should have at least been asked to provide an offer on the emergency contract. You believe the actions taken by the CO failed to result in the best-value for the Postal Service.

I have examined the disagreement lodged with me as well as the information you provided. I have also examined the contract file. As a result of that review, I have determined that the decision to

award HCR 217BU to Marcus Express, Inc., without soliciting an offer from Gowen, the incumbent, was arbitrary and did not represent the best-value for the Postal Service.

According to the CO, the emergency service was procured because your representative informed her that it would no longer be able to provide the service. The CO further stated that your representative was aware that the service was still required, even if Gowen could no longer perform and as such, she needed to find another supplier. The CO contends that at no time during their discussion on October 26 did your representative state that it wanted to continue with this service. The CO submits that four suppliers made offers and the emergency contract was awarded based on the best-value to the Postal Service. Based on the information contained in the contract file, I disagree.

As indicated in both the contract file and information supplied by you, Gowen was delivering mail between Frederick to downtown Hagerstown, MD under HCR 21734. In October 2005, Gowen was instructed by the CO to deliver mail from Frederick to the Northern Station under this same contract. For two years, Gowen continued to deliver mail to the Northern Station without any modification to this contract. In addition, the contract file clearly provides evidence of your repeated attempts to secure a modification to the contract. With each request, the CO stated that the modification was forthcoming, but argued that the responsibility to approve the modification was with the Frederick Postmaster. For two years while Gowen delivered mail to the new location, the CO failed to secure approval and to issue the modification. After two years of trying to secure a modification, you informed the CO that you could no longer perform the service until you received the modification. As a result of Gowen's stance, the CO issued an emergency solicitation (HCR 217BU) for the route and procured offers from four suppliers, excluding Gowen. Based on the totality of these circumstances, the CO clearly over-interpreted Gowen's statement that it would no longer be able to provide the service. For two-years, Gowen's new route was not formalized in writing and during those two years, the Postal Service was on notice that Gowen's contract was in need of a modification. Instead of securing a modification or allowing Gowen to offer on the new emergency contract, the CO opted to exclude Gowen from offering on the emergency solicitation. Gowen should have been invited to make an offer on the emergency contract.

Under these circumstances, I find that the determination to exclude Gowen from the emergency solicitation arbitrary and therefore the emergency contract award did not represent the best-value to the Postal Service. With this decision, I am instructing the CO to terminate the emergency contract and promptly resolicit HCR 217BU and to include Gowen in the new solicitation.

This is the Postal Service's final decision on this disagreement regarding HCR 217BU under 39 CFR 601.108(g).

Sincerely,



Pete Dolder, C.P.M.  
USPS Supplier Disagreement Resolution Official

cc: Cassandra Jackson, Contracting Officer  
Ron Sulchek, Sulchek & Moore, LLC