



April 17, 2020

BY EMAIL AND CERTIFIED MAIL

Ms. Michelle N. Thames
Post Office Box [REDACTED]
[REDACTED]

E-mail: [REDACTED]

Re: Supplier Disagreement Resolution No.: SDR-20-TR-001

Dear Ms. Thames:

This letter responds to the business disagreement (“Disagreement”) submitted by you (“Ms. Thames”) on March 17, 2020, to the Supplier Disagreement Resolution Official (the “SDRO”) concerning Solicitation No. 800-752-20 for mail service in Mertzon, Texas (the “Solicitation”) issued by the United States Postal Service (“USPS” or “Postal Service”).

Background

1. Incumbent Contract and Renewal Attempt

The previous Highway Contract Route for Mertzon, TX was held by Ms. Thames, and had a period of performance from April 1, 2014 through March 31, 2020. On October 7, 2019, a USPS contract specialist contacted Ms. Thames via e-mail, using the e-mail address she provided ([REDACTED]), inviting Ms. Thames to renew her contract (“Renewal Invitation E-mail”). The Renewal Invitation E-mail provided Ms. Thames with the documents she would need to review and complete in order to effect the contract renewal, and informed her that the documents would need to be completed and returned to the USPS by October 31, 2019. Further, the Renewal Invitation E-mail notified Ms. Thames that failure to complete the required documents and return them by October 31, 2019 “may be interpreted as a desire to allow the contract to expire. The service will then be solicited.”

Ms. Thames did not respond to the Renewal Invitation E-mail. On October 31, 2019, the contract specialist sent a second e-mail to Ms. Thames at the same e-mail address, forwarding the Renewal Invitation E-mail. That same day, the contract specialist attempted to call Ms. Thames at the phone number she provided ([REDACTED]).

██████████), but left a voicemail when there was no answer. Given the lack of response from Ms. Thames, the Postal Service moved forward with soliciting the Mertzon, TX route. On December 11, 2019, Ms. Thames was sent notice, to the same ██████████ e-mail address, that her contract was not being renewed. Ms. Thames responded on the same day claiming that she was unaware of any previous e-mails regarding renewal of her contract. On December 12, 2019, the USPS forwarded a copy of the Renewal Invitation E-mail, and the contract specialist's follow-up e-mail from October 31, 2019. The USPS issued the Solicitation on December 16, 2019.

2. Solicitation and Award Decision

The Solicitation informed offerors that the Postal Service would award a contract "to the offeror whose offer conforming to the solicitation is deemed to offer the Postal Service the best value, price and other factors as specified considered." (Solicitation Terms & Conditions, Provision 4-2.) The Solicitation stated that proposals would be evaluated according to the following factors:

- Supplier Eligibility (evaluated on a pass/fail basis)
- Technical Factors
 - o Operations Plan (most important)
 - o Past Performance (less important than Operations Plan)
 - o Supplier Capability (equal to Past Performance)
- Price (evaluated based on data provided in Box 2 on PS Form 7405)

Offerors that did not "pass" the Supplier Eligibility criteria would be deemed ineligible and would not be further evaluated for award. For offerors that were deemed eligible for award, the Solicitation provided that the Postal Service would "assess the strengths, weaknesses, and deficiencies between or among competing technical proposals from the standpoint of 1) what the difference might mean in terms of anticipated performance; and 2) what the evaluated cost would be for the Postal Service to take advantage of that difference." The Award would be made to the offeror providing the best value, which would not necessarily mean the highest-rated proposal or the lowest-price.

The Solicitation stated that the Technical factors were more important than Price. However, the Solicitation noted that Price would become more important in selecting among closely rated Technical proposals. Moreover, the Solicitation informed offerors that in making a cost-technical tradeoff, "the Postal Service also does not intend to pay a premium price unless there is a significant technical advantage justifying a higher price."

The Postal Service received five offers in response to the Solicitation, including an offer from Ms. Thames. After evaluation of offers, Kacie N. Pruitt ("Awardee") was selected for award at a total price of \$ [REDACTED]. Ms. Thames' offered price was \$ [REDACTED], or a price premium of \$ [REDACTED] as compared to the Awardee. Unsuccessful offerors, including Ms. Thames, were notified of the award to the Awardee on February 26, 2019.

3. Initial Disagreement

On February 27, 2020, Ms. Thames contacted the USPS offering to perform the Mertzon, TX route for the same \$ [REDACTED] price offered by the Awardee. This offer was not considered by the USPS. On March 2, 2020, Ms. Thames again contacted the USPS offering to lower her price to perform the Mertzon, TX route, this time offering a price of \$ [REDACTED]. This offer was also not considered by the USPS.

