



August 11, 2021

BY EMAIL AND CERTIFIED MAIL

Mitchell G. Styers
Banzet, Thompson, Styers & May, P.L.L.C
PO Box 535
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Warrenton, NC 27589

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Re: Supplier Disagreement Resolution No.: SDR-21-TR-006

Dear Mr. Styers:

This letter responds to the business disagreement ("Disagreement") submitted by you on behalf of Gill Enterprises, LLC ("Gill") on July 6, 2021, to the Supplier Disagreement Resolution Official (the "SDRO") concerning the award of a contract on HCR No. 27542 for mail service in Raleigh, North Carolina (the "Award") issued by the United States Postal Service ("USPS" or "Postal Service").

Background

1. Incumbent Contract and Renewal Attempt

The previous Highway Contract Route from Raleigh to Bunn was held by Gill, with the period of performance set to expire on June 30, 2021 ("Gill Contract"). Beginning in January 2021, the Postal Service began negotiating with Gill for a contract renewal. The parties could not agree on rates for the renewed contract. On March 29, 2021, USPS Purchasing Specialist Jamal Robinson sent Gill via email paperwork for the renewal of the Gill Contract, with rates that USPS was willing to accept for the new contract. On March 30, 2021, counsel for Gill responded to Mr. Robinson via email, stating that after reviewing the renewal paperwork, "it appears the only way to get a fair and competitive rate is to bid on the contract in an open bidding process."

2. Solicitation and Award Decision

On April 14, 2021, Mr. Robinson sent email solicitations to several suppliers soliciting proposals for HCR 27542. Among the suppliers that received the solicitation were Gill and the eventual awardee, Judith Eason Pate ("Pate"). The email solicitation referenced Highway Contract Transportation Terms and Conditions issued January 30, 2021 ("Terms & Conditions").¹

¹ The email solicitations sent to offerors mistakenly did not attach the Terms and Conditions. While this was in error, it was not prejudicial to offerors as all offerors received the same email solicitation (without the Terms and Conditions), and all offerors had received the Terms and Conditions previously under separate HCR contracts. Nevertheless, any challenge to the Postal Service's error in not including the Terms and Conditions in the email solicitation would be untimely, as such a challenge is required to be made prior to the deadline for receipt of proposals. 39 C.F.R. § 601.107(b).

The Postal Service received two offers in response to the email solicitation, including an offer from Gill. After evaluation of offers, Pate was selected for award at a total award amount of \$355,653.78. Gill's offered price was \$ [REDACTED], or a price premium of \$ [REDACTED] as compared to the Pate offer. The award to Pate was made on June 18, 2021, and a Notice of Award was sent to Gill on June 22, 2021.

3. Initial Disagreement

On June 22, 2021, Gill filed an initial disagreement with Mr. Robinson ("Initial Disagreement"). The Initial Disagreement stated the following:

1. Several Gill employees were contacted by the awardee following award to Pate but prior to Gill receiving the Notice of Award.
2. Gill believed the award process to be tainted, stating "We have substantial evidence of undue influence and retaliation on behalf of the other supplier and USPS contracting officials." No evidence was provided.
3. Gill requested the "Gill Enterprises supplier's evaluation factors as determined for this contract award by the technical award team." Gill contended that its 20 years' experience running the route and at lower costs than other suppliers should have led to the determination that Gill's offer was the best value.
4. The lack of notice provided to Gill presented undue hardship and unwarranted costs to the company.
5. Gill disagreed with the award of a contract to Pate without proper notice to Gill, and alleged the award was non-competitive.

On June 30, 2021, the contracting officer issued a decision denying the Initial Disagreement. The CO determined that there was nothing improper in the awardee reaching out to Gill employees following the award, and noted that Gill failed to provide any evidence of undue influence or retaliation. The CO also stated that Gill was incorrect in asserting that it offered a lower price than other offerors. Rather, Pate offered a lower price and had a higher technical rating than Gill. Thus, the CO concluded that the contract was awarded to the offeror who provided the best value to the Postal Service.

Finally, the CO rejected Gill's contention that the Postal Service failed to provide proper notice of award. The award was made on a Friday, and the notice of award was sent to Gill the following Tuesday. The CO concluded this was adequate notice.

Disagreement

On July 6, 2021, Gill appealed the contracting officer's decision to the SDRO. ("SDRO Disagreement"). The SDRO Disagreement argues four issues:

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| Issue 1: | Lack of Good Faith Negotiation |
| Issue 2: | Undue Influence and Retaliation |
| Issue 3: | Improper Notice |
| Issue 4: | Unanswered Requests |

The SDRO Disagreement concluded with a statement that Gill disagreed with the contracting officer's response to the Initial Disagreement with the award to another supplier. Each of the four issues raised in the SDRO Disagreement are addressed below.

