



July 21, 2020

BY EMAIL AND CERTIFIED MAIL

██████████
Law Offices of William R. Satterberg, Jr.
709 Fourth Avenue
Fairbanks, AK 99701-4416

Re: Supplier Disagreement Resolution No.: SDR-20-TR-006

Dear Ms. ██████,

This letter responds to the business disagreement (the "Disagreement") lodged on behalf of Angela Pugliese on June 22, 2020 with the Supplier Disagreement Resolution Official ("SDRO"). Although it is unclear from the Disagreement itself, it appears from correspondence regarding Ms. Pugliese's initial disagreement submitted to contracting officer Bertrum Manchego that this Disagreement concerns the May 8, 2020 Solicitation No.: 800-1514-20 for contract delivery services for the North Pole Branch in Alaska (the "Solicitation"). For the reasons set forth below, I deny Ms. Pugliese's Disagreement.

Procedural History

The Postal Service awarded Ms. Pugliese Contract Delivery Service Contract No. HCR 99756 in 2018. Following an investigation by the Postal Inspection Service, the Postal Service denied Ms. Pugliese's access to the mail on March 20, 2020 for, among other things, endangering the security of the mail. Ms. Pugliese appealed the denial of access on March 25, 2020, which the Postal Service Surface Transportation CMC Manager affirmed on May 26, 2020.

While denied access to the mail, Ms. Pugliese failed to provide service under HCR 99756 and, as a result, the Postal Service issued a solicitation for replacement service on May 8, 2020, *i.e.*, the Solicitation.¹ The Postal Service emailed a copy of the Solicitation to Ms. Pugliese on May 8, 2020, noting that it was an "*** **URGENT SOLICITATION** ***" (emphasis in original) and that proposals were due by "10:00 AM, Mountain Time, May 12, 2020."

Prior to the deadline for submitting proposals, the Postal Service received no disagreements regarding the solicitation from Ms. Pugliese or other potential offerors. Ultimately, the Postal Service received four proposals in response to the solicitation. Ms. Pugliese did not submit an offer. The Postal Service awarded the contract, HCR 997B8, on May 13, 2020.

On May 19, 2020, Ms. Pugliese submitted a purported initial disagreement to the USPS Alaska District Manager, who is not a contracting officer. The Alaska District Manager received the purported initial disagreement on May 26, 2020, and forwarded it to the contracting officer, who received it on May 28, 2020. On June 8, 2020, the contracting officer denied Ms. Pugliese's initial disagreement and transmitted his resolution to Ms. Pugliese and her counsel by email on June 8, 2020.

We received your Disagreement, *i.e.*, appeal of the contracting officer's denial of Ms. Pugliese's initial disagreement, on June 22, 2020.

¹ Ms. Pugliese addresses reasons for the omitted service in her Disagreement. Because those issues pertain to matters of contract administration, rather than solicitation and award, they are not properly before the SDRO and, in any event, do not factor into this decision.

As set forth below, the Postal Service denies the Disagreement for a number of reasons. First, Ms. Pugliese failed to timely appeal the contracting officer's denial of her initial disagreement in accordance with 39 C.F.R. § 601.108. Second, Ms. Pugliese lacked standing to submit a disagreement regarding the award of HCR 997B8 because she was not an interested party. And third, assuming Ms. Pugliese purported to submit a disagreement regarding the solicitation, Ms. Pugliese waived any grounds for a disagreement by failing to submit the disagreement prior to the deadline for submitting proposals.

The Disagreement Is Untimely

Ms. Pugliese failed to timely appeal the contracting officer's denial of her initial disagreement to the Supplier Disagreement Resolution Official ("SDRO"). In accordance with 39 C.F.R. § 601.108(d)(3), "[w]here a supplier is dissatisfied with the contracting officer's resolution of a disagreement under § 601.107, the supplier must lodge the disagreement with the SDR Official within 10 days after the supplier *first receives notification* of the contracting officer's resolution[.]" (emphasis added). While extensions of this deadline may be granted in appropriate circumstances, "[a]ny request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the SDR Official on or before the time to lodge a disagreement lapses." *Id.* § 601.108(d)(5).