On or about March 6, 2020, Ms. Thames contacted the USPS objecting to the award to the Awardee. Ms. Thames' communications were treated by the contracting officer as an initial business disagreement under 39 C.F.R. § 601.107. Ms. Thames' initial business disagreement alleged the following grounds: (1) the Awardee is not the best value for the Postal Service; (2) the Awardee is not the best value for the customers; and (3) the Awardee lacks experience. Ms. Thames also alleged that the Awardee failed to report an accident while transporting the mail under another contract.

On March 12, 2020, the contracting officer issued a decision denying Ms. Thames' initial business disagreement. The CO determined that the proposal submitted by the Awardee was the best value for the Postal Service based on the combination of price and technical responses. The contracting officer noted that while the alleged accident cited by Ms. Thames was not considered in the evaluation of the Awardee's proposal, because the Postal Service had no knowledge of it at the time of evaluation, that information would not have changed the best value determination.

Disagreement

On March 17, 2020, Ms. Thames e-mailed the SDRO appealing the contracting officer's decision ("SDRO Disagreement"). The SDRO Disagreement alleges the same grounds of protest as in the initial business disagreement, alleging the following three grounds:

1. The award winner is not the best value for the Postal Service.
2. The award winner is not the best value for the customers.
3. The award winner lacks experience.

In addition to these three numbered grounds of disagreement, the SDRO Disagreement made additional complaints about the award to the Awardee: “[The Solicitation] also stated that the USPS would like for the award winner to live and be interactive with the community in which the route is held”; “I was never offered a renewal even after inquiring about renewal in May/April 2019”; and “It is my understanding that the award winner failed to report an accident as a sub-contractor, actually flipping/rolling the vehicle while she was transporting mail.” While these additional complaints were not listed as grounds of appeal, each will be addressed below.

Discussion

1. The Awardee is not the Best Value for the Postal Service

The Solicitation laid out the evaluation scheme and the criteria for the best value determination. Specifically, the Solicitation provided that the Technical factors were more important than Price, but that Price would become more important in selecting between closely ranked technical proposals. (Solicitation Terms & Conditions, Provision 4-2.) The Awardee and Ms. Thames both received the same technical scores. Given the evaluation scheme stated in the Solicitation, this made the offerors’ pricing more important. The Awardee’s offered price savings of \$ [REDACTED] as compared to Ms. Thames’ offered price, which is [REDACTED] % of the awarded price.

While Ms. Thames did offer to lower her price on two separate occasions, these offers came after the award decision was made and announced. The Solicitation notified offerors that the Postal Service may evaluate proposals and make an award without discussions, therefore “the offeror’s initial proposal should contain the offeror’s best terms from a price and technical standpoint.” (Solicitation Terms & Conditions, Provision 4-1.) Thus, the Postal Service was under no obligation to consider the post-award offers from Ms. Thames.

There was no technical superiority represented by Ms. Thames’ proposal as compared to the Awardee. Rather, the technical proposals for both the Awardee and Ms. Thames received identical technical scores. The CO made the reasonable determination that, based on the Awardee’s demonstrated experience, capability, and proposed plan to manage the contract, as well as the significant price savings offered by her proposal, the Awardee’s proposal represented the best value to the Postal Service.

Therefore, I deny this basis for Ms. Thames’ disagreement.

2. The Awardee is not the Best Value for the Customers

The SDRO Disagreement alleges that the Awardee is not the best value for “the customers,” but does not specify who these customers are. In any event, the Solicitation states that an award would be made “to the offeror who proposes the

best value to the Postal Service.” (Solicitation Terms & Conditions, Provision 4-2.) The offers would be evaluated for their value to **the Postal Service**. There is no mention in the Solicitation that there would be any sort of evaluation based on best value to customers. Therefore, this allegation does not form a reasonable basis of protest.

Therefore, I deny this basis for Ms. Thames’ disagreement.

3. The Awardee Lacks Experience

Ms. Thames asserts that the Awardee’s lacks experience. However, this assertion is misplaced because “experience” was not one of the three technical factors outlined in the Solicitation’s evaluation scheme. The Solicitation informed offerors that they would be evaluated on their Past Performance, Supplier Capability, and Operations Plan. The Awardee was evaluated according to the Solicitation under each of these technical factors, and received the same scores as Ms. Thames. “Experience” was not an evaluation factor.