Discussion

Issue 1: Lack of Good Faith Negotiation

The crux of Gill's disagreement relating to lack of good faith appears to be regarding renewal negotiations. Gill's argument on this issue lacks merit. First, Gill was on notice that the previous contract was not being renewed upon receiving the solicitation for the new contract on April 14, 2021. Any challenge to a nonrenewal must be filed within 10 days of when a supplier is on notice of nonrenewal. 39 C.F.R. § 601.107(b). The Initial Disagreement was not filed until June 22, 2021, thus Gill's disagreement regarding the renewal process is untimely. Second, neither the Initial Disagreement nor the SDRO Disagreement requests a remedy relating to the disagreement of the nonrenewal. Thus, there is no action for the SDRO to take in response to this disagreement issue.

Lastly, Gill provided no evidence of a lack of good faith on the part of the Postal Service for the SDRO to review and consider. Gill provided emails demonstrating a failed negotiation, however that the parties could not agree on terms for a renewal is not evidence of a lack of good faith. The Postal Service has the right to determine not to enter into a renewed contract with a supplier.

Therefore, I deny this basis for Gill's disagreement.

Issue 2: Undue Influence and Retaliation

Gill's argument on this issue can be separated into two elements: (1) bias against Gill; and (2) USPS contact with Pate.

First, Gill states that the award decision was influenced by the actions of the contract specialist who held a bias against Gill from the previous renewal process. Gill stated that the specialist made "threats" to take the contract away from Gill and refused to make "fair and equitable" adjustments to the contract. However, Gill provided no evidence of such threats for the SDRO to review and consider. Furthermore, renewal of an existing contract is not automatic. The parties must agree on renewal terms, and the Postal Service has the right to make a determination not to enter into a renewed contract. The Postal Service's refusal to adjust the rates of the previous contract during renewal negotiations has no bearing on the outcome of the new award and therefore is not relevant to this disagreement.

Second, Gill takes issue with the contract specialist's contact with Pate, and Pate's contact with Gill employees. The Postal Service routinely communicates with potential successful offerors as they are finalizing the awarded contract. This typically happens prior to notifying other offerors that the award decision has been made as it is necessary to fully complete the award process prior to announcement. It is also common practice for successful offerors to reach out to potential employees prior to the start of services, and this type of communication is not evidence of any wrongdoing.

Therefore, I deny this basis for Gill's disagreement.

Issue 3: Improper Notice

Gill asserts that it was not given proper notice of the contract award decision. However, the award was made on June 18, 2021. By Gill's own admission, it received a formal unsuccessful offeror letter on June 22, 2021, which is only two business days after the award. This meets the requirements in Section 3-1.1 of the Postal Service's Supplying Principles and Practices for the proper notice of award to unsuccessful offerors. Furthermore, Gill emailed Mr. Robinson on Friday, June 18, 2021, asking for an update on the contract award. Mr. Robinson responded on the following Monday, June 21, 2021, informing Gill that an award had been made (on June 18) and a notice would be forthcoming. After reviewing the evidence, the Postal Service informed Gill of the award decision in the appropriate amount of time.

Therefore, I deny this basis for Gill's disagreement.

Issue 4: Unanswered Questions

The SDRO Disagreement alleges that the CO did not respond to a question asking whether Pate requested amendments to the contract after award. It would be inappropriate for the CO to discuss with other suppliers any correspondences between the awardee and the Postal Service. Gill's allegation on this issue does not allege anything improper.

The SDRO Disagreement also states that the contracting officer did not respond to Gill's request to provide Gill's "supplier's evaluation factors as determined for this contract award by the technical award team." It is unclear if this request is referring to the evaluation of Gill's proposal or the evaluation factors themselves. Under either interpretation, Gill's allegation on this issue lacks merit.

The award notice sent to Gill informed Gill of its right to request feedback from the contracting officer within three days of receipt of the notification. The contracting officer received no such request. The contracting officer had no obligation to provide information to Gill outside of this process.


To the extent Gill is arguing that the Postal Service did not explain the evaluation factors, the CO stated in the solicitation that the Highway Contract Transportation Terms and Conditions, issued January 30, 2021, applied. Gill has received a copy of the Terms and Conditions, and thus the evaluation factors were known prior to the submission of proposals. Any challenge to the evaluation factors at this stage is untimely, as such a challenge was required prior to the deadline for receipt of proposals. 39 C.F.R. § 601.107(b).

Therefore, I deny this basis for Gill's disagreement.

SDRO Decision

I have reviewed the matter and conclude that Gill has not raised any valid challenges to the Postal Service's evaluation of proposals or the award to Pate. Therefore, it is my decision to deny Gill's 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 Nicholas.G Faiola
on 2021-08-11 08:24:12 CDT

Nicholas G. Faiola
Supplier Disagreement Resolution Official
Manager, Supply Management Infrastructure

cc: Kisha Jones, Contracting Officer