Here, the Contracting Officer resolved Ms. Pugliese's initial disagreement on June 8, 2020, and transmitted the resolution to both Ms. Pugliese and her counsel by email on that date. There is no indication in the contract file that the email was not received on June 8, 2020, and Ms. Pugliese's Disagreement does not argue otherwise. In accordance with 39 C.F.R. § 601.108(d)(3), in order to appeal that decision, Ms. Pugliese was required to either lodge her disagreement with the SDRO or deliver a written request for an extension by June 18, 2020.

Ms. Pugliese did not request an extension of time to submit her Disagreement after June 18, 2020, nor did she submit her Disagreement by that date. Accordingly, I deny her disagreement as untimely.

Ms. Pugliese Is Not An Interested Party

Ms. Pugliese is not an interested party with standing to protest the award of HCR 997B8. Postal Service regulations provide that only an "interested party" has standing to lodge a business disagreement. The regulations define "interested party" as an "[a]ctual or prospective offeror[] whose direct economic interests would be affected by the award of, or failure to award, the contract." 39 C.F.R. §601.107(a)(3). Federal courts have held that, to establish "interested party" standing, an offeror must demonstrate a prejudicial error occurred and that, but for the error, the offeror would have had a substantial chance of being awarded the contract. *See Labatt Food Serv., Inc. v. United States*, 577 F.3d 1375, 1381 (Fed. Cir. 2009) ("[S]ubmission deadlines are strictly enforced across the board. When the rules and procedures of a bid process are applied equally to all parties, but one party submits a proposal past the deadline for doing so, the untimely submission becomes a stranger to the process, and is disqualified from the procurement. A late proposal is tantamount to no proposal at all. Such a party has no 'substantial chance' of award, and no more standing to sue than the proverbial man on the street.").

The Postal Service emailed Ms. Pugliese the Solicitation at the time it was issued. The Solicitation prominently indicated that it was an "*** URGENT SOLICITATION ***" and clearly indicated the deadline for submission of proposals. The Postal Service received multiple, competitive proposals in response to the solicitation, indicating that the time for submitting proposals was not unreasonable. The Postal Service received no proposal from Ms. Pugliese. Because Ms. Pugliese failed to submit a proposal in response to the Solicitation, she is not an interested party with standing to protest the award of HCR 997B8. For this reason as well, I deny the Disagreement.

Ms. Pugliese Waived Objections To Any Improprieties In The Solicitation

Ms. Pugliese waived any objections to alleged improprieties in the solicitation itself by failing to submit a disagreement before the time set for receipt of proposals. The Postal Service's Initial Disagreement

Resolution regulations provide that, “[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) (emphasis added). Failing to object to alleged improprieties in a solicitation before the time set for receipt of proposals constitutes a waiver of any such objections. *Blue & Gold Fleet v. United States*, 492 F.3d 1308 (Fed. Cir. 2007).

Because Ms. Pugliese did not lodge an initial disagreement with the contracting officer prior to the time set for the receipt of proposals, she has waived objections to any alleged improprieties in the solicitation itself. Accordingly, to the extent Ms. Pugliese purports to assert such objections, I deny the Disagreement on this basis as well.

SDRO Decision

I deny Ms. Pugliese’s Disagreement because it was not timely lodged following receipt of the contracting officer’s resolution of her initial disagreement, because she lacks standing to lodge a disagreement with respect to the award of HCR 977B8, and because she has waived any objections to alleged improprieties in the Solicitation itself. Although Ms. Pugliese raises a number of issues in her disagreement pertaining to her denial of access to the mail and a purported termination for default of HCR 99756, those matters are not properly before the SDRO and were not a factor in reaching this decision. 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 2020-07-21 08:51:15 CDT

Robert D. D’Orso
Supplier Disagreement Resolution Official
Manager, Policy, Compliance & Audit

cc: Bertrum Manchego