However, to the extent that an offeror’s experience was relevant to the evaluation of an offeror’s proposal, Ms. Thames fails to demonstrate a lack of experience of the Awardee. Instead, Ms. Thames alleges that “I know this route better than anyone else,” and that no other offeror could score higher in expertise, conduct, past performance, or operation plan. However, such conclusory statements do not form the basis for sustaining a disagreement.

Moreover, Ms. Thames argument is immaterial that she has lived in the community for the past 38 years, has children enrolled in the school, and is involved in the community. There was no requirement in the Solicitation that the awardee live in the area, have children enrolled in the schools, or be generally involved in the community. Nor were any of those issues listed as criteria for evaluation.

Rather, the contracting officer evaluated all offerors according to the evaluation scheme outlined in the Solicitation. To the extent that experience was relevant for any of the technical factors, the result of the evaluation was a determination that both the Awardee and Ms. Thames received the same score in each technical factor. This determination was reasonable.

Therefore, I deny this basis for Ms. Thames’ disagreement.

4. The Award Winner Should Live and Be Interactive with the Community

There are no evaluation factors in the Solicitation that require the awardee live and be interactive in the community. Nor does the Solicitation indicate that an offeror's place of residence or level of involvement with the local community would be a factor to be considered in the evaluation of an offeror's proposal.

Therefore, I deny this basis for Ms. Thames' disagreement.

5. Ms. Thames Was Not Offered a Contract Renewal

In the SDRO Disagreement, Ms. Thames claims she was not offered an opportunity to renew her contract. This claim has no merit. Ms. Thames was, in fact, twice offered an opportunity to renew her contract. The first offer came on October 7, 2019, when the contract specialist assigned to her incumbent contract e-mailed Ms. Thames all of the documents she needed to review and complete in order to renew her contract. Ms. Thames was notified in that same e-mail that the documents would need to be completed by October 31, 2019, for the contract to be renewed. When Ms. Thames failed to respond by October 31, 2019, the contract specialist took the extra step to reach out to her again, by both phone and e-mail, in an attempt to assist her with renewing her contract.

In each case the contract specialist attempted to contact Ms. Thames using the contact information she provided. Notably, the contract specialist used the same e-mail address for Ms. Thames that she has continuously used since that time to communicate with the Postal Service regarding the solicitation of the Mertzon, TX route and submit the initial business disagreement and the SDRO Disagreement. In using this e-mail address, the Postal Service took reasonable steps to communicate with Ms. Thames and give her an opportunity to renew her contract. It is not the fault of the Postal Service that Ms. Thames missed the e-mails and the voicemail from the contract specialist regarding the renewal.

In any event, Ms. Thames' incumbent contract contained Postal Service Clause B-78, which states that the "Postal Service reserves the right to decide not to enter into a renewed contract with the supplier." Thus, even if Ms. Thames had timely replied to the contract specialist's e-mails and provided the required documents for renewal of her contract, it was still the Postal Service's decision as to whether to actually renew the contract. Thus, the decision to issue the Solicitation and open up the Mertzon, TX route for competition was entirely within the discretion of the Postal Service. In this case, after Ms. Thames was nonresponsive to several communications regarding possible renewal of the incumbent contract, the Postal Service made the reasonable decision to solicit the Mertzon, TX route.

Therefore, I deny this basis for Ms. Thames' disagreement.

6. The Awardee Failed to Report an Accident as a Subcontractor

The Solicitation does not contain a requirement for offerors to disclose any traffic accidents. Thus, contrary to the suggestion in the SDRO Disagreement, there was no requirement for the Awardee to report the purported accident referred to by Ms. Thames. Nevertheless, in the decision denying Ms. Thames initial business disagreement, the contracting officer noted that the news article discussing the incident that was provided by Ms. Thames stated that no citations were issued for the event. The contracting officer stated that even had the Postal Service known of the purported accident in question when conducting the evaluation of the Awardee's proposal, it would not have changed the evaluation or the best value determination.

Therefore, I deny this basis for Ms. Thames' disagreement.

SDRO Decision

I have reviewed the matter and conclude that there were no improprieties in the evaluation of the Awardee's proposal or the best value determination made by the contracting officer. Therefore, it is my decision to deny Ms. Thames' SDRO Disagreement. In accordance with 39 C.F.R. § 601.108(g), this is my final and binding resolution of this matter.

Sincerely,

 E-SIGNED by ROBERT D'ORSO
on 2020-04-17 17:01:01 CDT

Robert D'Orso
Supplier Disagreement Resolution Official
Manager, Policy, Compliance, & Audit
Supply Management Infrastructure

cc: John Hite, Contracting Officer